

State of Nebraska  
State Purchasing Bureau  
Solicitation Number: RFP 6549 Z1





## COMPANY HISTORY

Midwest Maintenance is the largest minority owned and female owned building service contractor in Nebraska, founded in 1965 and incorporated as a sole proprietorship in 1968. Jamie Gutierrez became President in 1995 and took ownership in 1997.

Today, Midwest Maintenance stands as a leader in the industry. Serving Nebraska, South Dakota, Iowa, Missouri, Kansas and Texas, our organization maintains a reputation for outstanding custodial and building services support. Since 2010, the growth of our organization has gone from 251 employees to over 500 employees in 2020.

Midwest Maintenance has over 60 major accounts of various sizes and scope, comprised of numerous market segments including Commercial, Industrial, Manufacturing, Nuclear and Coal Plants, Healthcare, Financial Institutions, Government Offices, Conference Centers, Hotels and Sports & Entertainment venues.

## PHILOSOPHY

Our philosophy is to create a cleaner, healthier workplace for you and your employees, thus providing you with the best environment for promoting productivity. We do this through proven procedures and technologies that are innovative, economical and efficient. Additionally, we will accomplish this by continuing to partner with vendors and suppliers equally devoted to improving upon the equipment, chemicals and methods that we use. Each of these principles is designed to improve your environment today and to help promote your success in the future.

## Midwest Maintenance Company, Inc. Unique Processes at Work

The unique method used by Midwest Maintenance to ensure high quality service standards is **The Absolute Advantage™**. Through this process, we have carefully reviewed the information requested as well as at the on-site visit to ensure that we can provide cost and time savings alternatives to meet your needs. We utilize measurable front and backstage processes. Through quality trained employees, streamlined communication, transparent implementation, and quality assurance matrices we provide measurable results.



## **Understanding the Project**

Midwest Maintenance is especially well-matched to the stated cleaning needs for The State of Nebraska. Midwest Maintenance has established a management approach to ensure solid and high-quality support services:

- Maintain flexibility to meet customer needs
- Build long-lasting relationships through excellent management and key corporate contacts
- Maintain and improve administrative support to enhance customer service and employee job performance
- Empower the Account Team and hold them accountable for expected results
- Increase productivity in every aspect of our operations
- Identify, develop, and reward outstanding performers
- Schedule regular client meetings to review performance and discuss new initiatives
- Quickly identify and correct any mistakes

## **Our Communication Process**

Midwest Maintenance uses a variety of methods to communicate with personnel and our on-site employees.

Our Executive Team takes great pride in the relationship established with our colleagues. We are available on an impromptu basis and will do whatever it takes to meet requirements of the job and resolve issues. Top Midwest Maintenance staff have daily interactions with the on-site Management team, attend weekly scheduling meetings at regular intervals, and participate in monthly Lead/Supervisor meetings. The on-site Management has daily communication and interaction with their key contacts. This has been a proven and successful communication model.

## **Organizational Structure and Distribution of Authority**

Midwest Maintenance will have a dedicated Project Manager to oversee all aspects of customer service and operations. The Project Manager will be supported by our Corporate Operations Manager, Human Resource Manager, and Supply operations team. The Project Manager will be supported by Quality Assurance Managers who in turn will be supported by Supervisors.

**Project Manager** – Responsible for all aspects of the contract, including communicating daily with the client.

Quality Assurance Manager – Responsible for ensuring all work meets or exceeds the scope of work in each facility. Manages the Supervisors directly.

Supervisors – Determine schedules and oversee work force. Ensures supplies and consumables are on hand at all times.

Corporate Operations Manager – Supports efforts of Project Manager and provides guidance as needed.

Human Resource Manager – Provides hiring, staffing, and ongoing training.

