

**State of Nebraska**  
**REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES**

**RETURN TO:**  
State Purchasing Bureau  
1526 K Street, Suite 130  
Lincoln, NE 68508  
Phone: 402-471-6500

<b>SOLICITATION NUMBER</b>	<b>RELEASE DATE</b>
RFP 6154 Z1	September 26, 2019
<b>OPENING DATE AND TIME</b>	<b>PROCUREMENT CONTACT</b>
November 8, 2019 2:00 p.m. Central Time	Dianna Gilliland/Annette Walton

**PLEASE READ CAREFULLY!**

**SCOPE OF SERVICE**

The State of Nebraska (State), Department of Administrative Services (DAS), Materiel Division, State Purchasing Bureau (SPB), is issuing this Request for Proposal (RFP) Number 6154 Z1 for the purpose of selecting a qualified Contractor to provide Auctioneer Services. 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 one (1) year commencing upon notice to proceed. The Contract includes the option to renew for four (4) additional one (1) year periods upon mutual agreement of the Parties. The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Parties.

ALL INFORMATION PERTINENT TO THIS REQUEST FOR PROPOSAL CAN BE FOUND ON THE INTERNET AT:  
<http://das.nebraska.gov/materiel/purchasing.html>.

A mandatory Pre-Proposal Conference will be held on October 15, 2019 at 5001 South 14<sup>th</sup> Street, Lincoln, NE, 68512, 10 am to 11:30 am.

**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 contractor's proposal or response will be posted to a public website managed by DAS, which can be found at <http://statecontracts.nebraska.gov>.

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

These postings will include the entire proposal or response. Contractor must request that proprietary information be excluded from the posting. The contractor 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 contractor must submit a detailed written document showing that the release of the proprietary information would give a business advantage to named business competitor(s) and explain how the named business competitor(s) will gain an actual business advantage by disclosure of information. The mere assertion that information is proprietary or that a speculative business advantage might be gained is not sufficient. (See Attorney General Opinion No. 92068, April 27, 1992) THE BIDDER MAY NOT ASSERT THAT THE ENTIRE PROPOSAL IS PROPRIETARY. COST PROPOSALS WILL NOT BE CONSIDERED PROPRIETARY AND ARE A PUBLIC RECORD IN THE STATE OF NEBRASKA. The State will then determine, in its discretion, if the interests served by nondisclosure outweighs any public purpose served by disclosure. (See Neb. Rev. Stat. § 84-712.05(3)) The Contractor will be notified of the agency's decision. Absent a State determination that information is proprietary, the State will consider all information a public record subject to release regardless of any assertion that the information is proprietary.

If the agency determines it is required to release proprietary information, the contractor will be informed. It will be the contractor's responsibility to defend the contractor'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 contractor 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 without expectation of conducting or performing it at a later time.

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

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

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

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

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

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

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

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

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

**Contract 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.

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

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

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

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

**Evaluation:** The process of examining an offer after opening to determine the 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.

**Installation Date:** The date when the procedures described in "Installation by Contractor", and "Installation by State", as found in the solicitation, or contract, are completed.

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

**Invalid 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.

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

**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.

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

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

**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.

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

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

**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:** An offer, bid, or quote submitted by a contractor/vendor in a 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 contractor who has timely submitted a proposal response 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 Contractor:** A contractor 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.

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

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

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

**Subcontractor:** Individual or entity with whom the 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 contractor 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:** Inclusive term for any Bidder or Contractor

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

**Work Day:** See Business Day.

**I. PROCUREMENT PROCEDURE**

**A. GENERAL INFORMATION**

The solicitation is designed to solicit proposals from qualified bidders who will be responsible for providing Auctioneer Services at a competitive and reasonable cost. Terms and Conditions, Project Description and Scope of Work, Proposal instructions may be found in Sections II through VI.

Proposals shall conform to all instructions, conditions, and requirements included in the solicitation. Prospective contractors should 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 State Purchasing Bureau. The point of contact (POC) for the procurement is as follows:

Solicitation Number: RFP 6154 Z1  
Name: Dianna Gilliland/Annette Walton, Buyer(s)  
Agency: State Purchasing Bureau  
Address: 1526 K Street, Suite 130  
Lincoln, NE 68508  
Telephone: 402-471-6500  
E-Mail: [as.materieipurchasing@nebraska.gov](mailto:as.materieipurchasing@nebraska.gov)

From the date the solicitation is issued until the Intent to Award is issued, communication from the Contractor is limited to the POC listed above. After the Intent to Award is issued, the Contractor 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. Contractors 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 contractor's proposal, withdraw an Intent to Award, or terminate a contract if the State determines there has been a violation of these procurement procedures.



**D. WRITTEN QUESTIONS AND ANSWERS**

Questions regarding the meaning or interpretation of any solicitation provision must be submitted in writing to State Purchasing Bureau and clearly marked "RFP Number 6154 Z1; Auctioneer Services 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 Contractor's proposal is or might be developed. Proposals will be evaluated without consideration of any known or unknown assumptions of a contractor. The contract will not incorporate any known or unknown assumptions of a contractor.

It is preferred that questions be sent via e-mail to [as.materiel purchasing@nebraska.gov](mailto:as.materiel purchasing@nebraska.gov), but may be delivered by hand or by U.S. Mail. It is recommended that Contractors 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. MANDATORY PRE-PROPOSAL CONFERENCE**

A pre-proposal conference will be held per the Schedule of Events. Attendance at the pre-proposal conference is mandatory. Contractors will have an opportunity to ask questions at the conference to assist in the clarification and understanding of the solicitation requirements. Questions that have a material impact on the solicitation or process, and questions that are relevant to all contractors, will be answered in writing and posted at <http://das.nebraska.gov/materiel/purchasing.html>. An answer must be posted to be binding on the State. The State will attempt to provide verbal answers to questions that do not impact the solicitation or process, and are only of interest to an individual contractor during the conference. If a contractor feels it necessary to have a binding answer to a question that was answered verbally, the question should be submitted in writing per the Schedule of Events.

**F. NOTICE OF INTENT TO ATTEND MANDATORY PRE-PROPOSAL CONFERENCE**

Contractors should notify the POC of their intent to attend by submitting a "Notification of Intent to Attend the Pre-Proposal Conference Form" (see Form B) by hand-delivery, U.S. Mail, or email at: [as.materiel purchasing@nebraska.gov](mailto:as.materiel purchasing@nebraska.gov).

**G. RECYCLING (§81-15,159(d)(2))**

Preference will be given to items which are manufactured or produced from recycled material or which can be readily reused or recycled after their normal use. Preference will also be given to purchases of corn-based biodegradable plastics and road deicers if available and suitable. No preference shall be given if such preference would result in the purchase of products, materials, or supplies that are of inadequate quality or of substantially higher cost.

