

**Attachment A  
Bidder Questionnaire  
RFP 124469 O5**

**Bidder Name: Deloitte & Touche LLP**

**Bidder should provide a response to all questions in this attachment to meet the requirements of the RFP.**

**CORPORATE OVERVIEW**

**1.1 BIDDER IDENTIFICATION AND INFORMATION**  
The bidder should provide the full company or corporate name, address of the company's headquarters, entity organization (corporation, partnership, proprietorship), state in which the bidder is incorporated or otherwise organized to do business, year in which the bidder first organized to do business and whether the name and form of organization has changed since first organized.

**Response:**

Deloitte has had the opportunity to serve the State of Nebraska for more than 20 years, building on our 70-year local legacy of supporting the Nebraska community (see Figure 1). Our commitment extends beyond client services; we are dedicated to making a meaningful difference in the lives of our neighbors through the more than 30 Local Community Organizations and Boards that our professionals belong to or actively support, including the Aksarben Foundation, United Way of the Midlands, Habitat for Humanity, and Nebraska Chamber of Commerce. Deloitte is also the recipient of the Governor’s Wellness Award which demonstrates our commitment and dedication to incorporate a culture of health and wellness into our workplace.



*Figure 1. Deloitte Omaha Team*

Established in 1845, Deloitte has evolved into one of the world’s largest and most trusted professional services firms (see information in Table 1). Deloitte offers comprehensive consulting, advisory, audit & assurance, and tax services to clients across diverse industries with a U.S. workforce of over 180,000 professionals in 103 cities.

**Table 1. Bidder Identification and Information**

<b>Name:</b>	Deloitte & Touche LLP
<b>Nebraska Office:</b>	1100 Capitol Avenue, Suite 300 Omaha, NE 68102
<b>Headquarters:</b>	30 Rockefeller Plaza New York, NY 10112
<b>Entity organization: (corporation, partnership, proprietorship)</b>	Limited Liability Partnership
<b>State in which the bidder is incorporated or otherwise organized to do business</b>	Delaware
<b>Year in which the bidder first organized to do business</b>	Original entity was founded in 1845. The current entity, Deloitte & Touche LLP, became a limited liability partnership in 2003.
<b>Whether the name and form of organization has changed since first organized</b>	Yes, since Deloitte was founded in 1845, it has undergone numerous organizational changes. The bidder for this RFP is Deloitte & Touche LLP, which is a subsidiary of Deloitte LLP. Please see <a href="http://www.deloitte.com/us/about">www.deloitte.com/us/about</a> for a detailed description of the legal structure of Deloitte LLP and its subsidiaries.

Deloitte's awards and recognition spanning consulting leadership, industry capability, and workplace excellence reflect consistent performance validated by respected third parties. These accolades, as shown in Figure 2, underscore our scale, quality, and ability to attract and retain leading talent, giving clients confidence they are engaging a trusted team that delivers measurable results.

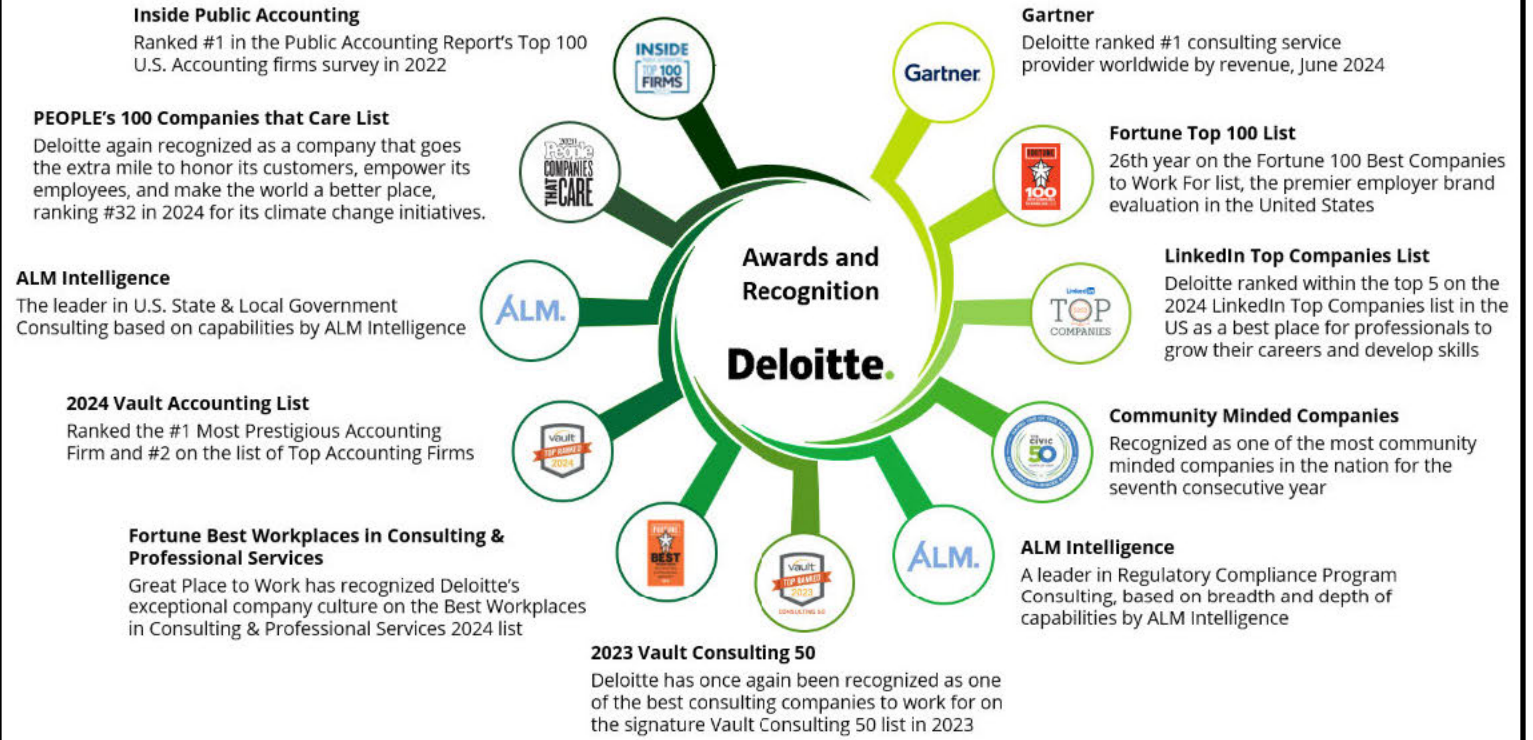
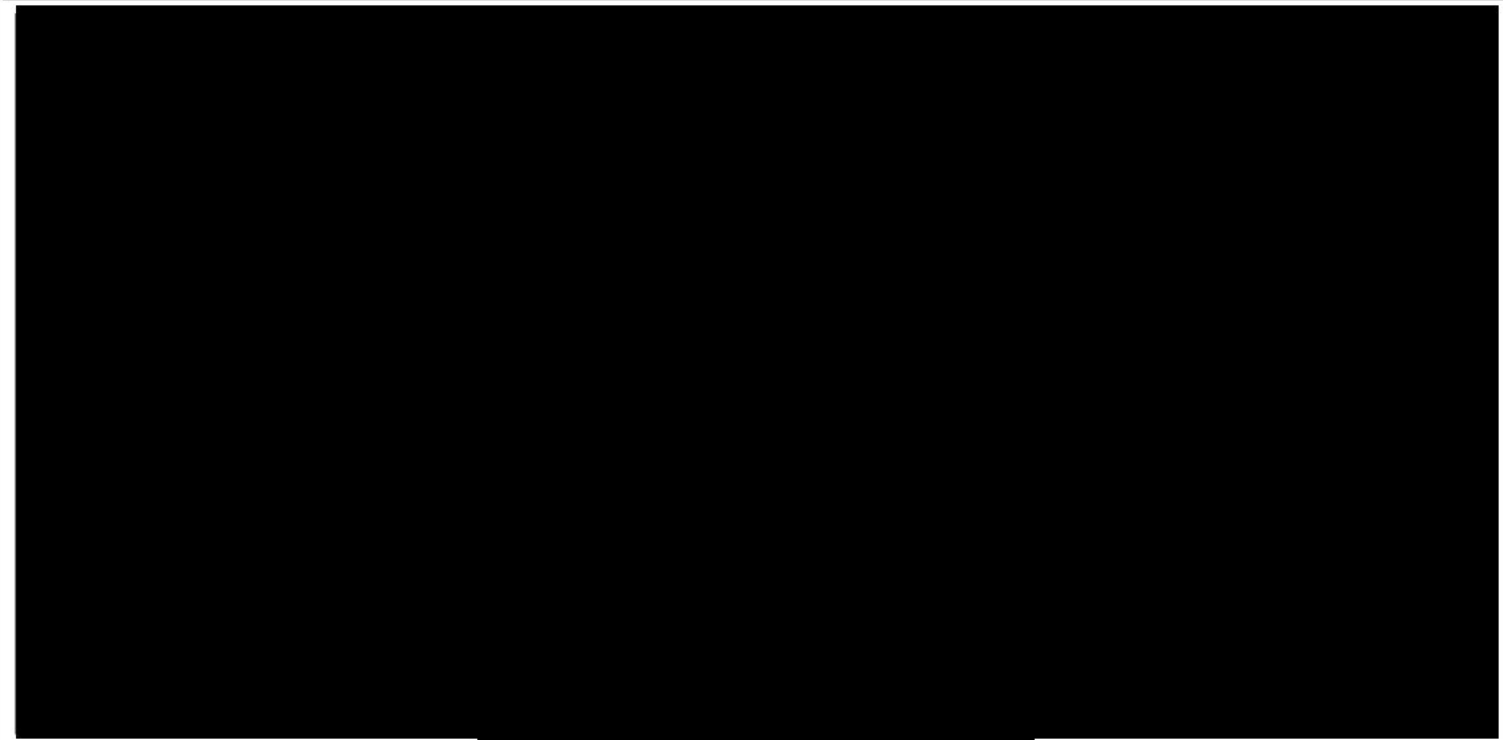


Figure 2. Overview of Deloitte's Awards and Recognitions





**FINANCIAL STATEMENTS**

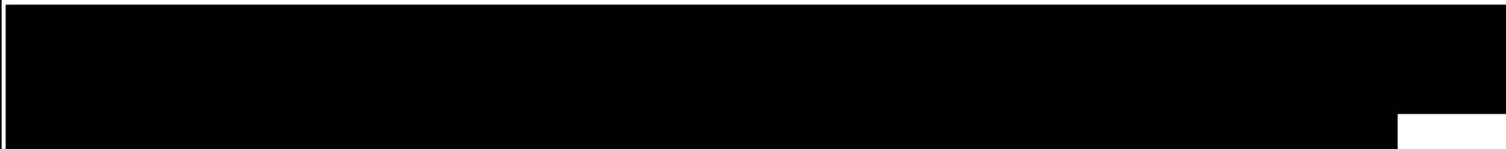
The bidder should provide financial statements applicable to the firm. If publicly held, the bidder should provide a copy of the corporation's most recent audited financial reports and statements, and the name, address, and telephone number of the fiscally responsible representative of the bidder's financial or banking organization.