## Operation Approach and Methodology



There are 7 steps to **The Absolute Advantage™**

- The Strategic Game plan™
- The Surge Experience™
- The Smart Data Solution™
- The Power Promoter™
- The Quality Assurance Matrix™
- The Validation Method™
- The Unity Network™



In addition to the Absolute Advantage, we have **7 Key Performance Indicators (KPIs)** with which we use to ensure quality in our staff and our cleaning standard. Under each KPI we assign a value ranging from Excellent to Very Poor. Staff is rated and when standards fall under the acceptable level changes are made to ensure our cleaning standards will continue to be upheld. Our KPIs are as follows:

- Cleaning Standard, as set by the Level of Clean expectation by the client
- Complaints
- Customer Service
- Waste Management
- Safety Management
- Turnover
- Staff Presentation & Uniforms

## **EXPERIENCE, SCOPE OF CAPABILITIES**

In the more than 55 years we have served the community, we recognize that companies as well as industries have different needs and requirements when it comes to janitorial building services.

Midwest Maintenance has structured its organization into three divisions each specifically designed to meet the needs of the companies we serve: Midwest Maintenance Janitorial, Midwest Healthcare and Environmental (MHES) and Midwest Essential Personnel Solutions (MEPS).

Housed in our Corporate facility are the following: Human Resources, Accounting, Payroll, Warehouse, MEPS, MHES, Safety and Risk Management, Sales, Corporate Communications and Operations.

Midwest Maintenance is responsible for supporting commercial, industrial and government clientele. Companies serviced by this division include Financial institutions, Non-profit organizations, Manufacturing, Nuclear and Coal Plants, Insurance companies, Business and Government offices of various sizes and scope. This division has extensive experience working with independent building owners as well as property management companies. Our processes and procedures are uniquely geared towards high security environments and multi-building office parks and radius tenant locations.

## QUALITY CONTROL-ASSURANCE PLAN

Midwest Maintenance Company, Inc. stresses on the active participation of all company employees and the customer as well in developing systems that prevent problems from happening in the first place instead of concentrating on correcting problems after they happen.

Midwest Maintenance utilizes CleanTelligent™ software (CT) for quality assurance as well as comprehensive client communications. This closed loop system ensures all program information is captured in a central repository and targeted metrics that are properly benchmarked and available upon demand.

We employ quality assurance inspectors on staff full-time to monitor these standards.

The Quality Assurance inspector tours the facility unannounced to Midwest Maintenance staff and completes a monthly audit of each facility's cleanliness, related safety requirements and obtains clients' feedback on a regular basis.

- A survey questionnaire is also used to help capture client's concerns and needs whether throughout the inspection or during our one on one regular meeting with the POC.
- Inspections are based on contract specifications and the specific requirements of each building are available online immediately after completion.
- After the quality assurance inspector evaluates the facility and document customer's feedback, the report is electronically generated and immediately sent to the Project Manager and Branch Manager for review.
- In case of deficiencies needs or concerns, a plan of action will be implemented, which is to be executed within 24 hours of the inspection date.
- The quality control inspector will do a follow-up inspection to ensure that all areas have reached Midwest Maintenance and customer's standard of quality. The follow-up inspections are logged and re-submitted to the Project and Branch Managers at Midwest Maintenance Company.
- The Quality Assurance inspectors, Project Manager and Branch Manager will work in tandem to maintain consistent levels of high-quality services at each account.

- Inspections are completed using the CT Software. It is the culmination of all of our efforts to put everything in one place where users can go to foster efficiency and success. Not only is the software built on the foundation of structure and organization, but it's also been designed to be customizable for each client's individual needs.
- CleanTelligent™ software also provides a means of communication between contract manager and client for general communication and work order requests for cleaning services. The quality control program is built specifically to allow us to cater to the unique needs of every client and to assess customer's experience and satisfaction.

## Sample Survey

**Your Opinion Is Important To Us!**

Are the lobby and common areas acceptable in appearance? Yes \_\_\_ No \_\_\_

Is the restroom you use cleaned regularly? Yes \_\_\_ No \_\_\_

Is the breakroom or cafeteria clean and acceptable? Yes \_\_\_ No \_\_\_

Is your trash receptacle emptied and liner replaced when needed? Yes \_\_\_ No \_\_\_

When your workspace is cleared of paperwork is it dusted? Yes \_\_\_ No \_\_\_

Is the floor in your area vacuumed and/or mopped regularly? Yes \_\_\_ No \_\_\_

**Overall Rating**

Excellent \_\_\_ Very Good \_\_\_ Fair \_\_\_ Poor \_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