The State also encourages the use of products utilizing soy or beets, however, the State cannot give a preference for using these products.

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

All contractors must be authorized to transact business in the State of Nebraska and comply with all Nebraska Secretary of State Registration requirements. The contractor 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.

**I. ETHICS IN PUBLIC CONTRACTING**

The State reserves the right to reject proposals, withdraw an intent to award or award, or terminate a contract if a contractor 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.

**J. 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 contractor 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.

**K. SUBMISSION OF PROPOSALS**

Bidders should submit one proposal marked on the first page: "ORIGINAL". If multiple proposals are submitted, the State will retain one copy marked "ORIGINAL" and destroy the other copies. The bidder is solely responsible for any variance between the copies submitted. Proposal responses should include the completed Form A, "Contractor Proposal Point of Contact". Proposals must reference the 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, 402-471-6500 should be used. The RFP number should be included in all correspondence. The State will not furnish packaging or sealing materials. It is the contractor's responsibility to ensure the solicitation is received in a sealed envelope or container and submitted by the date and time indicated in the Schedule of Events. Sealed proposals must be received in the State Purchasing Bureau 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 and returned by the proposal opening date and time along with the contractor's Request for Proposal. Include 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/purchasing.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-conforming.

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

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

**L. 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.

**M. 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 proposal. 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.

**N. PRICES**

Prices quoted shall be 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.

All prices, costs, and terms and conditions submitted in the proposal shall remain fixed and valid commencing on the opening date of the proposal until the contract terminates or expires.

**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.**

**O. 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.

**P. 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 contractor 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.

**Q. PROPOSAL CORRECTIONS**

A bidder may correct a mistake in a proposal prior to the time of opening by giving written notice to the State of intent to withdraw the proposal for modification or 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.

**R. 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 contractor and at contractor's expense. The State is not responsible for proposals that are late or lost regardless of cause or fault.

**S. PROPOSAL OPENING**

The opening of proposals will be public and the bidders will be announced. 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. Information identified as proprietary by the submitting contractor, in accordance with the solicitation and state statute, will not be posted. If the state determines submitted information should not be withheld, in accordance with the Public Records Act, or if ordered to release any withheld information, said information may then be released. The submitting contractor will be notified of the release and it shall be the obligation of the submitting contractor to take further action, if it believes the information should not be released. (See RFP signature page for further details) Contractors may contact the State to schedule an appointment for viewing proposals after the 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.

**T. 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 using an indelible method;
2. Clarity and responsiveness of the proposal;
3. Completed Corporate Overview;
4. Completed Sections II through VI;
5. Completed Technical Approach; and
6. Completed State Cost Proposal Template.

**U. EVALUATION COMMITTEE**

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

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

**V. EVALUATION OF PROPOSALS**

All proposals that are responsive to the solicitation will be evaluated. Each evaluation category will have a maximum point potential. The State will conduct a fair, impartial, and comprehensive evaluation of all proposals in accordance with the criteria set forth below. Areas that will be addressed and scored during the evaluation include:

1. Corporate Overview should include but is not limited to:
  - a. the ability, capacity, and skill of the contractor to deliver and implement the system or project that meets the requirements of the solicitation;
  - b. the character, integrity, reputation, judgment, experience, and efficiency of the contractor;
  - c. whether the contractor can perform the contract within the specified time frame;
  - d. the quality of vendor performance on prior contracts;
  - e. such other information that may be secured and that has a bearing on the decision to award the contract;
2. Technical Approach; and,
3. 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, Section H) 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 contractor, 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 contractor, 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 "Contractor 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 contractor 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 contractor from consideration of the preference.

Evaluation criteria will be released with the solicitation.

**W. ORAL INTERVIEWS/PRESENTATIONS AND/OR DEMONSTRATIONS**

The State may determine after the completion of the Technical and Cost Proposal evaluation that oral interviews/presentations and/or demonstrations are required. Every contractor may not be given an opportunity to interview/present and/or give demonstrations; the State reserves the right, in its discretion, to select only the top scoring contractors to present/give oral interviews. The scores from the oral interviews/presentations and/or demonstrations will be added to the scores from the Technical and Cost Proposals. The presentation process will allow the contractors to demonstrate their proposal offering, explaining and/or clarifying any unusual or significant elements related to their proposals. Contractors' key personnel, identified in their proposal, may be requested to participate in a structured interview to determine their understanding of the requirements of this proposal, their authority and reporting relationships within their firm, and their management style and philosophy. Only representatives of the State and the presenting contractor will be permitted to attend the oral interviews/presentations and/or demonstrations. A written copy or summary of the presentation, and demonstrative information (such as briefing charts, et cetera) may be offered by the contractor, but the State reserves the right to refuse or not consider the offered materials. Contractors shall not be allowed to alter or amend their proposals.

Once the oral interviews/presentations and/or demonstrations have been completed, the State reserves the right to make an award without any further discussion with the contractors regarding the proposals received.

Any cost incidental to the oral interviews/presentations and/or demonstrations shall be borne entirely by the contractor and will not be compensated by the State.

**X. BEST AND FINAL OFFER**

If best and final offers (BAFO) are requested by the State and submitted by the contractor, they will 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. The award will then be granted to the highest scoring contractor. However, a contractor should provide its best offer in its original proposal. Contractors should not expect that the State will request a best and final offer.

**Y. 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 contractor grants to the State the right to contact or arrange a visit in person with any or all of the contractor'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.

**Z. 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 contractor proposals that are not material, do not compromise the solicitation process or a contractor's proposal, and do not improve a contractor'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 contractors; or,
9. Award one or more all-inclusive contracts.

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:

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

**AA. EMAIL SUBMISSIONS**

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

**BB. 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.

**CC. 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**

**Contractors should complete Sections II through VI as part of their proposal.** Contractor should read the Terms and Conditions and should initial either accept, reject, or reject and provide alternative language for each clause. The contractor should also provide an explanation of why the contractor rejected the clause or rejected the clause and provided alternate language. By signing the solicitation, contractor 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 contractor's commercial contracts and/or documents for this solicitation.

The contractors should submit with their proposal any license, user agreement, service level agreement, or similar documents that the contractor wants incorporated in the Contract. The State will not consider incorporation of any document not submitted with the contractor'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 (Solicitation and properly submitted documents);
5. The executed Contract and Addendum One to Contract, if applicable; and,
6. Amendments/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) Amendment to the executed Contract with the most recent dated amendment having the highest priority, 2) executed Contract and any attached Addenda, 3) Amendments to solicitation and any 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 or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth below, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or five (5) calendar days following deposit in the mail.

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. NOTICE (POC)**

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 contractor 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:
			

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.