1.2 If the bidder is not a publicly held corporation, either the reports and statements required of a publicly held corporation, or a description of the organization, including size, longevity, client base, areas of specialization and expertise, and any other pertinent information, should be submitted in such a manner that solicitation evaluators may reasonably formulate a determination about the stability and financial strength of the organization. Additionally, a non-publicly held firm should provide a banking reference.

The bidder must disclose any and all judgments, pending or expected litigation, or other real or potential financial reversals, which might materially affect the viability or stability of the organization, or state that no such condition is known to exist.

The State may elect to use a third party to conduct credit checks as part of the corporate overview evaluation.

**Response:**





<b>1.3</b>	<p><b>CHANGE OF OWNERSHIP</b></p> <p>If any change in ownership or control of the company is anticipated during the twelve (12) months following the solicitation response due date, the bidder should describe the circumstances of such change and indicate when the change will likely occur. Any change of ownership to an awarded bidder(s) will require notification to the State.</p>
------------	--

**Response:**

Deloitte does not anticipate a change of ownership during the twelve months following the proposal's due date. Should a change occur, Deloitte will communicate this to the State of Nebraska in writing.

<b>1.4</b>	<p><b>OFFICE LOCATION</b></p> <p>The bidder's office location responsible for performance pursuant to an award of a contract with the State of Nebraska should be identified.</p>
------------	---

**Response:**

Deloitte's Nebraska-based leaders will provide program support, knowledge, and experience having supported efforts in collaboration with over a dozen agencies in the State. Our local leaders continue to build trusted relationships as they lead a variety of cross-functional programs focusing on financial management, operations, and technology solutions. Table 3 provides our office information responsible for performance pursuant to an award of a contract.

**Table 3. Office Location**

<b>Name:</b>	Deloitte
<b>Nebraska Office Address:</b>	1100 Capitol Avenue, Suite 300 Omaha, NE 68102-1113
<b>Contact Person &amp; Title:</b>	[REDACTED]
<b>E-mail Address:</b>	[REDACTED]
<b>Telephone Number (Office):</b>	[REDACTED]

1.5

**RELATIONSHIPS WITH THE STATE**

The bidder should describe any dealings with the State over the previous ten (10) years. If the organization, its predecessor, or any Party named in the bidder's solicitation response has contracted with the State, the bidder should identify the contract number(s) and/or any other information available to identify such contract(s). If no such contracts exist, so declare.

**Response:**

Deloitte has had the opportunity to serve the State of Nebraska, the university system, and various local jurisdictions for more than 20 years as part of our 70-year history supporting local clients. Deloitte has built a strong reputation for delivering results and fostering trusted relationships. Table 4 and 5 below describes Deloitte's dealings with the State over the previous ten years, both active contracts and completed contracts.

**Table 4. Active Contracts and Sponsorships with State of Nebraska**

Department or Agency	Description
<b>Sponsorships: Investing in Nebraska</b>	<p><b>Governor's Summit: Growing Nebraska</b></p> <p>Deloitte was a Sponsor of the 2025 Governor's Summit hosted by the Departments of Economic Development and Agriculture held in Kearney. The summit focused on Nebraska's workforce, manufacturing, and bioeconomy. The Governor's Youth Summit enabled high school students navigate their path to career success and connect with businesses to learn more about internships and career opportunities in Nebraska.</p> <p><i>Contract: Not Applicable</i></p>
	<p><b>Nebraska Data &amp; AI Summit</b></p> <p>Deloitte was a Sponsor of the 2025 Nebraska Data &amp; AI Summit hosted by the Office of Chief Information Officer held in Omaha. The Nebraska Data and AI Summit brought together public sector leaders and industry experts to explore how data and artificial intelligence can transform public services, drive operational efficiency, and position the state as a national leader in technology.</p> <p><i>Contract: Not Applicable</i></p>
	<p><b>Nebraska Employment eXploration &amp; Transition (Nebraska NEXT)</b></p> <p>Deloitte is a Sponsor and advocate of Nebraska NEXT, a statewide talent attraction strategy led by the Department of Economic Development and the Good Life is Calling campaign to connect people with purpose, place, and opportunity. Deloitte sponsored the Collegiate Talent Forum, an event that connects top collegiate talent with Nebraska's thriving professional landscape.</p> <p><i>Contract: Not Applicable</i></p>
	<p><b>Governor's Operational Excellence Summit: Leading through Change</b></p> <p>Deloitte sponsored the 2021 Governor's Operational Excellence Summit hosted by the Department of Administrative Services. The summit focused on improving government services and driving operational excellence.</p> <p><i>Contract: Not Applicable</i></p>
<b>Nebraska Emergency Management Agency</b>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p><i>Contract: 20-NE-C19-SA and 95281 O4</i></p>
<b>Department of Administrative Services</b>	<p>[REDACTED]</p> <p>[REDACTED]</p>

	[REDACTED]
	<i>Contract: 114954 O4</i>
<b>Department of Water, Energy, and Environment</b>	[REDACTED]
	<i>Contract: 114994 O4</i>
<b>Health and Human Services</b>	[REDACTED]
	<i>Contract: 78047 O4</i>

**Table 5. Completed Contracts with State of Nebraska**

<b>Department or Agency</b>	<b>Description</b>
<b>Governor's Office</b>	[REDACTED]
	<i>Contract: 20-NE-C19-SA</i>
	[REDACTED]
	<i>Contract: NE-21-0000-MSA-ERAP</i>
	[REDACTED]
	<i>Contract: 95281 O4</i>
<b>Health and Human Services</b>	[REDACTED]
	<i>Contract: NDAS-21-0000-MSA-HHSCC</i>

**Economic  
Development**

[Redacted]

*Contract: 95281 O4*

**Administrative  
Services**

[Redacted]

*Contract: 95281 O4*

**Agriculture**

[Redacted]

*Contract: 95281 O4*

**Labor**

[Redacted]

*Contract: 95281 O4*

[Redacted]

*Contract: 95281 O4*

<b>1.6</b>	<p><b>BIDDER'S EMPLOYEE RELATIONS TO STATE</b></p> <p>If any Party named in the bidder's solicitation response is or was an employee of the State within the past twelve (12) months, identify the individual(s) by name, State agency with whom employed, job title or position held with the State, and separation date. If no such relationship exists or has existed, so declare.</p> <p>If any employee of any agency of the State of Nebraska is employed by the bidder or is a subcontractor to the bidder, as of the due date for solicitation response submission, identify all such persons by name, position held with the bidder, and position held with the State (including job title and agency). Describe the responsibilities of such persons within the proposing organization. If, after review of this information by the State, it is determined that a conflict of interest exists or may exist, the bidder may be disqualified from further consideration in this solicitation. If no such relationship exists, so declare.</p>
------------	--

**Response:**

No Party mentioned in Deloitte's proposal response is or was an employee of the State within the past twelve (12) months. To the best of our knowledge and belief, no employee of any State agency is employed by Deloitte or is a subcontractor to Deloitte, as of the due date for proposal submission.

<b>1.7</b>	<p><b>CONTRACT PERFORMANCE</b></p> <p>If the bidder or any proposed subcontractor has had a contract terminated for default during the past ten (10) years, all such instances must be described as required below. Termination for default is defined as a notice to stop performance delivery due to the bidder's non-performance or poor performance, and the issue was either not litigated due to inaction on the part of the bidder or litigated and such litigation determined the bidder to be in default.</p> <p>It is mandatory that the bidder submit full details of all termination for default experienced during the past ten (10) years, including the other Party's name, address, and telephone number. The response to this section must present the bidder's position on the matter. The State will evaluate the facts and will score the bidder's solicitation response accordingly. If no such termination for default has been experienced by the bidder in the past ten (10) years, so declare.</p> <p>If at any time during the past five (5) years, the bidder has had a contract terminated for convenience, non-performance, non-allocation of funds, or any other reason, describe fully all circumstances surrounding such termination, including the name and address of the other contracting Party.</p>
------------	--

**Response:**

Deloitte & Touche LLP has experienced no terminations for default of a Deloitte & Touche LLP services engagement by a state, local, or federal governmental entity within the past five (5) years. From time to time, contracts may be terminated by clients for various other reasons, such as for convenience, non-allocation of funds, or other reasons such as change in business needs, direction or funding, however given the size of our practice and the many hundreds of projects that are performed each year, Deloitte & Touche LLP does not centrally track these instances or situations, and the information about our client projects is generally subject to confidentiality obligations. We are confident in our track record of success and believe there is no issue with any prior engagement that would affect our ability to deliver the requested services.