Optional:

\_\_\_\_\_  
Your Name

\_\_\_\_\_  
Your Department

\_\_\_\_\_  
Your Phone

\_\_\_\_\_  
Your Email

\_\_\_\_\_  
Today's Date

## **Quarterly Business Review (QBR)**

Midwest Maintenance conducts a formal business review with each client every quarter or as needed. During the QBR, managers and executives from both companies communicate and validate service value from the preceding three months. At the QBR, quantitative and qualitative narratives of our key performance indicators will be shared allowing the client to confirm receipt of delivered services.

Midwest Maintenance presents a detailed overview of all activity including progress on quarterly initiatives, monthly scorecard and dashboard for quality inspections, client requests, concerns, safety training and OSHA incidents.

The review is a great opportunity for clients to revisit company goals and alert Midwest Maintenance Company to any changes in corporate directives and overall satisfaction with services provided and management of these services.

Midwest Maintenance Company would also expect weekly rounding with the appropriate facility manager or managers. On-site managers/supervisors complete daily inspections and have a bi-weekly report, sent to the main office, addressing quality improvement opportunities.

## **Midwest Maintenance Quality Program Principles**

- Define quality according to the customer
- Build a long-term partnership with the customer
- Work for long-term success, not short term profits
- Focus on systems, not individuals
- Work smarter, not harder
- Strive for continuous improvement
- Evaluate processes to enhance performance
- Focus on prevention
- Involve the entire company
- Empower, train and educate employees
- Standardize processes
- Congratulate, Acknowledge and Recognize Excellence (C.A.R.E.)



## Quality Inspection Report

Inspection Date ..... 8/17/20 - 8/17/20  
 Types to Include ..... External Only  
 Partial Inspections ..... No  
 Only Inspections by ..... Ray Cribbs

This Report Includes Data from the Following Service Locations (Sublocations [Sections]):  
 Tower Park by detail, Woodmen Park by detail, Woodmen Tower by detail

### Tracking Item/Service Criteria

Include Sign-Off Information ..... No  
 Include Tracking Item Details ..... No  
 Include Service Item Details ..... Yes  
 Included Ratings ..... Include Deficient  
 Include All Details with Notes ..... No

### General Notes

Include Client Notes ..... Yes  
 Include Inspector Notes ..... Yes  
 Include Plan of Action ..... Yes  
 Include Hidden Notes ..... Yes

#### Report Description

This report displays the inspection details, questions, and notes matching the report criteria for the selected Service Locations during the selected time period or inspection.

Total Number of Inspections: 0  
 NonDeficient Ratings: 0; Deficient Ratings: 0; N/A Ratings: 0

### Service/Tracking Items

### General Notes

#### Inspection: Woodmen Tower - 8/17/20 3:38 PM, Ray Cribbs

**Client Notes:** Really good feedback from Amanda and Jill the head boss or at least for Jose. They said that they can count on Jose and that he takes good care of the building and there needs.

**Inspector:** Overall the building look great it was some carpet in elevators that need cleaned Jose said that the wooden has there own carpet cleaning company that does that piece of work for them.

**Plan of  
Internal**



## Inspection Summary

### Inspection Information

**Date** 8/17/20 3:38 PM  
**Location** Woodmen Tower  
**Inspected By** Ray Cribbs

### Overview

Inspection Score

100.00%

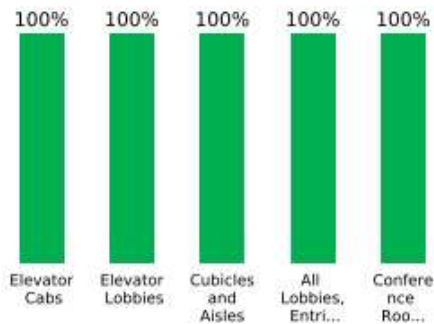
Deficient Ratings

0

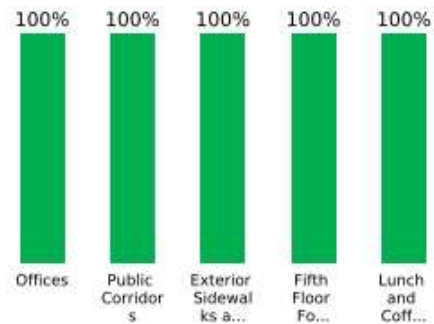
Non-Deficient Ratings

125

#### Top 5 Areas



#### Bottom 5 Areas



### General Notes

#### Inspector Notes

Overall the building look great it was some carpet in elevators that need cleaned Jose said that the wooden has there own carpet cleaning company that does that piece of work for them.