**\*\*\*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. 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. OR in case of breach by the Contractor, the State may, without unreasonable delay, make a good faith effort to make a reasonable purchase or contract to purchased goods in substitution of those due from the contractor. 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.

**J. 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.

**K. SEVERABILITY**

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

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.

**L. 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.

**2. INTELLECTUAL PROPERTY (Optional)**

The Contractor 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 Contractor or its employees, subcontractors, consultants, representatives, and agents; provided, however, the State gives the Contractor prompt notice in writing of the claim. The Contractor may not settle any infringement claim that will affect the State’s use of the Licensed Software 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 Contractor has indemnified the State, the Contractor shall, at the Contractor’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 Contractor, and the State may receive the remedies provided under this solicitation.

**3. 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.

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

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.

**M. 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.

**N. 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.

**O. 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.

**P. FORCE MAJEURE**

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

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.

**Q. 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.

**R. 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.

**S. 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.

**T. 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.

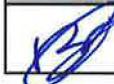
**U. EARLY TERMINATION**

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 Contractor, person or entity in the assumption of any or all of the obligations of this contract;
5. Cooperate with any successor Contractor, person or entity with the transfer of information or data related to this contract;
6. Return or vacate any state owned real or personal property; and,
7. Return all data in a mutually acceptable format and manner.

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

**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 contractor'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:
			

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. 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.

**F. 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.

**G. 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 six (6) months 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 six (6) months following termination or expiration of the contract.

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

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

**1. WORKERS' COMPENSATION INSURANCE**

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

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

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

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

<b>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 Contractors	Included
Abuse & Molestation	Included
<b><i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i></b>	
<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>CYBER LIABILITY</b>	
Breach of Privacy, Security Breach, Denial of Service, Remediation, Fines and Penalties	\$5,000,000
<b>CONTRACTOR'S POLLUTION LIABILITY</b>	
Each Occurrence/Aggregate Limit	\$2,000,000
Includes Non-Owned Disposal Sites	
<b>MANDATORY COI SUBROGATION WAIVER LANGUAGE</b>	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
<b>MANDATORY COI LIABILITY WAIVER LANGUAGE</b>	
"Commercial General Liability & Commercial Automobile Liability policies shall name the State of Nebraska as an Additional Insured and the policies shall be primary and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory as additionally insured."	

**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:

Agency: Nebraska State Purchasing Bureau  
 Attn: Buyer for 6154 Z1  
 1526 K Street, Suite 130  
 Lincoln, NE 68508

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.

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

**I. ANTITRUST**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative 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.

**J. 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.

**K. STATE PROPERTY**

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

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

**L. SITE RULES AND REGULATIONS**

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.

**M. 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.

**N. 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.

**O. DRUG POLICY**

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

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.

**P. WARRANTY**

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

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 State, or if Contractor is unable to perform the services as warranted, Contractor shall reimburse the State the 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.

**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. 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.

**D. 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.

**E. LATE PAYMENT (Statutory)**

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

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

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

The State shall have the right to audit the Contractor's performance of this contract upon a 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 (Information) 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 (.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

The contractor should provide the following information in response to this solicitation.

### A. PROJECT OVERVIEW

The State of Nebraska (State) is seeking one Contractor to provide Auctioneer Services for conducting public auctions selling surplus State property. The types of items sold will be wide ranging from traditional office equipment to vehicles heavy construction equipment and electronics. These items will not include buildings, land or livestock. These services are to be performed in close coordination with the Department of Administrative Services (AS) Surplus Property program and the AS Surplus Property Manager. The AS Surplus Property program conducts approximately twenty (20) surplus furniture auctions and two (2) surplus automobile/heavy equipment auctions per year within Lancaster County. Occasionally surplus furniture auctions are held outside Lancaster County at various locations within the State of Nebraska. A Nebraska Motor Vehicle Auction Dealer's License, is required, in accordance with Neb. Rev. Stat. Section 60- 1401.02., for auctions that include titled vehicles. The State may also sell titled vehicles on behalf of other political subdivisions at surplus vehicles/heavy equipment auctions. These consignment sales occur on an occasional basis and usually are limited to a few vehicles. The number of auctions conducted annually are approximate and not to be construed to be a minimum or maximum.

### B. BUSINESS REQUIREMENTS

AS Surplus Property will prepare the auction site and the items to be sold for the auction. All items will be identified with lot numbers assigned by the State. The Contractor will register bidders, conduct the auction, record all sales transactions, collect all payments, report and pay sales taxes and provide the State with auction proceeds and detailed reports. The Contractor will submit all invoices for State approved charges incurred to AS Surplus Property within five (5) business days after the completion of the auction. The sales data and reports shall be forwarded at the same time that the final auction report and state check distribution is made. The State will not pay invoices for subcontracted vendors for work required within this agreement. The only fees authorized for deduction from the gross sales at an auction are the Contractor fees in accordance with the Cost Proposal.

#### 1. Additional requirements in the submission of responses for the RFP are as follows:

- a. The bidder must provide a photocopy of their Nebraska Auctioneers License;
- b. The bidder must provide a photocopy of their Nebraska Vehicle Auction dealer's license;
- c. The bidder must provide two (2) references for vehicle/equipment auctions conducted within the past two (2) years with a minimum of \$1,000,000 in gross sales for both auctions. Reference information must include a primary point of contact for the auction conducted, a general summary of the number of pieces and types of equipment sold as well as gross sales figures;
- d. The bidder must also provide largest gross sales dollar figure for one (1) auction referencing the above, as identified in c;
- e. The bidder must submit two (2) references for any other type of auction, not to be duplicated with the above, for an auction conducted within the past two (2) years with a minimum of \$25,000 in gross sales; within five business days after bid opening. Reference information must include a primary point of contact for the auction conducted, a general summary of number of pieces and types of equipment sold as well as gross sales figures;

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. SCOPE OF WORK**

1. All items shall to be sold through an open competitive bidding process.
2. Items to be sold, will be provided by the State through or in coordination with AS State Surplus Property. These items will be from State agencies, boards and commissions. Occasionally there may be a few consignments of titled vehicles from other Nebraska political subdivisions included in State vehicle/heavy equipment auctions.
3. Auctions are to be scheduled on dates and at times acceptable to both the State of Nebraska and the Contractor. Auction dates may not be changed without prior approval of the AS Surplus Property Manager. The Contractor is expected to make every reasonable attempt possible to meet the scheduling needs of the State when auction dates are being identified, approved or changed. The State reserves to change the auction schedule as needed. Reference Table 1, below, for current scheduled auction dates.