**SUMMARY OF BIDDER’S CORPORATE EXPERIENCE**

The bidder should provide a summary matrix listing the bidder’s previous projects similar to this Solicitation in size, scope, and complexity. The State will use no more than three (3) narrative project descriptions submitted by the bidder during its evaluation of the solicitation response.

The bidder should address the following:

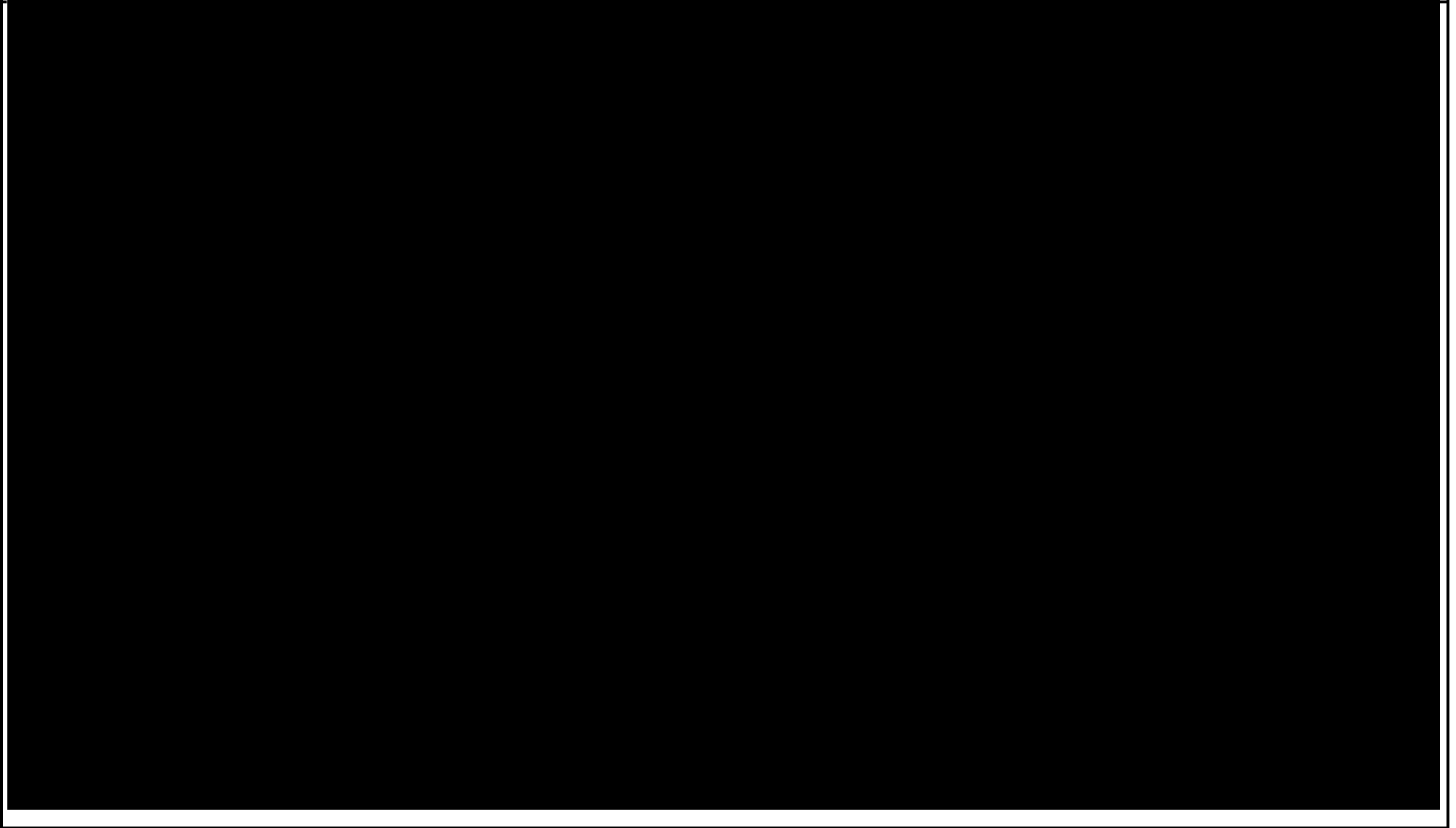
1.8

- i. Provide narrative descriptions to highlight the similarities between the bidder’s experience and this Solicitation. These descriptions should include:
  - a) The time period of the project,
  - b) The scheduled and actual completion dates,
  - c) The bidder’s responsibilities,
  - d) For reference purposes, a customer name (including the name of a contact person, a current telephone number, a facsimile number, and e-mail address); and
  - e) Each project description should identify whether the work was performed as the prime Vendor or as a subcontractor. If a bidder performed as the prime Vendor, the description should provide the originally scheduled completion date and budget, as well as the actual (or currently planned) completion date and actual (or currently planned) budget.
- ii. Bidder and Subcontractor(s) experience should be listed separately. Narrative descriptions submitted for Subcontractors should be specifically identified as subcontractor projects.
- iii. If the work was performed as a subcontractor, the narrative description should identify the same information as requested for the bidders above. In addition, subcontractors should identify what share of contract costs, project responsibilities, and time period were performed as a subcontractor.

**Response:**

Deloitte is proud to have collaborated with states across the country to provide innovative solutions to respond quickly to constituent needs, meet changes to federal and state policies, and to plan for and achieve critical objectives. Our diligent approach to project management, including issues, risk, communications, and quality management, facilitates timely completion of engagement tasks and deliverables which helps to significantly reduce risk to your mission, increase team productivity, and improve quality.

The following summary matrix (Figure 5) showcases the work we have effectively performed for specific projects that are similar to the disaster mitigation, preparedness, response, and recovery program support activities requested by NEMA. For narratives of our three (3) most similar previous projects, refer to Tables 6, 7, and 8 following the summary matrix.





[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

[Redacted]

[Redacted]







**SUBCONTRACTORS**

If the awarded bidder(s) intends to subcontract any part of its performance hereunder, the awarded bidder(s) should provide:

**1.9**

- i. name, address, and telephone number of the subcontractor(s),
- ii. specific tasks for each subcontractor(s),
- iii. percentage of performance hours intended for each subcontract; and
- iv. total percentage of subcontractor(s) performance hours.

**No Response Required:**

Deloitte does not intend to subcontract any part of its performance under this scope of work. Deloitte does intend to work with its affiliates in the United States. Deloitte & Touche LLP will be responsible for the services performed by its affiliates. Deloitte will provide written notification to NEMA in our response to prospective task orders if subcontractors may be used.

TECHNICAL RESPONSE

2.1 Describe bidder's process for providing PA technical services.

The bidder should address the following:

- i. Bidder's process for reviewing projects for sub-recipients not yet obligated by FEMA
- ii. Bidder's process for reviewing projects for sub-recipient(s) after obligation to ensure eligible payments made to sub-recipient(s) and smooth closeout process
- iii. Bidder's process for working with sub-recipients to ensure needs of project are met (Please provide at least one narrative description of previous work with a sub-recipient)

Response:

[Redacted response content]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

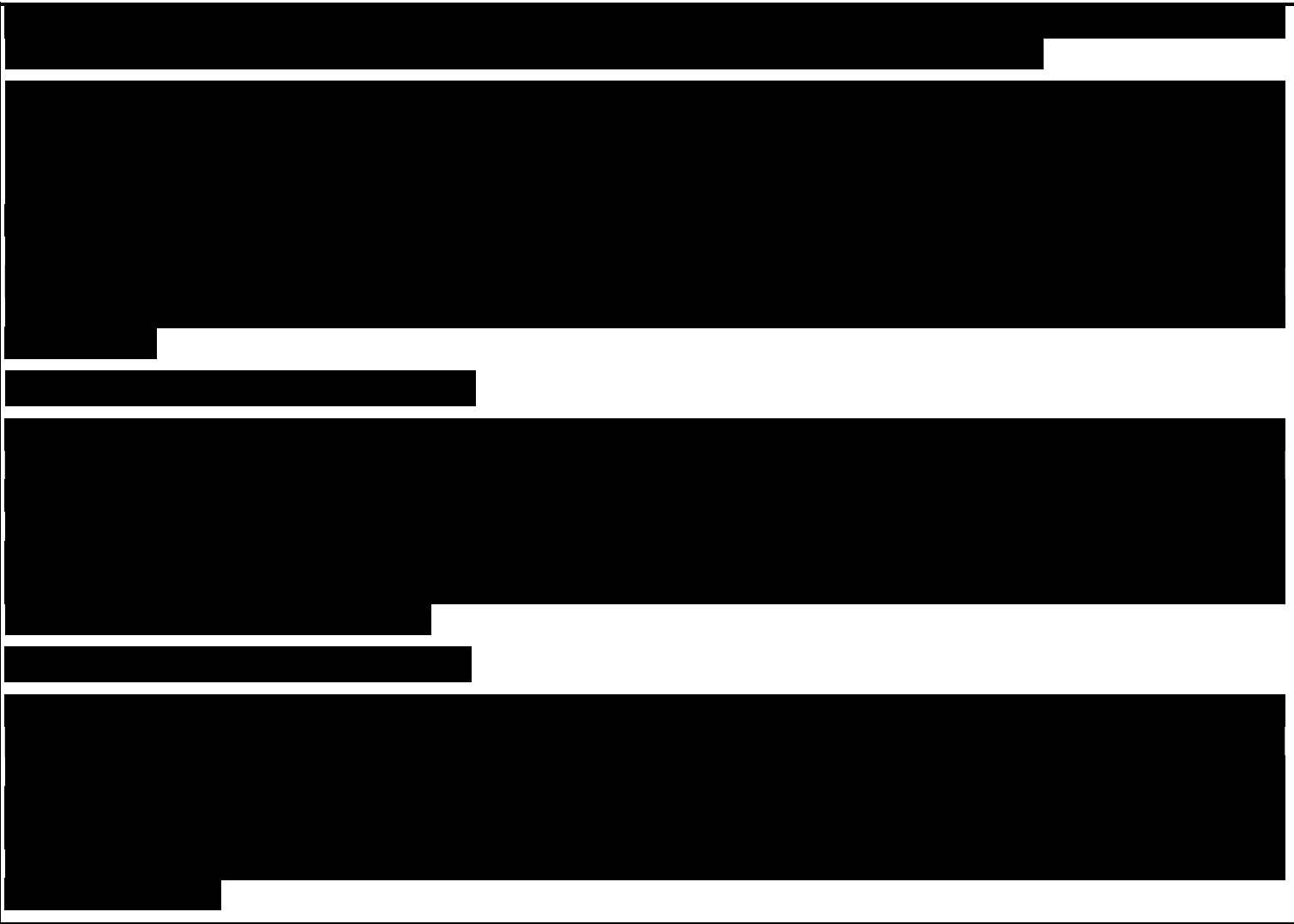
[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