#### Client Notes

Really good feedback from Amanda and Jill the head boss or at least for Jose. They said that they can count on Jose and that he takes good care of the building and there needs.

#### Plan of Action

(None)



## Inspection Summary

### Inspection Information

**Date** 8/14/20 11:32 AM  
**Location** Burlington Capital  
**Inspected By** Ray Cribbs

### Overview

Inspection Score

98.78%

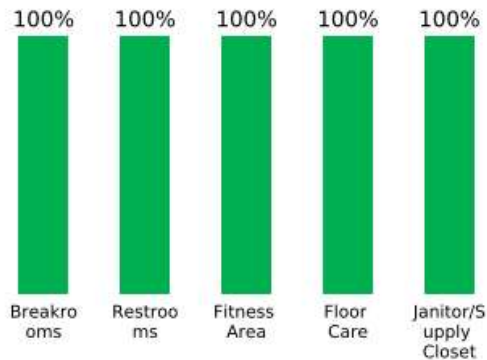
Deficient Ratings

1

Non-Deficient Ratings

40

#### Top 5 Areas



#### Bottom 5 Areas



### General Notes

#### Inspector Notes

Overall building looked very good client was happy and only seen a little bit of dusting that needed done. They have construction going on in this area outside by the window so this could be why this dust is building up on the window ledges.

#### Client Notes

Talked with Michelle client said that everything has been good there and she has no complaints

#### Plan of Action

Talked with Ana about this and told her to keep a better eye on these areas since the construction is going on.



## Inspection Summary

### Inspection Information

**Date** 8/28/20 1:30 PM  
**Location** PCA 215 - Safety  
**Inspected By** Ray Cribbs

### Overview

Inspection Score	Deficient Ratings	Non-Deficient Ratings
100.00%	0	17

#### Top 5 Areas



#### Bottom 5 Areas

### General Notes

#### Inspector Notes

The building for being so old was in great shape as far as the cleaning goes the carpet, windows and the furniture right when you walk in looked good . Out in the plant the shipping offices looked good as well as the floor, main walk areas Client again could not say enough about the quality work that our worker provides for them down there at PCA. Client mentioned that the area manager Jesus and his self have a good relationship as far as the communicating things when they are needed for there facility .

#### Plan of Action

Talk with Jesus let him know that they are both doing a good job and to make sure they keep up the good work down there .Let him know that the client Thomas had nothing but good things to say.

#### Client Notes

Thomas the client had no complaints about our work at there facility said that they all love the work that our worker does down there at PCA. Client Thomas had no complaints what so ever to tell me .Also Thomas said that Jesus does a great job with checking in with them whenever they have any needs or when the normal worker is on vacation or needs a day off .

## **Training Program**

Our training program incorporates a variety of methods, including:

- Online Orientation and Basic Skills Training with a qualifying test at the end
- On-the-job, hands-on demonstration with supervised practice
- Daily quality inspection
- Monthly Safety and Quality Training
- Quarterly Evaluation
- Seasonal Training Refresher
- Commercial Custodial Certificate (CCC) with the collaboration of Metropolitan Community College (MCC)
- Global Bio-risk Advisory Council (GBAC) Online Fundamentals Training course related to prevention, response, and infection control through ISSA.
- Certified Site Supervisor program sponsored by Building Service Contractor Association International (BSCAI) and MCC
- Registered Building Service Manager (RBSM) sponsored by BSCAI for managers.