**Table 1**

Auction Date	Public Viewing Date	Type of Auction
<b>2019 Remaining Schedule</b>		
August 10, 2019	August 9, 2019	Electronics/Furniture
September 15, 2019	September 13, 2019	Electronics/Furniture
October 6, 2019	October 4, 2019	Electronics/Furniture
October 19, 2019	October 17-18, 2019	AUTO AUCTION
November 9, 2019	November 8, 2019	Electronics/Furniture
December 7, 2019	December 6, 2019	Electronics/Furniture
<b>2020 Schedule</b>		
January 11, 2020	January 10, 2020	Electronics/Furniture
February 8, 2020	February 7, 2020	Electronics/Furniture
March 7, 2020	March 6, 2020	Electronics/Furniture
April 4, 2020	April 3, 2020	Electronics/Furniture
May 2, 2020	May 1, 2020	Electronics/Furniture
May 16, 2020	May 14-15, 2020	AUTO AUCTION
June 6, 2020	June 5, 2020	Electronics/Furniture
July 11, 2020	July 10, 2020	Electronics/Furniture
August 1, 2020	July 31, 2020	Electronics/Furniture
September 5, 2020	September 4, 2020	Electronics/Furniture

4. All property is to be sold using the AS Surplus Property assigned Lot Numbers. The Lot Number, a brief description of the item(s), the Bidder Number for the successful bidder and the sale price must all be clearly and accurately recorded.
5. If during an auction, after reasonable attempts have been made by the Contractor to secure an opening bid for an item or Lot, and no bids of \$10.00 or higher have been offered, the auctioneer will announce the item as a "No Sale" and the item or lot is to be recorded.
6. The combining of Lots and offering them for sale as a group is prohibited.
7. The purchase of items by the Contractor Service, Contractor employees, subcontractors, subcontractor's employees to the Contractor, for the purpose of resale is prohibited.
8. Everything will be sold to the highest bidder on an "AS IS, WHERE IS" basis, **WITH ABSOLUTELY NO GUARANTEES MADE OR IMPLIED.** All purchases are made at the bidder's risk.
9. Once an item or items have been declared "sold", no sale prices will be discounted. All sales are final.
10. No opening bids for under ten dollars (\$10.00) will be accepted and no item (lot) will be sold for less than ten dollars (\$10.00). The State reserves the option to revise the minimum reserve.
11. No items will be offered with a reserve unless approved by the AS Surplus Property Manager. The Contractor will announce at the time of the sale there is a reserve.
12. Prior to each auction, the Contractor and will be required to do one (1) on site review of all items to be sold during office hours observed by AS Surplus Property. This review should take place no later than fourteen (14) working days prior to the auction date.
13. The Contractor shall not sell, assign, transfer or convey any interest in the contract, in whole or in part, without prior written consent of the State of Nebraska.

## D. ADVERTISING

1. Advertising will be at the Contractor Service's expense. The invoice for this required advertising does not need to be submitted to AS Surplus Property since this fee is the total responsibility of the Contractor. Each auction is to be advertised by the Contractor in the Lincoln Journal Star and Omaha World-Herald newspapers the Sunday preceding the sale. This ad is to also appear in both papers the Friday immediately preceding the sale/auction date. The Contractor will also advertise via one of the following Social Media platforms (Facebook, Instagram, or Twitter). Any additional advertising must be reviewed and approved in writing by the AS Surplus Property Manager prior to publication.
2. Proof of advertising is required and must be presented to AS Surplus Property with the final auction report no later than five (5) business days after the auction. The proof should be the actual page "cut out" of the newspaper with the date, and a screen shot of the social media post with a date/time stamp available for review. The advertisement size must be a minimum of 1 column x 3". Any requests by the auctioneer service to make adjustments to this size requirement must be submitted in writing to and approved by the AS Surplus Property Manager.
3. The Contractor shall prepare an original copy of a suitable flyer for each auction. This "original flyer" will be provided to AS Surplus Property in a PDF format a minimum of fourteen (14) business days prior to the scheduled auction date. The form, format and content of the flyer must be appropriate for use on a government website and is subject to the approval of the AS Surplus Property Manager. This flyer will be posted to the AS Surplus Property website and Facebook Page by Administrative Services staff prior to the auction.
4. The Contractor must maintain an updated website which is accessible to the general public. A copy of the auction flyer and photo show shall be posted on that website no later than fourteen (14) business days prior to the auction.
5. **Advertising for Vehicle/Heavy Equipment Auction (Outside Auction):**
  - a. The Contractor must also post additional pictures of items to be sold in the form of a "photo show" on their website, which will depict the majority of the items to be sold. The auctioneer is to begin posting pictures on their web site six (6) weeks prior to the auction date. Understanding additional items to be sold will be arriving at the Surplus Sales Lot during this time period, a finalized complete version the "photo show" is to be posted on the auctioneer's web site, fourteen days (14) days prior to the auction date for the inside auction.
6. **Advertising for Furniture Auction (Inside Auction):**
  - b. The Contractor must maintain an updated website and a copy of the flyer along with a photo show of items for auction must be available to the public on that website a minimum of fourteen (14) business days prior to the scheduled auction date.

## VI. PROPOSAL INSTRUCTIONS

This section documents the requirements that should be met by bidders in preparing the Technical and Cost Proposal. Bidders should identify the subdivisions of "Project Description and Scope of Work" clearly in their proposals; failure to do so may result in disqualification. Failure to respond to a specific requirement may be the basis for elimination from consideration during the State's comparative evaluation.

Proposals are due by the date and time shown in the Schedule of Events. Content requirements for the Technical and Cost Proposal are presented separately in the following subdivisions; format and order:

### A. PROPOSAL SUBMISSION

#### 1. CORPORATE OVERVIEW

The Corporate Overview section of the Technical Proposal should consist of the following subdivisions:

##### a. 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.

##### b. 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.

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 proposal 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.

##### c. CHANGE OF OWNERSHIP

If any change in ownership or control of the company is anticipated during the twelve (12) months following the proposal 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 contractor(s) will require notification to the State.

##### d. OFFICE LOCATION

The bidder's office location responsible for performance pursuant to an award of a contract with the State of Nebraska should be identified.

##### e. RELATIONSHIPS WITH THE STATE

The bidder should describe any dealings with the State over the previous four (4) years. If the organization, its predecessor, or any Party named in the bidder's proposal 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.