[REDACTED]

[REDACTED]

[REDACTED]

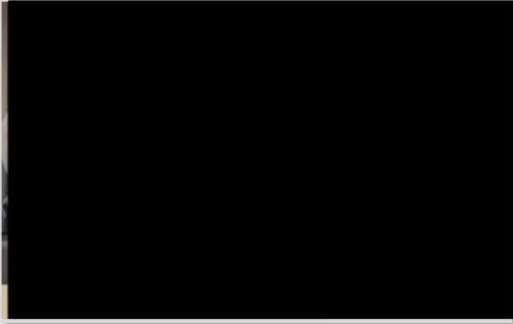
[REDACTED]

[REDACTED]

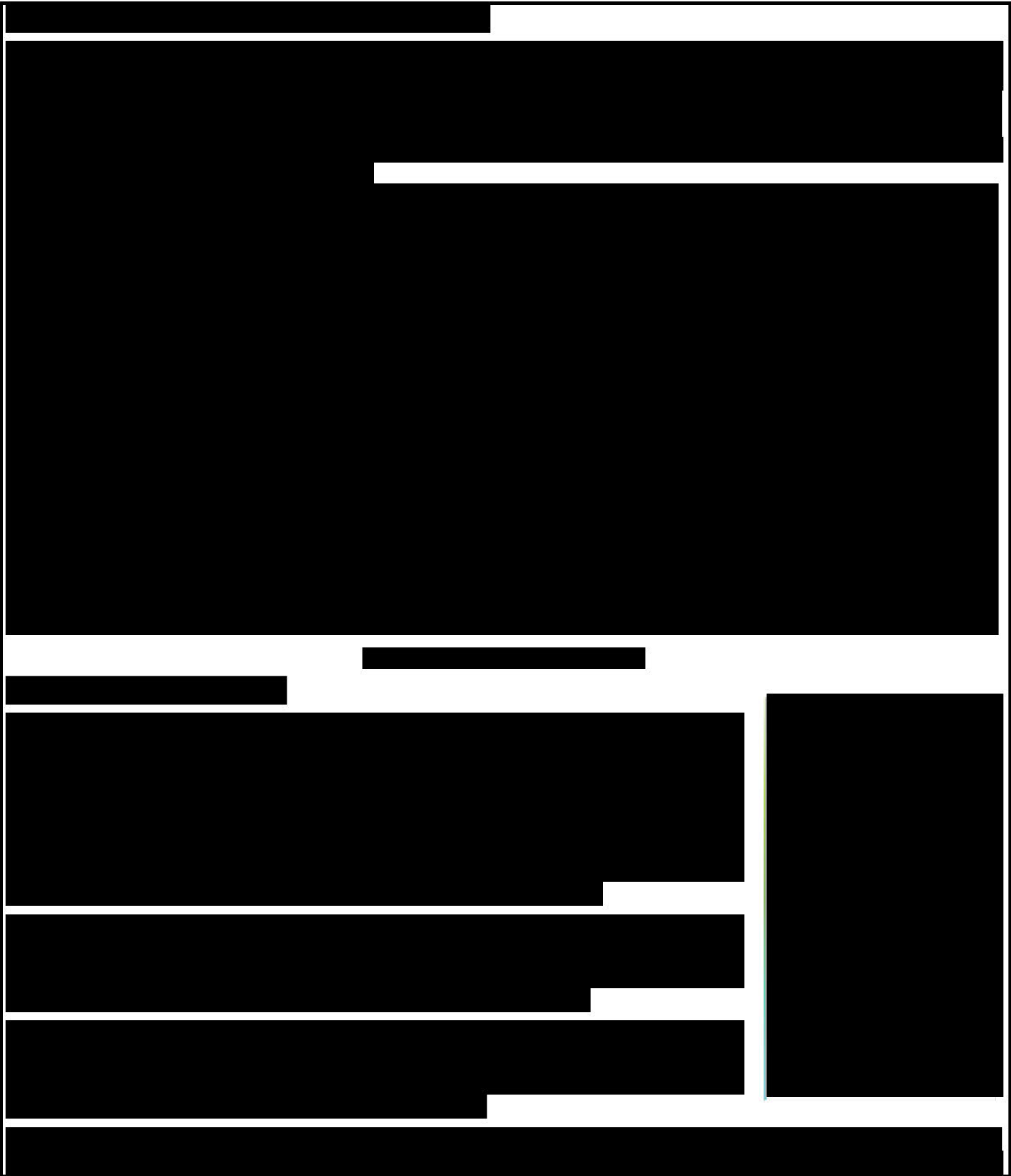
[REDACTED]

[REDACTED]

[Redacted text block]



Utilities



[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

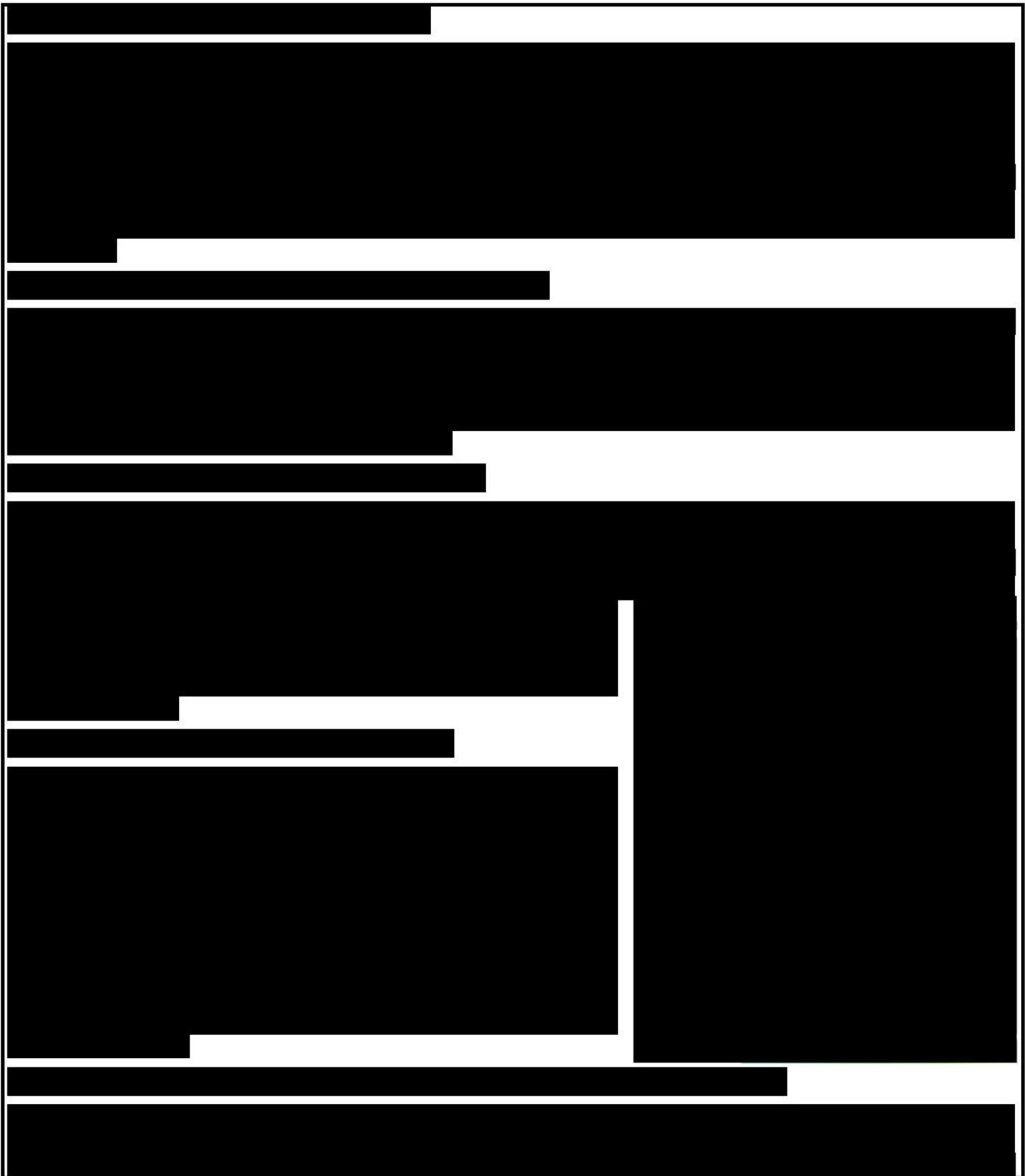
[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]







[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



[Redacted text block]

[Redacted text block]



[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]