## **Training and motivating the Right People Leads to Quality Work**

Our training is the second step in providing top quality work for our clients. The first step is to hire the right people who meet our rigorous standards (we may only hire one out of ten that apply).

Midwest Maintenance is picky as to our team members, and we want the best for ourselves and our clients. Quality work happens when we have motivated and well-trained individuals wanting the best for themselves, the company, and the client. The entire scope of work will be performed with excellence and will be quality-controlled by supervisors, a project manager, QA specialists, and an entire team of operations professionals.

## **Financial Statements**

Available on request

## Green Cleaning

Midwest Maintenance makes every effort to use and supply its customers with environmentally friendly and sustainable products. We strive to implement operations that help conserve non-renewable natural resources through strategic planning and efficient use of products and supplies. Vendors that partner with Midwest Maintenance such as AmSan, Unisource and Ecolab also adhere to green standards by cutting down on post-consumer waste, use of recyclable containers for chemicals and minimizing emissions on fleet vehicles through efficient purchasing systems.

### Action Plan:

1. Midwest Maintenance trains their employees in proper use and handling of all chemicals, solvents, and equipment. Training includes:
  - a. Use of proper labels for chemical bottles
  - b. Proper storage and handling of chemicals
  - c. Location of MSDS sheets in janitor's closets for information
  - d. Use of personal protective equipment
2. Midwest Maintenance uses "Green Seal Certified" chemicals in all client facilities. These certified chemicals are beneficial in the following ways:
  - a. Uses dispenser systems that dilute chemicals to reduce water usage and ensure less environmental impact and waste
  - b. Utilizes chemicals that are safe for disposal in sewage systems
  - c. Chemicals are packaged in recyclable containers to reduce post-consumer waste
3. Midwest Maintenance employees are trained to help customers save energy usage in their facilities by:
  - a. Using a strategic 'team cleaning' plan that helps reduce energy by limiting energy consumption to one area at a time
  - b. Teaching employees to lock doors and turn off lights in areas after they complete tasks
4. Midwest Maintenance uses a paperless ordering system with its vendors to conserve resources:
  - a. Ordering takes place electronically for fast and accurate transactions
  - b. Electronic filing systems are used to reduce paper waste
  - c. Delivery schedules are tactically developed to minimize emissions from fleet vehicles

In addition, Midwest Maintenance provides customers with waste management, carpet care and hard floor maintenance programs to assist our customers with their sustainability goals in making their facilities cleaner, safer and greener.



**Form A**  
**Bidder Proposal Point of Contact**  
**Request for Proposal Number 6549 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 bidder's name and address, and the specific person(s) who are responsible for preparation of the bidder's response.

Preparation of Response Contact Information	
Bidder Name:	Midwest Maintenance Co., Inc.
Bidder Address:	2901 Q Street Omaha, NE 68107
Contact Person & Title:	Jeff Cunningham
E-mail Address:	jcunningham@midwestinc.net
Telephone Number (Office):	402-733-1114
Telephone Number (Cellular):	402-680-9354
Fax Number:	402-733-5385

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

Communication with the State Contact Information	
Bidder Name:	Midwest Maintenance Co., Inc.
Bidder Address:	2901 Q Street Omaha, NE 68107
Contact Person & Title:	Jeff Cunningham
E-mail Address:	jcunningham@midwestinc.net
Telephone Number (Office):	402-733-1114
Telephone Number (Cellular):	402-680-9534
Fax Number:	402-733-5385



**Form B**  
**Notification of Intent to Attend Pre-Proposal Conference**  
**Request for Proposal Number 6549 Z1**

Bidder Name:	Midwest Maintenance Co., Inc.
Bidder Address:	2901 Q Street Omaha, NE 68107
Contact Person:	Jeff Cunningham
E-mail Address:	jcunningham@midwestinc.net
Telephone Number:	402-680-9534
Fax Number:	402-733-5385
Number of Attendees:	2

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.





## REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES FORM

### BIDDER MUST COMPLETE THE FOLLOWING

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

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:	Midwest Maintenance Co., Inc.
COMPLETE ADDRESS:	2901 Q Street, Omaha, NE 68107
TELEPHONE NUMBER:	402-680-9534
FAX NUMBER:	402-733-5385
DATE:	6/8/2021
SIGNATURE:	<i>Jeff Cunningham</i>
TYPED NAME & TITLE OF SIGNER:	Jeff Cunningham Sales Manager

## REFERENCES

**Nebraska State Office Buildings**  
**301 Centennial Mall South**  
**Lincoln, Nebraska 68508**

Contact: David Brooks  
Facilities Maintenance Supervisor  
(402)471-0438  
[dave.brooks@nebraska.gov](mailto:dave.brooks@nebraska.gov)

Service Since: 2010

**Woodmen Tower**  
**1700 Farnam Street**  
**Omaha, Nebraska 68102**

Contact: Jill R. McCormick  
General Manager, Property  
(402) 315-9456  
[jmccormick@woodmen.org](mailto:jmccormick@woodmen.org)

Service Since: 2018

**Metropolitan Community College**

Contact: Doug Madsen  
Facilities Maintenance Supervisor  
Telephone: 402.660.4204  
Email: [dmadsen@mccneb.edu](mailto:dmadsen@mccneb.edu)

Service Since 2017

THIS CERTIFIES THAT

**Midwest Maintenance Company, Inc.**



\* Nationally certified by the: **MOUNTAIN PLAINS MINORITY SUPPLIER DEVELOPMENT COUNCIL**

\*NAICS Code(s): 561720; 561740; 561790

\* Description of their product/services as defined by the North American Industry Classification System (NAICS)

12/11/2020

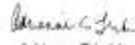
**Issued Date**

12/21/2021

**Expiration Date**

MP01874

**Certificate Number**

  
Adrienne Trimble



**Stan Sena, President/CEO**

By using your password (NMSDC issued only), authorized users may log into NMSDC Central to view the entire profile: <http://nmsdc.org>

*Certify, Develop, Connect, Advocate.*

\* MBEs certified by an Affiliate of the National Minority Supplier Development Council, Inc.®





**ADDENDUM ONE  
QUESTIONS and ANSWERS**

Date: June 3, 2021  
To: All Bidders  
From: Annette Walton, Dianna Gilliland, Buyers  
AS Materiel State Purchasing Bureau (SPB)  
RE: Addendum for Request for Proposal Number 6549 Z1 to be opened July 16, 2021 at 2:00  
p.m. Central Time

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**Questions and Answers**

No questions were received.

This addendum will become part of the Request for Proposal and should be acknowledged with the Request for Proposal response.

*Jeff Cunningham*



## ADDENDUM TWO

Date: June 3, 2021  
To: All Bidders  
From: Annette Walton, Dianna Gilliland, Buyers  
AS Materiel State Purchasing Bureau (SPB)  
RE: Addendum for Request for Proposal Number 6549 Z1 to be opened July 16, 2021  
at 2:00 p.m. Central

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### Pre-Proposal Location

The Mandatory Pre-Proposal scheduled to be held on June 9, 2021 from 9:30 A.M. – 11:30 A.M. CT at 1445 K St., Lincoln, NE 68508

Has been moved from Hearing Room 1510 to Hearing Room 1507 across the hall. There will be signs and the Information desk will have the directions if needed.

This Addendum will become part of the Request for Proposal and should be acknowledged with the Request for Proposal response.

*Jeff Cunningham*



### ADDENDUM THREE QUESTIONS and ANSWERS

Date: June 14, 2021  
To: All Bidders  
From: Annette Walton, Dianna Gilliland, Buyers  
AS Materiel State Purchasing Bureau (SPB)  
RE: Addendum for Request for Proposal Number 6549 Z1 to be opened July 16, 2021 at 2:00 P.M. Central Time

#### Questions and Answers

	RFP Page	QUESTION	RESPONSE
VI.A.2.	39	I have a question about missing information in the RFP document. I mentioned it in the pre-bid meeting – the section outlining required topics for the "TECHNICAL APPROACH" seems to be missing (page 39). I checked again online today on both the WORD and PDF versions, and the page is pretty much blank. Am I missing something here? Thanks.	Section VI.A.2 Technical Approach – This section references back to the section that needs to be completed and submitted with the response for technical evaluation, which is Section V.F. Bidder Requirements.  VI.A.2. reads: "The technical approach section of the Technical Proposal should consist of the following subsections: a. Section V.F. Bidder Requirements.