**Ficke & Ficke Auctioneers have provided auctioneer services to the State for the past four years. See 4890 Z1**

	Describe bidder's business practices on payments will be collected and sales taxes remitted.
9	Bidder Response: Ficke & Ficke Auctioneers accept personal and business checks, cash and most credit/debit cards. We do not require a bank letter of credit or check guarantee, while this protects the auctioneer, it this serves as a choke on buyers bidding. Sales tax is collected, forwarded and filed with State Revenue Dept., electronically.
	Describe bidder's auction site security practices.
10	Bidder Response: Ficke & Ficke contracts annually with the Lincoln Police Department for off-duty officers, several of whom have been on the SWAT team. They are asked to disallow drunks, drinking and drugs as well as nothing is to be removed until sold and paid for, showing proof of purchase via paid invoice. High on the list ... they are asked to be on the lookout for potential whackos intent on using a crowd as a shooting gallery. Squabbles, bad behavior and theft are virtually non-existent, as a result. All upper Ficke & Ficke members have passed State Patrol/FBI background checks.
	Provide one example of a situation that lead to outstanding customer service.
11	Bidder Response: Out-of-state buyer purchased a non-starting truck that had been driven in. He called, in a Friday afternoon deadline panic, that his scheduled, hired semi was out of service. However, he had a driver enroute but no mechanic. Could there be a way we could assist? We went out and a pair of batteries and alternator later, it was out the gate. Never charged the customer. He is still a customer.
	Describe two examples of how the bidder provided customer service to an upset customer ultimately leading to a positive outcome for the customer.
12	Bidder Response: Example one: Auction for UNL Landscape services. Buyer came from out-of-state to bid on an advertised commercial high-end batwing riding mower only to discover it had been removed from the auction lineup the previous day because the replacement mower was involved in a terminal mishap. This was during the peak of the mowing season. Even though the flier info contained the "...reserves the right to..." comment the bidder was hot. Took him aside, let him vent, apologized, and asked him what he would do, if after placing his old work truck for sale, had an interested buyer, and before the buyer could come for the old truck, his new one was T-boned and totaled and he still had jobs to complete. He would have little choice but to void the sale to keep his customers. Unfortunate, but that's life! He, though disappointed, agreed and stayed for the remainder of the auction. Example two: Customer purchased vehicle at auction only to discover later that there was a significant mileage discrepancy. This was on a pre six digit speedometer. The mileage on the bill of sale was incorrect and signed by the property manager. Funds had been dispersed. Customer was rightfully distressed, to say the least. We asked him to return the van to us in exchange for a full refund. We later resold the van, at a loss, fully disclosing the speedometer discrepancy. When this sort of thing goes upstream, it gets ugly!

**K. STATE OF NEBRASKA REQUIREMENTS FOR AUCTIONS COMPLETED AT AS SURPLUS PROPERTY:**  
The following are the responsibilities of the State of Nebraska associated with auctions completed at AS Surplus Properties:

1. Provide auction site, including ample public parking, and sufficient space for conducting the auction.
2. Provide support staff for starting vehicles to be sold on the day of the auction.
3. Provide clear titles and all appropriate title documents, free of encumbrances, as pertains to any surplus property to be auctioned in sufficient time prior to auction date.
4. The State reserves the right to add or withdraw any item or lot prior to the time the item is offered for sale by the Contractor.

**L. DELIVERABLES**

Each auction performed shall be considered an individual project. The deliverable for each project shall be the successful completion of all requirements detailed in the Scope of Work culminating with the payment of auction proceeds to the State and the submission of the corresponding auction Final Report to AS Surplus Property.

**J. TECHNICAL REQUIREMENTS**

For the following technical requirements, provide a bidder response explaining how each requirement will be met. These requirements must be responded to and submitted with the proposal response.

1	<p>Describe bidder's approach to conducting auctions and describe the level of professionalism that will be provided.</p> <p>Bidder Response: Ficke &amp; Ficke auctions strive for well-organized, as practicable, auctions and treat customers and buyers in a fair, firm, friendly and professional manner such that as they leave, with a smile, they comment "I got some stuff, paid too much on some and bargains on some, but I enjoyed it. Thank you and see you soon."</p>
2	<p>Provide a detailed description of the professional sound system for inside auctions and for outside auctions with the capability of running multiple rings simultaneously.</p> <p>Bidder Response: We have experimented and upgraded systems with the most effective, and least grating, setups comprised of multiple professional high-end band-type set-ups utilizing 12-15" cone woofers, tweeters and midrange speakers driven by 1000 watt QSC amplifiers. The mobile units are by Anchor and are touted to address over a thousand people outdoors.</p>
3	<p>Describe bidder's permanent employee roster and how many subcontractors are needed for auction assistance on average.</p> <p>Bidder Response: Our roster, for smaller auctions, like the State indoor, consist of five-six personnel that are diversified in that they are competent in multiple positions to enable floating to where the greatest need is. Clerks, recorders, markers, ringman and auctioneers. Our crew size ranges from four to forty, depending on the auction demands. We have conducted as many as four simultaneous auctions. Two is common.</p> <p>Subcontractors normally are security by Lincoln off-duty police (with whom we hold a contract), toilet service and towing (wrecker) service. We can, and have, provided inspection service, hauling service (local and cross country), garbage service, repairmen and others,</p>
4	<p>Describe bidder's advertising experience and provide one auction advertising example.</p> <p>Bidder Response: Fifteen years in Lincoln Journal Star advertising department, twelve years as Classified Manager and advertising art, page layout and computer input/output manager/trainer</p>
5	<p>Describe bidder's marketing approach on how to reach as many potential auction bidders as possible.</p> <p>Bidder Response: The internet is primary. It is the most efficient and expedient method of reaching searching buyers while providing the most information to these potential buyers at minimal cost. Periodical advertising, twitter notifications, email blitzes and Facebook notices should direct all interest to the website where the bulk of the auction information details, photos and videos reside.</p>
6	<p>Describe bidder's auction system and provide information on their online auction service.</p> <p>Bidder Response: Ficke &amp; Ficke has used computerized clerking for nearly 20 years. We are in the process of upgrading for efficiency and more features. Buyers are provided a printout showing all of their purchases, tax, totals and payment credits.</p> <p>We do conduct both online auctions and live auctions online. The first is a timed event over a period of days, hours and minutes. The second occurs simultaneously with an onsite auction. The bidder who has seen the item up-close always has the advantage and incentive to bid the most. So the ideal situation is for a potential buyer to view the item during viewing, then is able bid at some distance with confidence and knowledge. The next best is to provide enough good, unembellished, information to instill bidder confidence, but not at the expense of honesty and fairness!</p>
7	<p>Describe bidder's business practices for reports of sale and provide one example.</p> <p>Bidder response: Ficke &amp; Ficke reports all sales, prices, quantities and necessary buyer information while protecting the buyer as to info security, and expenses as required.</p>
8	<p>Describe bidder's use of social media technology and how it will be used to attract and communicate with customers.</p> <p>Bidder Response: Twitter, Facebook, Instagram and the top 20+ other social media sites are first social media and online news platforms. They can be used to draw interested parties to a website for more information on specific items if the target audience is using them, or may know someone in need. Nearly any type of information providing source can be helpful when properly and tastefully utilized and managed.</p>

6. The Contractor must maintain an updated website which is accessible to the general public. A copy of the auction flyer and photo show shall be posted on that website no later than fourteen (14) business days prior to the auction.