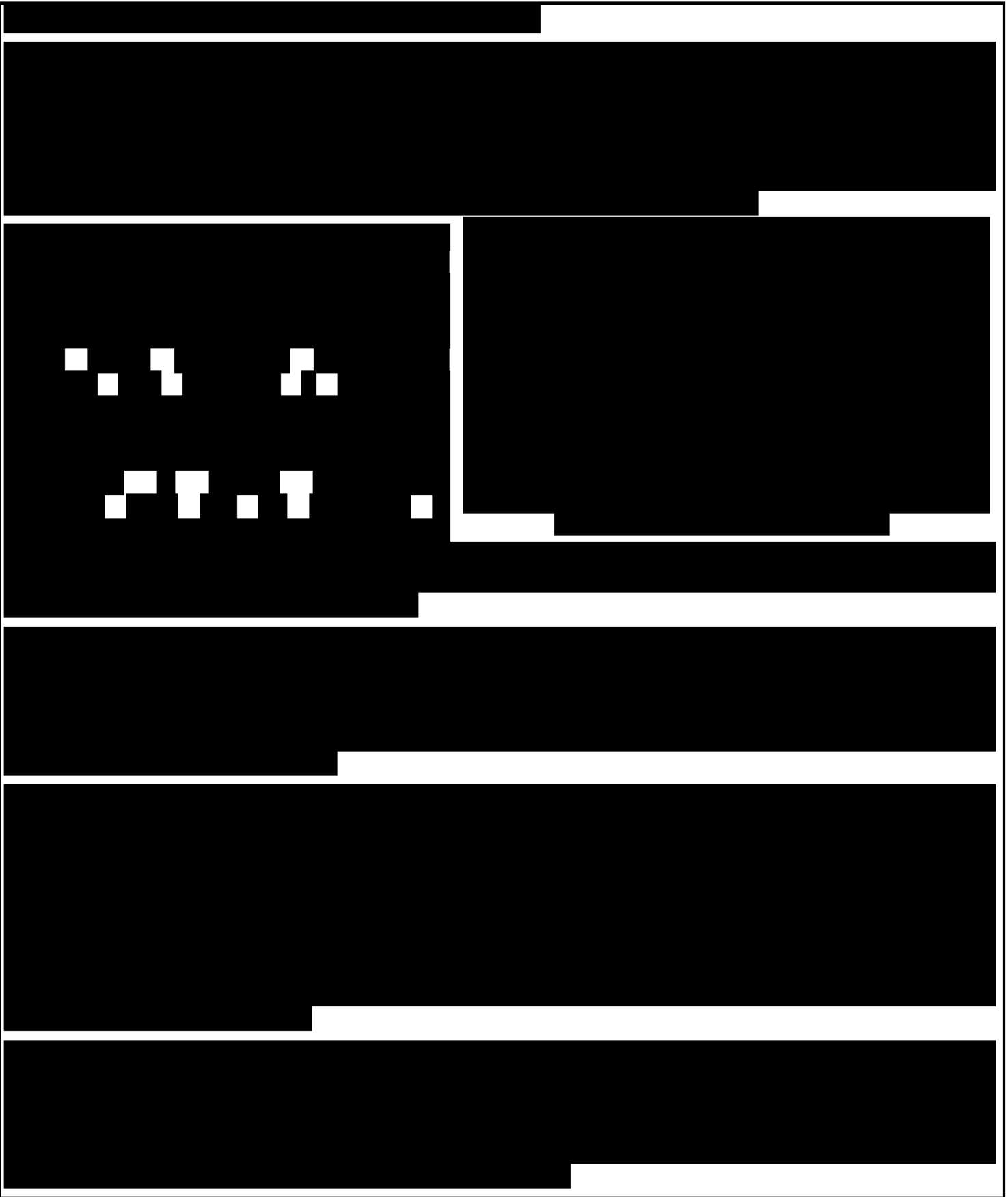
**Describe bidder's process for providing HMGP technical services.**

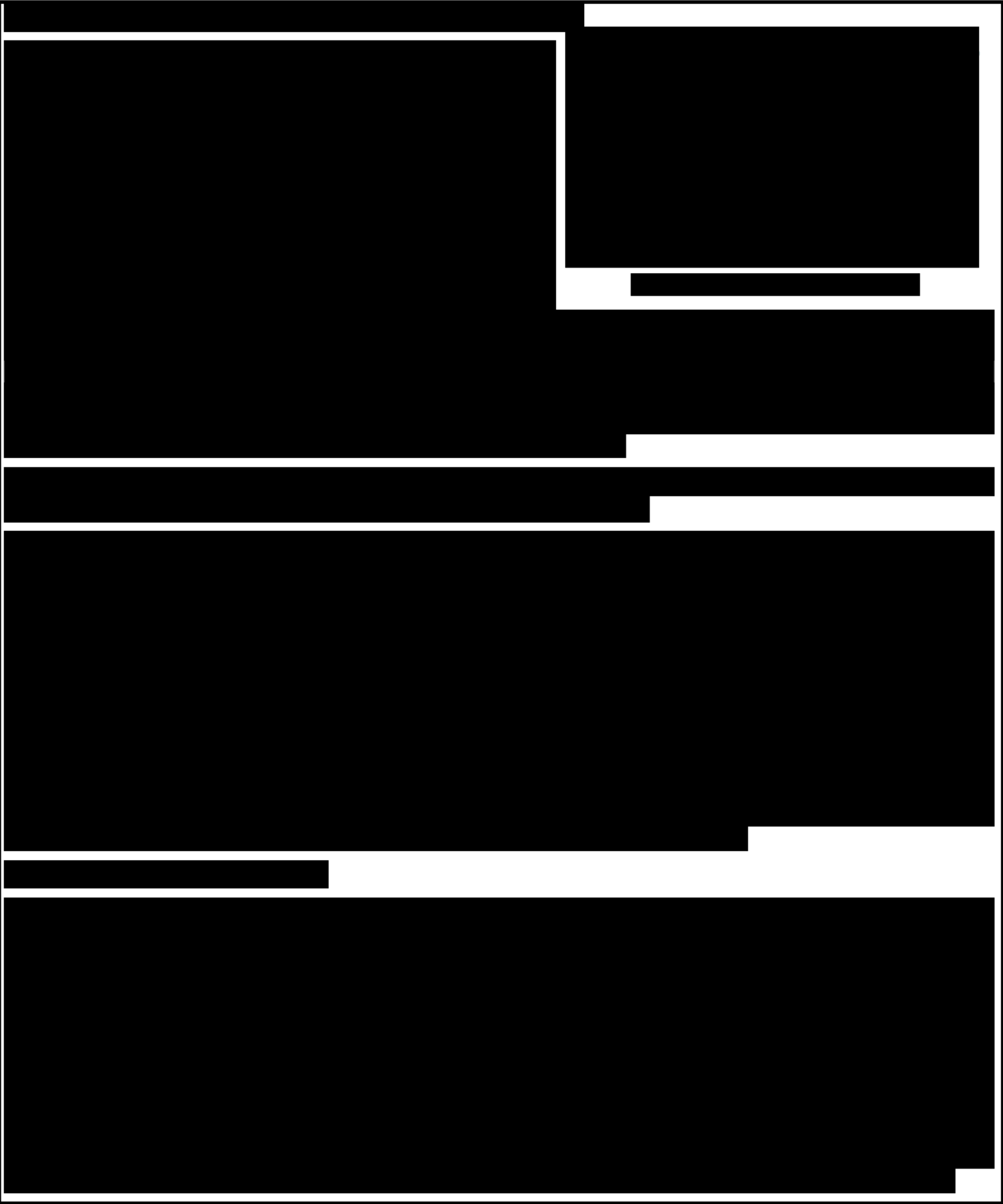
The bidder should address the following:

- 2.3
- i. Bidder's process to review applications for eligibility and completeness to FEMA approval
  - ii. Bidder's process for reviewing projects for sub-recipient(s) after obligation to ensure eligible payments made to sub-recipient(s) and smooth closeout process
  - iii. Bidder's process for working with sub-recipients to ensure needs of project are met (Please provide at least one narrative description of previous work with a sub-recipient)

**Response:**

[Redacted response content]