**I. VEHICLE / HEAVY EQUIPMENT AUCTION (OUTSIDE AUCTION) REQUIREMENTS**

1. The contractor service shall meet with the AS Surplus Property Manager at Surplus Property on a mutually agreed upon date and time during established Surplus Property business hours, for a pre-auction walk-through review of heavy equipment to be sold. The purpose of this walk-through review is to provide the contractor service with any additional information available to Surplus Property regarding the condition of the equipment. The auction service representative shall be either an auctioneer or experienced ring person who will be present and participating in the sale of the heavy equipment the day of the auction. The date of the walk-through review shall be no more than fourteen days (14) prior to the sale unless otherwise agreed upon by the AS Surplus Property Manager.
2. The Contractor must also post additional pictures of items to be sold in the form of a "photo show" on their website, which will depict the majority of the items to be sold. The auctioneer is to begin posting pictures on their web site six (6) weeks prior to the auction date. Understanding additional items to be sold will be arriving at the Surplus Sales Lot during this time period, a finalized complete version the "photo show" is to be posted on the auctioneer's web site, two (2) weeks prior to the auction date for the inside auction.
3. The Contractor will arrange and pay for the provision of three (3) portable toilets for the day of the auction. These units and their locations must be approved by the AS Surplus Property Manager.
4. The Contractor will provide competent security personnel in order to protect the vehicles and equipment from theft or vandalism from 8:00am to 4:30PM on Thursday and Friday prior to the auction, and from 7:30AM until the gates to AS Surplus Property are closed after the auction is completed on Saturday.
5. The Contractor is responsible for the forwarding of all titles, sales tax statements, odometer statements, and disclaimers. Titles for all sales transactions shall be sent to the successful bidder of record no later than fifteen (15) business days after the completion of the auction.

**G. PAYMENTS**

The Contractor is responsible for the collection of bidder payments and for the collection, reporting and payment of sales tax as required by State law. The total amount due to the State as proceeds may not be reduced by the contractor service to offset any bidder payments which are pending or uncollectable.

1. The Contractor assumes liability for all forms of payment accepted by the Contractor for items sold. No additional credit card processing charges can be charged to the auction bidders. The Contractor should make reasonable efforts to have a variety of payment options available at auctions. The Contractor is responsible for notifying the AS Surplus Property Manager immediately of any disputes regarding sales of items or disputes regarding payment.
2. The Contractor will assume all responsibility for unpaid amounts due when merchandise is removed from the auction site, or when insufficient funds checks from bidders are received. Payment to the State for the total amount of the gross receipts minus the appropriate fee from the Cost Proposal is required. Adjustments to this amount for unpaid transactions when the merchandise is removed from the auction site or insufficient funds checks received by the Contractor are not permitted. AS Surplus Property is the sole authority in determining disposition of items which are sold but not claimed by the bidder. Such items retained by the State of Nebraska may be sold at a later date.
3. Payment shall be in the name of "The State of Nebraska" and will be submitted to AS Central Services 1526 K Street, Suite 240, Lincoln, NE 68508-2732.

**H. MINIMUM REQUIREMENTS FOR VEHICLE/HEAVY EQUIPMENT AND FURNITURE AUCTIONS**

The following services for the State of Nebraska Surplus Property auctions shall be performed by the Contractor as essential elements of the contract:

1. The Contractor will provide complete and accurate bidder registration, recording of all transactions (sales and no-sales), assist in handling/display of items being sold and perform cashier duties in a professional and accurate manner.
2. While conducting the auctions, when describing items to be sold, the Contractor must demonstrate general knowledge of a majority of items typically owned by state government and must demonstrate substantial knowledge of :
  - a. Passenger automobiles and trucks;
  - b. Heavy construction equipment including dump trucks, loaders, tractors, etc.
  - c. Office furnishings;
  - d. Computers and electronics of all types.
3. The Contractor will conduct simultaneous live internet and phone bidding for auctions. No additional fees will be charged to the State.

The Contractor will be required to provide a professional quality sound system to be approved by the AS Surplus Property Manager. This sound system must provide adequate service so bidders and others attending the auctions are able to reasonably be aware of sales transactions as they occur and hear instructions from the contractor. The entire sound system shall be a standalone system and be contained within the auction facility for the inside auction.

The Outside auction will require a professional quality sound system to be approved by the Surplus Property Manager. A separate sound system will be needed for the Vehicle Auction ring and a separate system for the Heavy Equipment ring.

4. At the beginning of each auction, the Contractor is required to make the following announcement that all items are sold "as is, where is" with no guarantees or warranties real or implied, and that all items sold, if not removed by the date and time established by the AS Surplus Property Manager. The State of Nebraska is not responsible for damaged, lost or stolen items. Any item not removed will be disposed of in a manner determined by the AS Surplus Property Manager to be in the best interests of the State, including the possibility of resale.
5. The Contractor, with minimal exceptions, is to sell items in lot order number as established by AS Surplus Property. Significant deviation from lot order number must be approved by the AS State Surplus Property Manager. There will be no manufactured bids. Straw, shill and falsely represented opening bids are expressly prohibited. Each item being sold will be announced by the auctioneer at the time of its sale, including the item's lot number and a brief description. After pronouncing each item sold, the Contractor will repeat the dollar amount and the bidder number for that item.

## E. STAFFING

1. The Contractor must provide sufficient staff to complete bidder registration quickly and efficiently. Having no more than five (5) bidders waiting in each registration line for more than ten (10) minutes.
  - a. Each registration record shall include the bidder's printed name and signature, address, telephone number, bidder number and provide for optional email address. If the Contractor has other safety requirements they want to include in the registration process, those must be submitted to the Surplus Property Manager for approval prior to implementation.
  - b. The Contractor must provide sufficient staff to collect and process all bidder payments. The wait lines should not have more than five (5) bidders waiting in each line for more than ten (10) minutes.
  
2. **Additional staffing requirements for Vehicle/Heavy Equipment (Outside Auction):**
  - a. The Contractor shall provide at a minimum: Two (2) auctioneers, ten (10) experienced clerks, eight (8) ring persons and eight (8) vehicle drivers (including driver coordinator). Any exceptions to this minimum requirement must be pre-approved by AS Surplus Property Manager.
  - b. The Contractor shall provide sufficient staff and equipment to operate two (2) separate sale rings; one (1) for passenger vehicles and light trucks in drivable condition and one (1) for heavy equipment, trucks, tractors and other items. While the rings may begin the selling at different times, they will operate simultaneously for the majority of the auction. The requirement for announcements to be given prior to each auction shall apply to both of these rings.
  - c. The Contractor shall provide staff for the purpose of driving vehicles through the sales ring for passenger vehicles and light duty trucks when they are being sold. The number of drivers is specified above and may be changed with the approval of the AS State Surplus Property Manager. In addition the Contractor is to provide at least one person to coordinate the activities of the drivers and ensure vehicles are sent to the ring in as close to lot number order as is reasonably possible. All drivers must be able to safely operate a wide variety of vehicles and vehicle types in an auction setting and have current valid driver's licenses the day of the auction.