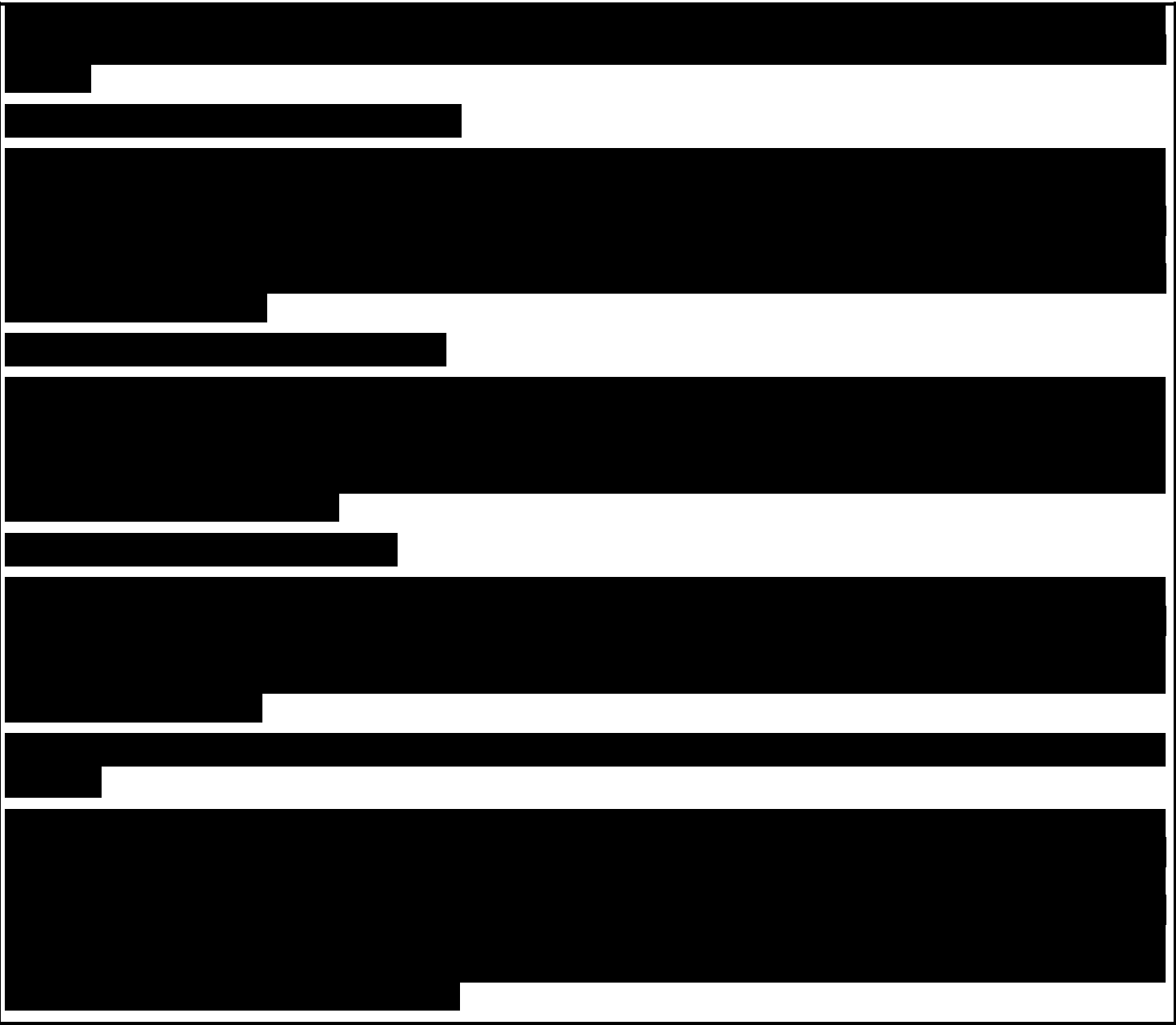












## HOURLY RATES

Bidders should provide not-to-exceed hourly rates that will be used for Task Orders as they are issued. There is no guarantee on the number of hours that will be used.

The hourly rates provided below will not be a scored item for the evaluation of this solicitation, but all responses will be reviewed for cost realism and reasonableness.

The roles listed below are mandatory roles that the bidder must be able to provide the State (See RFP Section V.F. for more detailed role descriptions). Bidders may add additional roles/titles as they see fit. The hourly rates shall be inclusive of labor, overhead, and all other expenses, with the exception of travel costs, which will be factored in as needed on task orders as they are issued to awarded bidders.

These not-to-exceed rates will be fixed for the first two (2) years of the contract. Any request for a price increase subsequent to the first two (2) years of the contract shall not exceed five percent (5%) of the price proposed for the period. 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 State Purchasing Bureau 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.

**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.**

<b>Required Personnel Roles (See RFP Section V.F.)</b>		<b>Standard Hourly Not-to-Exceed Rate</b>	<b>Overtime Hourly Not-to-Exceed Rate</b>
1.	Project Manager	<b>\$295.00</b>	<b>\$295.00</b>
2.	Senior Advisor for Public Assistance	<b>\$250.00</b>	<b>\$250.00</b>
3.	Public Assistance Program Liaison	<b>\$165.00</b>	<b>\$165.00</b>
4.	Public Assistance Technical Assistance Liaison	<b>\$180.00</b>	<b>\$180.00</b>
5.	Appeals Specialist	<b>\$295.00</b>	<b>\$295.00</b>
6.	Senior Debris Specialist	<b>\$250.00</b>	<b>\$250.00</b>
7.	Senior Advisor for Hazard Mitigation Assistance	<b>\$250.00</b>	<b>\$250.00</b>
8.	Hazard Mitigation Assistance Program Liaison	<b>\$165.00</b>	<b>\$165.00</b>
9.	Hazard Mitigation Assistance Benefit-Cost Analysis Specialist	<b>\$180.00</b>	<b>\$180.00</b>
10.	Hazard Mitigation Assistance Technical Liaison	<b>\$180.00</b>	<b>\$180.00</b>
11.	Lead Individual Assistance Specialist	<b>\$250.00</b>	<b>\$250.00</b>
12.	Individual Assistance Specialist	<b>\$155.00</b>	<b>\$155.00</b>
13.	Closeout Specialist	<b>\$170.00</b>	<b>\$170.00</b>
14.	Disaster Recovery Specialist	<b>\$155.00</b>	<b>\$155.00</b>
15.	Accounting Analyst	<b>\$140.00</b>	<b>\$140.00</b>
<b>Additional Personnel Roles/Titles (Add Rows as Necessary)</b>		<b>Standard Hourly Not-to-Exceed Rate</b>	<b>Overtime Hourly Not-to-Exceed Rate</b>
<b>Program Analyst</b>		<b>\$110.00</b>	<b>\$110.00</b>
<b>Program Associate</b>		<b>\$80.00</b>	<b>\$80.00</b>
<b>Program Staff</b>		<b>\$65.00</b>	<b>\$65.00</b>

## II. TERMS AND CONDITIONS

Bidder should read the Terms and Conditions within this section and must initial either “Accept All Terms and Conditions Within Section as Written” or “Exceptions Taken to Terms and Conditions Within Section as Written” in the table below. If exception is not taken to a provision, it is deemed accepted as stated. If the bidder takes any exceptions, they must provide the following within the “Exceptions” field of the table below (Bidder may provide responses in separate attachment if multiple exceptions are taken):

1. The specific clause, including section reference, to which an exception has been taken;
2. An explanation of why the bidder took exception to the clause; and
3. Provide alternative language to the specific clause within the solicitation response.

By signing the solicitation, bidder agrees to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the solicitation response. The State reserves the right to negotiate rejected or proposed alternative language. If the State and bidder fail to agree on the final Terms and Conditions, the State reserves the right to reject the solicitation response. The State reserves the right to reject solicitation responses that attempt to substitute the bidder’s commercial contracts and/or documents for this solicitation.

Accept All Terms and Conditions Within Section as Written (Initial)	Exceptions Taken to Terms and Conditions Within Section as Written (Initial)	<b>Exceptions:</b> (Bidder must note the specific clause, including section reference, to which an exception has been taken, an explanation of why the bidder took exception to the clause, and provide alternative language to the specific clause within the solicitation response.)
	CH	<p><b>Section A. GENERAL:</b> We request that Contractor’s proposal be above the RFP in the order of precedence. Also, note that we changed the order of incorporated documents to match the order of precedence in the paragraph below. Additionally, we would like to discuss the order of precedence for any Work Order Agreements.</p> <p><b>Section E. BEGINNING OF WORK &amp; SUSPENSION OF SERVICES:</b> With regard to any sections that reference suspension, we would like to clarify that any such suspension is a change and as such we request it be subject to the change process. For example, a suspension can impact the project schedule or flow and/or render key personnel unavailable upon resumption.</p> <p><b>Section G. CHANGE ORDERS OR SUBSTITUTIONS:</b> Edits to ensure the change order process is mutual and agreed to by both State and Contractor.</p> <p><b>Section I. NOTICE OF POTENTIAL VENDOR BREACH:</b> If Contractor encounters issues or expected or actual delays, it will notify of the same.</p> <p><b>Section J. BREACH:</b> Substitute language proposed below for breach as well as a reasonable, commercially standard limitation on Contractor’s liability.</p> <p><b>Section M. INDEMINIFICATION:</b> We propose that reasonable, commercially standard parameters be placed around our indemnification obligations.</p> <p><b>Section N. ATTORNEY’S FEES:</b> Clarification proposed below.</p> <p><b>Section T. CONTRACT CLOSEOUT:</b> Edit provided below to clarify that those paid for should be owned by the State, and to allow the parties to negotiate and agree on fair termination fees in the event of e.g., managed services for which their will be already sunk costs.</p>

The bidders should submit with their solicitation response 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 solicitation response 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 has been negotiated and agreed to, the Addendum to Contract Award shall be interpreted as follows:

1. If only one (1) 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**

1. The contract resulting from this Solicitation shall incorporate the following documents:

- ~~a. Amendments to the Contract. (if applicable);~~
- ~~b. Executed Contract and any Addendum to Contract Award (if applicable);~~
- ~~c. Bidders properly submitted solicitation response, including any terms and conditions or agreements submitted by the bidder;~~
- ~~a-d. Solicitation, including any attachments and addenda; and~~
- ~~b-e. Questions and Answers;~~
- ~~e. Bidders properly submitted solicitation response, including any terms and conditions or agreements submitted by the bidder;~~
- ~~d. Addendum to Contract Award (if applicable); and~~
- ~~e-f. Amendments to the Contract. (if applicable)~~

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a future contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to the executed Contract with the most recent dated amendment having the highest priority, 2) Executed Contract and any attached Addenda 3) the Vendor's submitted solicitation response, including any terms and conditions or agreements that are accepted by the State; 4) Addendums to the solicitation and any Questions and Answers, and 45) the original solicitation document and any Addenda or attachments, ~~and 5) the Vendor's submitted solicitation response, including any terms and conditions or agreements that are accepted by the State.~~

Unless otherwise specifically agreed to in writing by the State, the State's standard terms and conditions, as executed by the State, shall always control over any terms and conditions or agreements submitted or included by the Vendor.

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**

Bidder 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, return receipt requested; or mailed, return receipt requested. 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**

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 bidder 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 (Nonnegotiable)**

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 & SUSPENSION OF SERVICES**

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

The State may, at any time ~~and without advance notice~~, require the Vendor to suspend any or all performance or deliverables provided under this Contract with five (5) business days' notice. In the event of such suspension, the Contract Manager or POC, or their designee, will issue a written order to stop work. The written order will specify which activities are to be ~~immediately~~ suspended and the reason(s) for the suspension. Upon receipt of such order, the Vendor shall immediately promptly comply with its terms and take all necessary steps to mitigate and eliminate the incurrence of costs allocable to the work affected by the order during the period of suspension. The suspended performance or deliverables may only resume when the State provides the Vendor with written notice that such performance or deliverables may resume, in whole or in part. If a suspension occurs, which results from circumstances outside the reasonable control of the Vendor, the Vendor will be entitled to a change order to address any issues resulting from such delay.

#### **F. AMENDMENT**

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

#### **G. CHANGE ORDERS OR SUBSTITUTIONS**

The State and the Vendor, 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 Vendor may not claim forfeiture of the contract by reasons of such changes.

The Vendor 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 Vendor shall be determined in accordance with applicable unit prices if any, a pro-rated value, or through negotiations. ~~The State shall not incur a price increase for changes that should have been included in the Vendor's solicitation response, were foreseeable, or result from difficulties with or failure of the Vendor's solicitation response or performance.~~

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

In the event any good or service is discontinued or replaced upon mutual consent during the contract period or prior to delivery, the State reserves the right to amend the contract to include the alternate product at the same price mutually agreed to by the parties.

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

#### **H. RECORD OF VENDOR PERFORMANCE**

The State may document the vendor's performance, which may include, but is not limited to, the customer service provided by the vendor, the ability of the vendor, the skill of the vendor, and any instance(s) of products or services delivered or performed which fail to meet the terms of the purchase order, contract, and/or specifications. In addition to other remedies and options available to the State, the State may issue one or more notices to the vendor outlining any issues the State has regarding the vendor's performance for a specific contract ("Contract Compliance Request"). The State may also document the Vendor's performance in a report, which may or may not be provided to the vendor ("Contract Non-Compliance Notice"). The Vendor shall respond to any Contract Compliance Request or Contract Non-Compliance Notice in accordance with such notice or request. At the sole discretion of the State, such Contract Compliance Requests and Contract Non-Compliance Notices may be placed in the State's records regarding the vendor and may be considered by the State and held against the vendor in any future contract or award opportunity. The record of vendor performance will be considered in any suspension or debarment action.

#### **I. NOTICE OF POTENTIAL VENDOR BREACH**

If Vendor breaches encounters issues in performing its obligations under the contract or anticipates breaching delays in performing its obligations under the contract, the Vendor shall immediately give written notice to the State. The notice shall explain the breach or potential breach issue or delay, a proposed  cure solution or mitigation, and may

include a request for a waiver of the breach obligation if so desired. The State may, in its discretion, temporarily or permanently waive the breach obligation. 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**

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 email, delivery receipt requested; 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 if found incurable or pursuant to the State's other termination rights under this contract.

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

Each party, its subsidiaries and subcontractors, and their respective personnel shall not be liable to the other for any claims, liabilities, or expenses relating to this Agreement ("Claims") for an aggregate amount in excess of (i) in the case of Vendor, the fees paid by the State to Vendor under this Agreement during the twelve (12) month period immediately preceding the date on which the first Claim accrued or (ii) in the case of the State, the fees paid and incurred but not yet paid by the State to Vendor pursuant to this engagement, except to the extent resulting from their recklessness, bad faith or intentional misconduct. In no event shall either party, its subsidiaries or subcontractors, or their respective personnel be liable to the other for any loss of use, data, goodwill, revenues or profits (whether or not deemed to constitute a direct Claim), or any consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense relating to this Agreement. In circumstances where this limitation on damages provision hereunder is unavailable, the aggregate liability of each party, its subsidiaries and subcontractors, and their respective personnel for any Claim shall not exceed an amount that is proportional to the relative fault that their conduct bears to all other conduct giving rise to such Claim

**K. NON-WAIVER OF BREACH**

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

**L. SEVERABILITY**

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

**M. INDEMNIFICATION**

**1. GENERAL**

The Vendor agrees to defend, indemnify, and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all 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 bodily injury, death, or real or tangible personal property loss or damage, arising out of, resulting from, ~~or attributable~~ to the willful misconduct, negligence, error, or omission of the Vendor, its employees, Subcontractors, consultants, representatives, and agents, resulting from its performance of the services pursuant to this contract, except to the extent such Vendor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

**2. INTELLECTUAL PROPERTY**

The Vendor agrees it will, at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to, the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the Vendor or its employees, Subcontractors, consultants, representatives, and agents; provided, however, the State gives the Vendor prompt notice in writing of the claim. The Vendor may not settle any infringement claim that will affect the State's use of the Licensed Software deliverables without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the Vendor has indemnified the State, the Vendor shall, at the Vendor's sole cost and

expense, promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by the Vendor, and the State may receive the remedies provided under this Solicitation.

**3. PERSONNEL**

The Vendor 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 Vendor.

**4. 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. If there is a presumed loss under the provisions of this agreement, Vendor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,239.01 to 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Neb. Rev. Stat. § 81-8,294), Tort (Neb. Rev. Stat. § 81-8,209), and Contract Claim Acts (Neb. Rev. Stat. § 81-8,302), as outlined in state law and accepts liability under this agreement only to the extent provided by law.

**5.** 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**

In the event of any litigation, appeal, or other legal action to enforce any provision of the contract, the Parties agree ~~the prevailing party may seek award of 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**

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

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

**P. CONTRACTING WITH OTHER NEBRASKA POLITICAL SUBDIVISIONS OF THE STATE OR ANOTHER STATE**

The Vendor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. § 81-145(2), 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 Vendor may, but shall not be required to, allow other states, agencies or divisions of other states, or political subdivisions of other states to use this contract. The terms and conditions, including price, of this contract shall apply to any such contract, but may be amended upon mutual consent of the Parties. The State of Nebraska shall not be contractually or otherwise obligated or liable under any contract entered into pursuant to this clause. The State shall be notified if a contract is executed based upon this contract.

**Q. FORCE MAJEURE**

Neither Party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the contract due to a natural or manmade event outside the control and not the fault of the affected Party ("Force Majeure Event") that was not foreseeable at the time the Contract was executed. 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**

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. EARLY TERMINATION**

The contract may be terminated as follows:

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

#### **T. CONTRACT CLOSEOUT**

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

1. Transfer all completed or partially completed deliverables to the State upon payment thereof,
2. Transfer ownership and title to all completed or partially completed deliverables to the State,
3. Return to the State all information and data unless the Vendor is permitted to keep the information or data by contract or rule of law. Vendor may retain one copy of any information or data as required to comply with applicable work product documentation standards or as are automatically retained in the course of Vendor's routine back up procedures,
4. Cooperate with any successor Vendor, person, or entity in the assumption of any or all of the obligations of this contract,
5. Cooperate with any successor Vendor, 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 Vendor to surrender intellectual property, real or personal property, or information or data owned by the Vendor for which the State has no legal claim. Upon any termination, Contractor will be paid for all services performed through termination, including pro rata work in progress.

**U. AMERICANS WITH DISABILITIES ACT**

Vendor 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.

### III. VENDOR DUTIES

Bidder should read the Vendor Duties within this section and must initial either “Accept All Terms and Conditions Within Section as Written” or “Exceptions Taken to Vendor Duties Within Section as Written” in the table below. If exception is not taken to a provision, it is deemed accepted as stated. If the bidder takes any exceptions, they must provide the following within the “Exceptions” field of the table below (Bidder may provide responses in separate attachment if multiple exceptions are taken):

1. The specific clause, including section reference, to which an exception has been taken;
2. An explanation of why the bidder took exception to the clause; and
3. Provide alternative language to the specific clause within the solicitation response.

By signing the solicitation, bidder agrees to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the solicitation response. The State reserves the right to negotiate rejected or proposed alternative language. If the State and bidder fail to agree on the final Terms and Conditions, the State reserves the right to reject the solicitation response. The State reserves the right to reject solicitation responses that attempt to substitute the bidder’s commercial contracts and/or documents for this solicitation.

Accept All Vendor Duties Within Section as Written (Initial)	Exceptions Taken to Vendor Duties Within Section as Written (Initial)	Exceptions: (Bidder must note the specific clause, including section reference, to which an exception has been taken, an explanation of why the bidder took exception to the clause, and provide alternative language to the specific clause within the solicitation response.)
	CH	<p><b>Section A. INDEPENDENT VENDOR / OBLIGATIONS:</b> Note that the Statement of Work should address any personnel and/or subcontractors, as required once the scope of work is identified. Please consider the clarification provided below for necessitated changes.</p> <p><b>Section E. COOPERATION WITH OTHER VENDORS:</b> Clarification proposed below.</p> <p><b>Section I. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES:</b> We ask that this be clarified such that the transfer of ownership rights are granted upon payment for the given deliverables/software/documentation, excludes any pre-existing Contractor Materials.</p> <p><b>Section J. INSURANCE REQUIREMENTS:</b> We accept the requirements. We have proposed minor edits to align with how our coverage is written.</p> <p><b>Section M. STATE PROPERTY:</b> We would ask that any liability be subject to the limitation of liability provisions in this contract.</p> <p><b>Section S. WARRANTY:</b> We warrant that the services shall be performed in good faith and with due professional care, by qualified personnel, in accordance with applicable professional standards and in compliance with all applicable laws, however, disclaims all other warranties, either express or implied, including without limitation, warranties of merchantability and fitness for a particular purpose.</p> <p><b>Section T. TIME IS OF THE ESSENCE:</b> We propose modifying Time is of the Essence to specify work will be performed in a diligent manner and that we will notify of any delays; we believe this is more appropriate for a project with many dependencies as we work closely with the State and are dependent on, among other things, State involvement.</p>

**A. INDEPENDENT VENDOR / OBLIGATIONS**

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

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

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

By-name personnel commitments made in the bidder's ~~solicitation response~~ Statement of Work shall not be changed without the prior written approval of the State (which shall not be unreasonably withheld), except in the event of serious illness, separation from services, or serious personal circumstances. 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 Vendor to the contract shall be employees of the Vendor or a subcontractor and shall be fully qualified to perform the work required herein. Personnel employed by the Vendor or a subcontractor to fulfill the terms of the contract shall remain under the sole direction and control of the Vendor or the subcontractor respectively.