## F. REPORTING

1. **Auction Summary Report**

This report will be provided by the Contractor to the AS Surplus Property after the auction has concluded and before leaving the auction site. This report shall include at a minimum the total number of Lots offered to bidders, the total number of Lots sold and the total number of Lots for which no bids were received (no sales). The Report shall also include the total number of registered bidders.

  - a. All reports and supporting documents of all auctions containing detailed records of auction proceedings shall become the property of the State of Nebraska.
  - b. All required reports and copies of supporting documents will be made available to the State in electronic format upon request by AS Surplus Property.
  
2. **Electronic Auction Results Report**

Within two (2) business days of the completion of an auction, the Contractor is to provide AS Surplus Property with the following information electronically using a format approved by the AS Surplus Property Manager:

  - a. Listing of all lots sold and description information in Excel format.
  - b. Auction Financial Summary Page (Gross receipts minus allowable fees per Cost Proposal equals net receipts) in Excel format.
  - c. Complete Bidder List in Bidder Number Order in PDF format.
  
3. **Auction Final Report (Electronic) and Payment of Net Receipts**

Within five (5) business days after the completion of either a Vehicle/Heavy Equipment or a Furniture auction, an electronic Auction Final Report and a payment in full for the net receipts (gross receipts minus allowable fees established by the Cost Proposal) shall be provided to the State. Any adjustment to this timeframe must be approved by the Surplus Property Manager and will be limited to a maximum of five (5) additional business days only.

The Auction Final Report (Electronic) shall include:

- a. The Auction Financial Summary Page;
- b. Complete list of registered bidders in Bidder Number order;
- c. Copies of proof of advertising as required in this document.

**f. BIDDER'S EMPLOYEE RELATIONS TO STATE**

If any Party named in the bidder's proposal response is or was an employee of the State within the past four (4) 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.

**No such relationship exists.**

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 proposal 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 proposal. If no such relationship exists, so declare.

**No such relationship exists.**

**g. CONTRACT PERFORMANCE**

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.

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 proposal accordingly. If no such termination for default has been experienced by the bidder in the past ten (10) years, so declare.

**No such termination exists.**

If at any time during the past ten (10) 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.

**h. 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 proposal.

The bidder should address the following:

- 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 contractor or as a subcontractor. If a bidder performed as the prime contractor, 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.

Bidder and subcontractor(s) experience should be listed separately. Narrative descriptions submitted for subcontractors should be specifically identified as subcontractor projects.

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.

**I. SUMMARY OF BIDDER'S PROPOSED PERSONNEL/MANAGEMENT APPROACH**

The bidder should present a detailed description of its proposed approach to the management of the project.

The bidder should identify the specific professionals who will work on the State's project if their company is awarded the contract resulting from this solicitation. The names and titles of the team proposed for assignment to the State project should be identified in full, with a description of the team leadership, interface and support functions, and reporting relationships. The primary work assigned to each person should also be identified.

The bidder should provide resumes for all personnel proposed by the bidder to work on the project. The State will consider the resumes as a key indicator of the bidder's understanding of the skill mixes required to carry out the requirements of the solicitation in addition to assessing the experience of specific individuals.

Resumes should not be longer than three (3) pages. Resumes should include, at a minimum, academic background and degrees, professional certifications, understanding of the process, and at least three (3) references (name, address, and telephone number) who can attest to the competence and skill level of the individual. Any changes in proposed personnel shall only be implemented after written approval from the State.

**J. SUBCONTRACTORS**

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

- 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.

**2. TECHNICAL APPROACH**

The technical approach section of the Technical Proposal should consist of the following subsections:

- a.** Section V.J. Technical Requirements.

**Form A**  
**Contractor Proposal Point of Contact**  
**Request for Proposal Number 6154 Z1**

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

Preparation of Response Contact Information	
Contractor Name:	Ficke & Ficke Auctioneers LLC
Contractor Address:	941 O st. Ste 777 Lincoln, NE 6850
Contact Person & Title:	Bud Callahan, Managing Member
E-mail Address:	<a href="mailto:budcall@gmail.com">budcall@gmail.com</a>
Telephone Number (Office):	402-475-1141
Telephone Number (Cellular):	402-432-4040
Fax Number:	Email: <a href="mailto:budcall@gmail.com">budcall@gmail.com</a>

Each contractor should also designate a specific contact person who will be responsible for responding to the State if any clarifications of the contractor'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	
Contractor Name:	Ficke & Ficke Auctioneers LLC
Contractor Address:	941 O St. Ste 777 Lincoln, NE 68508
Contact Person & Title:	Bud Callahan, Managing Member
E-mail Address:	<a href="mailto:budcall@gmail.com">budcall@gmail.com</a>
Telephone Number (Office):	402-475-1141
Telephone Number (Cellular):	402-432-4040
Fax Number:	Email: <a href="mailto:budcall@gmail.com">budcall@gmail.com</a>

**Form B**  
**Notification of Intent to Attend Pre-Proposal Conference**  
**Request for Proposal Number 6154 Z1**

Contractor Name:	Ficke 7 Ficke Auctioneers LLC
Contractor Address:	941 O St, Ste 777 Lincoln, NE 68508
Contact Person:	Bud Callahan
E-mail Address:	budcall@gmail.com
Telephone Number:	402-475-1141
Fax Number:	
Number of Attendees:	one

The "Notification of Intent to Attend Pre-Proposal Conference" form should be submitted to the State Purchasing Bureau via e-mail ([as.materielpurchasing@nebraska.gov](mailto:as.materielpurchasing@nebraska.gov)), hand delivered or US Mail by the date shown in the Schedule of Events.

**Form C**  
**Final Checklist**  
**Request for Proposal Number 6154 Z1**

Please enclose this checklist with your proposal.