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

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

If the Vendor intends to utilize any subcontractor, the subcontractor's level of effort, tasks, and time allocation should be clearly defined in the ~~solicitation response~~ Statement of Work. The Vendor shall agree that it will not utilize any subcontractors not specifically included in its ~~solicitation response~~ Statement of Work in the performance of the contract without the prior written authorization of the State. If the Vendor subcontracts any of the work, the Vendor agrees to pay any and all subcontractors in accordance with the Vendor's agreement with the respective subcontractor(s).

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

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

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

## **B. EMPLOYEE WORK ELIGIBILITY STATUS**

The Vendor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing 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 Vendor is an individual or sole proprietorship, the following applies:

1. The Vendor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <https://das.nebraska.gov/materiel/docs/pdf/Individual%20or%20Sole%20Proprietor%20United%20States%20Attestation%20Form%20English%20and%20Spanish.pdf>
2. The completed United States Attestation Form should be submitted with the Solicitation response.
3. If the Vendor indicates on such attestation form that he or she is a qualified alien, the Vendor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Vendor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

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

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

The Vendor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Vendors of the State 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 Vendor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Vendor shall insert a similar provision in all Subcontracts for goods and services to be covered by any contract resulting from this Solicitation.

**D. COOPERATION WITH OTHER VENDORS**

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

**E. DISCOUNTS**

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

**F. PRICES**

Prices quoted shall be net, including transportation and delivery charges fully prepaid by the bidder, 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.

Prices submitted on the cost sheet, once accepted by the State, shall remain fixed for the first two (2) years of the contract. Any request for a price increase subsequent to the first two (2) years of the contract shall not exceed five percent (5%) of the price proposed for the period. 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 State Purchasing Bureau 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.

**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.**

**G. PERMITS, REGULATIONS, LAWS**

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

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

The State shall have the unlimited right to publish, duplicate, use, and disclose all information and data developed or obtained by the Vendor 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 upon full payment thereof. Vendor 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, except for any Vendor Materials therein.

For purposes of this section, "Vendor Materials" means all works of authorship, materials, information and other intellectual property created prior to or independently of the performance of the Services, or created by the Vendor or its subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon.

## I. INSURANCE REQUIREMENTS

The Vendor 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 Vendor shall not commence work on the contract until the insurance is in place. If Vendor subcontracts any portion of the Contract the Vendor 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, or alternatively commensurate with the risks presented by such Subcontractors in their performance of services as defined under the contract, as determined by the Vendor and provide written notice to the State that the Vendor has verified that each subcontractor has ~~the required such~~ coverage; or,
3. Provide the State with copies of each subcontractor's Certificate of Insurance, evidencing the required coverage.

The Vendor shall not allow any Subcontractor to commence work until the Subcontractor has equivalent insurance or alternatively commensurate with the risks presented by such Subcontractors in their performance of services as defined under the contract, as determined by the Vendor. The failure of the State to require a COI, or the failure of the Vendor to provide a COI or require subcontractor insurance shall not limit, relieve, or decrease the liability of the Vendor hereunder.

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

If by the terms of any insurance a mandatory deductible is required, or if the Vendor elects to increase the mandatory deductible amount, the Vendor 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 Vendor 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 Vendor 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 Vendor shall take out and maintain during the life of this contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Vendor 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 Vendor 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 Vendors, Personal Injury, and Contractual Liability coverage. **The policy shall include the State, and others as required by the contract documents, as Additional Insured(s). This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory. The COI shall contain the mandatory COI liability waiver language found hereinafter.** The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned, and Hired vehicles.

<b>REQUIRED INSURANCE COVERAGE</b>	
<b>COMMERCIAL GENERAL LIABILITY</b>	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Medical Payments	\$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 Vendors	Included
Abuse & Molestation	Included
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>	
<b>WORKER'S COMPENSATION</b>	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
Voluntary Compensation	Statutory
<b>COMMERCIAL AUTOMOBILE LIABILITY</b>	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
Motor Carrier Act Endorsement	Where Applicable
<b>UMBRELLA/EXCESS LIABILITY</b>	
Over Primary Insurance	\$5,000,000 per occurrence
<b>PROFESSIONAL LIABILITY</b>	
All Other Professional Liability (Errors & Omissions)	\$1,000,000 Per Claim / Aggregate
<b>COMMERCIAL CRIME</b>	
Crime/Employee Dishonesty Including 3rd Party Fidelity	\$1,000,000
<b>MANDATORY COI SUBROGATION WAIVER LANGUAGE</b>	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
<b>MANDATORY COI LIABILITY WAIVER LANGUAGE</b>	
"Commercial General Liability & Commercial Automobile Liability policies shall <del>name</del> include 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 Vendor shall furnish the Contract Manager, via email, with a certificate of insurance coverage complying with the above requirements prior to beginning work at:

123919 O5

Nebraska Emergency Management Agency  
 Attn: Recovery Section Administrator  
 1526 K Street  
 Lincoln, NE 68508  
 Donny.Christensen@nebraska.gov

These certificates or the cover sheet shall reference the solicitation 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 Vendor to maintain such insurance, then the Vendor 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 Vendor.

**J. ANTITRUST**

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

**K. CONFLICT OF INTEREST**

By submitting a solicitation response, vendor certifies that no relationship exists between the vendor and any person or entity which either is, or gives the appearance of, a conflict of interest related to this solicitation or project.

Vendor further certifies that vendor will not employ any individual known by vendor to have a conflict of interest nor shall vendor 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, vendor shall provide with its solicitation response 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 solicitation response evaluation.

**L. STATE PROPERTY**

The Vendor shall be responsible for the proper care and custody of any State-owned property which is furnished for the Vendor's use during the performance of the contract. The Vendor shall reimburse the State for any loss or damage of such real or tangible personal property, subject to the limitation of liability provisions herein; normal wear and tear is expected.

**M. SITE RULES AND REGULATIONS**

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

**N. ADVERTISING**

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

The Vendor 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**

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

**Q. WARRANTY**

Despite any clause to the contrary, the Vendor 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 Vendor 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 Vendor is unable to perform the services as warranted, Vendor shall reimburse the State all fees paid to Vendor 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.

THIS IS A SERVICES ENGAGEMENT. VENDOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**R. TIME IS OF THE ESSENCE**

~~Time is of the essence with respect to~~ Vendor's will use diligent efforts to perform the services and provide the ~~and deliverables~~ in accordance with any agreed upon dates set forth in a Statement of Work pursuant to this Contract.

## IV. PAYMENT

Bidder should read the Payment clauses within this section and must initial either “Accept All Terms and Conditions Within Section as Written” or “Exceptions Taken to Payment clauses Within Section as Written” in the table below. If exception is not taken to a provision, it is deemed accepted as stated. If the bidder takes any exceptions, they must provide the following within the “Exceptions” field of the table below (Bidder may provide responses in separate attachment if multiple exceptions are taken):

1. The specific clause, including section reference, to which an exception has been taken;
2. An explanation of why the bidder took exception to the clause; and
3. Provide alternative language to the specific clause within the solicitation response.

By signing the solicitation, bidder agrees to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the solicitation response. The State reserves the right to negotiate rejected or proposed alternative language. If the State and bidder fail to agree on the final Terms and Conditions, the State reserves the right to reject the solicitation response. The State reserves the right to reject solicitation responses that attempt to substitute the bidder’s commercial contracts and/or documents for this solicitation.

Accept All Payment Clauses Within Section as Written (Initial)	Exceptions Taken to Payment Clauses Within Section as Written (Initial)	Exceptions: (Bidder must note the specific clause, including section reference, to which an exception has been taken, an explanation of why the bidder took exception to the clause, and provide alternative language to the specific clause within the solicitation response.)
	CH	<p><b>Section F. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS:</b> Proposed edits below. We agree that the contract is subject to the availability of funds. Any loss of funding may result in a termination for convenience. The state may also issue a stop work order and Vendor shall not be obligated to perform work during such time. Additionally, any resumption of services following a stop work order shall be subject to a change order to the extent necessary to address any changes as a result of the stop work order.</p> <p><b>Section G. RIGHT TO AUDIT:</b> Proposed edits below. We agree to correct any discrepancy found in the audit.</p>

**A. PROHIBITION AGAINST ADVANCE PAYMENT (Nonnegotiable)**  
 Pursuant to Neb. Rev. Stat. § 81-2403, “[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 (Nonnegotiable)**  
 The State is not required to pay taxes and assumes no such liability as a result of this Solicitation. The Vendor may request a copy of the Nebraska Department of Revenue, Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13 for their records. Any property tax payable on the Vendor's equipment which may be installed in a state-owned facility is the responsibility of the Vendor.

**C. INVOICES**  
 Invoices for payments must be submitted by the Vendor to the agency requesting the services with sufficient detail to support payment. Invoices shall include, but are not limited to:

1. Billing period,
2. Total billed amount, and
3. Total hours billed

Supporting documentation shall include, but not be limited to:

1. Staff name,
2. Hours worked each day,
3. Hourly rate, and
4. Name of task

Approved invoices will be packaged for payment on a monthly basis. NEMA prefers to receive the invoices electronically and will provide email addresses after the award of contract. Any terms or conditions on or attached to any such invoice shall not 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.

The terms and conditions included in the Vendor'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. **The State shall have forty-five (45) calendar days to pay after a valid and accurate invoice is received by the State.**

**D. INSPECTION AND APPROVAL**

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

The State and/or its authorized representatives shall have the right to enter any premises where the Vendor or Subcontractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

**E. PAYMENT (Nonnegotiable)**

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 Vendor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any goods and services provided by the Vendor prior to the Effective Date of the contract, and the Vendor hereby waives any claim or cause of action for any such goods or services.

**F. LATE PAYMENT (Nonnegotiable)**

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

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

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

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

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

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