<b>Mandatory Requirements - defined in Section II - J</b>		
<u>B</u>	1	Request For Proposal For Contractual Services form, signed in ink.
<u>B</u>	2	Cost Proposal.
<u>B</u>	3	Provided a photocopy of the Nebraska Vehicle Auction dealer's license.
<u>B</u>	4	Provided two (2) references for vehicle/equipment auctions conducted within the past two years with a minimum of \$1,000,000 in gross sales for both auctions. Reference information must include a primary point of contact for the auction conducted, a general summary of the number of pieces and types of equipment sold as well as gross sales figures.
<u>B</u>	5	Provided two (2) references for any other type of auction, not to be duplicated with the above (#4), for an auction conducted within the past two years with a minimum of \$25,000 in gross sales. Reference information must include a primary point of contact for the auction conducted, a general summary of number of pieces and types of equipment sold as well as gross sales figures.
<u>B</u>	6	Provided largest gross sales dollar figure (for one auction) referencing # 4 above.
<u>1</u>	7	Largest gross sales dollar figure (for one auction) referencing #5 above.
<u>B</u>	8	Cost Proposal.

## REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES FORM

**CONTRACTOR 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 contractor maintains a drug free work place.

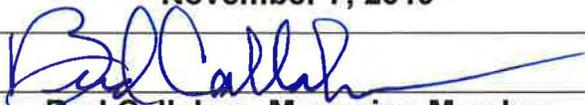
Per Nebraska's Transparency in Government Procurement Act, Neb. Rev Stat § 73-603 DAS is required to collect statistical information regarding the number of contracts awarded to Nebraska Contractors. This information is for statistical purposes only and will not be considered for contract award purposes.

 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 USING AN INDELIBLE METHOD (NOT ELECTRONICALLY)**

FIRM:	<b>Ficke &amp; Ficke Auctioneers LLC</b>
COMPLETE ADDRESS:	<b>941 O St., Ste 777, Lincoln, NE 68508</b>
TELEPHONE NUMBER:	<b>402-475-1141</b>
FAX NUMBER:	<b>402-475-1141</b>
DATE:	<b>November 7, 2019</b>
SIGNATURE:	
TYPED NAME & TITLE OF SIGNER:	<b>Bud Callahan, Managing Member</b>

ADDITIONAL REQUIREMENT RESPONSE, RFP 6154 Z1, PAGE 42.4.5

Two references for vehicle/equipment auctions greater than \$1,000,000, within the last two years:

Reference #1, State of Nebraska

May 18, 2019, State of Nebraska Surplus Property yard, 5001 South 14th Street, Lincoln, Nebraska. **Total gross sales \$1,186,255.00**, selling 164 cars, pickups and light trucks.

There were 264 lots of heavy equipment motor graders, loaders, trailers, road construction and maintenance equipment and miscellaneous items.

Point of contact: Surplus Property Manager, 402-471-3896

Reference #2, State of Nebraska

May 19, 2018, State of Nebraska Surplus Property yard, 5001 South 14th Street, Lincoln, Nebraska. **Total gross sales \$1,904,655.00**, selling 289 cars, pickups and light trucks.

There were 250 lots of heavy equipment motor graders, loaders, trailers, road construction and maintenance equipment and miscellaneous items.

Point of contact: Surplus Property Manager, 402-471-3896

Reference line 6, page 42, "Largest gross Sales..." State of Nebraska

May 11, 2013, State of Nebraska Surplus Property yard, 5001 South 14th Street, Lincoln, Nebraska. **Total gross sales \$2,049,430.00.00**, selling 321 cars, pickups and light trucks.

There were 165 lots of heavy equipment motor graders, loaders, trailers, road construction and maintenance equipment and miscellaneous items.

Point of contact: Surplus Property Manager, 402-471-3896

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Two references for auctions, greater than \$25,000, without vehicles or heavy equipment, within the last two years:

Reference #1, University of Nebraska

April 20, 2019, University of Nebraska Surplus Property warehouse, 4800 Doris Bair Cr, Lincoln, Nebraska. **Total gross sales \$28,200.50**, selling 595 lots of computers and peripheral equipment, furniture, lab equipment, bicycles and miscellaneous items.

Point of contact: John Lohmeier, Surplus Property Manager, 402-472-1187 or 402-560-0977

Reference #2, University of Nebraska

May 20, 2018, University of Nebraska Surplus Property warehouse, 4800 Doris Bair Cr, Lincoln, Nebraska. **Total gross sales \$25,701.50** selling 494 lots of computers and peripheral equipment, furniture, lab equipment, and miscellaneous items.

Point of contact: John Lohmeier, Surplus Property Manager, 402-472-1187 or 402-560-0977

Reference line 7, page 42, "Largest gross Sales..." State of Nebraska

June 1, 2013, State of Nebraska Surplus Property warehouse, 5001 South 14th Street, Lincoln, Nebraska. **Total gross sales \$56,068.00**, selling 336 lots of computers and peripheral equipment, furniture, office equipment, lab equipment, seized items, electronics, cameras and miscellaneous items.

Point of contact: Surplus Property Manager, 402-471-3896

FEE \$ 400

**2019**

NO. AU-00009

STATE OF NEBRASKA  
MOTOR VEHICLE INDUSTRY LICENSING BOARD

**AUCTION DEALER**

**LICENSE**

JOSHUA L. EICKMEIER, EXECUTIVE DIRECTOR  
OF THE NEBRASKA MOTOR VEHICLE INDUSTRY LICENSING BOARD  
DO HEREBY CERTIFY THAT

**FICKE & FICKE AUCTIONEERS LLC WITH PRINCIPAL  
PLACE OF BUSINESS LOCATED AT 941 O STREET,  
SUITE 777, LINCOLN, NEBRASKA 68508.**

**DUPLICATE**



IS DULY LICENSED TO ENGAGE IN THE ACTIVITIES AS INDICATED  
ABOVE, IN ACCORDANCE WITH CHAPTER 60, ARTICLE 14 R.R.S 1943,  
AS AMENDED, SUBJECT TO THE LIMITATIONS IMPOSED BY LAW DURING  
THE CALENDAR YEAR OF 2019.



*Joshua L. Eickmeier*

EXECUTIVE DIRECTOR

THIS LICENSE MUST BE PROMINENTLY DISPLAYED

02258



**Experience backed by over 5,000 auctions.**  
Real Estate – Machinery – Inventory – Personal Property Auctions  
***We know the business – we do it right!***

May 3, 2019

Business Services Inventory Department  
University of Nebraska  
1700 Y Street  
Lincoln, Nebraska 68588-0606

RE: WAREHOUSE SURPLUS AUCTION, APRIL 20, 2019

This is our closing statement to you for the sale, at public auction, of the property surplus to the University, at 4800 Doris Bair Circle:

GROSS SALES, clerking sheets attached .....	\$28,200.50
LESS: Commission @ 4%.....	(\$1,128.02)
NET SALE, check attached.....	\$27,072.48

There were 165 registered bidders with approximately 300 in attendance. Things were well organized and displayed; the auction went well.

Thank you for the sale. We appreciate the business.

KINDEST REGARDS,  
FICKE & FICKE, The Auctioneers

Bud Callahan, for the firm  
Attach.