This addendum will become part of the Request for Proposal and should be acknowledged with the Request for Proposal response.

*Jeff Cunningham*

**II. TERMS AND CONDITIONS**

**Bidders should complete Sections II through VI as part of their proposal.** Bidders should read the Terms and Conditions and should initial either accept, reject, or reject and provide alternative language for each clause. The bidder should also provide an explanation of why the bidder rejected the clause or rejected the clause and provided alternate language. By signing the solicitation, bidder is agreeing to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the proposal. The State reserves the right to negotiate rejected or proposed alternative language.

**If the State and bidder fail to agree on the final Terms and Conditions, the State reserves the right to reject the proposal. The State of Nebraska is soliciting proposals in response to this solicitation. The State of Nebraska reserves the right to reject proposals that attempt to substitute the bidder’s commercial contracts and/or documents for this solicitation.**

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

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

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

**A. GENERAL**

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

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

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

These documents constitute the entirety of the contract.

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

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



**B. NOTIFICATION**

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

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

Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered personally, electronically or mailed. All notices, requests, or communications shall be deemed effective upon receipt.

**C. BUYER'S REPRESENTATIVE**

The State reserves the right to appoint a Buyer's Representative to manage [or assist the Buyer in managing] the contract on behalf of the State. The Buyer's Representative will be appointed in writing, and the appointment document will specify the extent of the Buyer's Representative authority and responsibilities. If a Buyer's Representative is appointed, the Contractor will be provided a copy of the appointment document and is required 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:
JC			

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

**F. AMENDMENT**

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

This Contract may be amended only 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:
JC			

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

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

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

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

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

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

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

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

**I. NOTICE OF POTENTIAL CONTRACTOR BREACH**

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

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

**J. BREACH**

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

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. 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 purchase 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, including, but not limited to, charging interest to the State (Refer to Prompt Payment Act).

**K. NON-WAIVER OF BREACH**

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

Allowing time to cure or the acceptance of late performance with or without objection or reservation by a Party shall not waive any rights of the Party, including, but not limited to the right to immediately terminate the contract for the same or a different breach, or constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.

**L. SEVERABILITY**

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

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

**M. INDEMNIFICATION**

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

**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 subcontractors and 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 (§ 81-8,294), Tort (§ 81-8,209), and Contract Claim Acts (§ 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

**5. ATTORNEY GENERAL**

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

**N. ATTORNEY'S FEES**

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

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

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

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

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

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

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

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

The Contractor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. § 81-145, to use this contract. The terms and conditions, including price, of the contract may not be amended. The State shall not be

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

**Q. FORCE MAJEURE**

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

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

**R. CONFIDENTIALITY**

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

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

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

**S. EARLY TERMINATION**

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

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 30 calendar days 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 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.

**T. CONTRACT CLOSEOUT**

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

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 (1) 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:
JC			

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 duties under the contract;
4. Maintaining Workers' Compensation and health insurance that complies with State and federal law and submitting any reports on such insurance to the extent required by governing law;
5. Determining the hours to be worked and the duties to be performed by the Contractor's employees; and,
6. All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Contractor, its officers, agents, or subcontractors or subcontractor's employees)

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

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

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:
JC			

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:
JC			

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. DISCOUNTS**

Prices quoted shall be inclusive of ALL trade discounts. Cash discount terms of less than 30 calendar 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.

**F. PRICES**

Prices quoted shall be net, including transportation and delivery charges fully prepaid by the contractor, and 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. Requests for an increase must be submitted in writing to the State Purchasing Bureau a minimum of 120 days prior to the end of the current contract period. Documentation may be required by the State to support the price increase.

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

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

**G. PERMITS, REGULATIONS, LAWS**

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

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

**H. INSURANCE REQUIREMENTS**

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

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>REQUIRED INSURANCE COVERAGE</b>		
<b>COMMERCIAL GENERAL LIABILITY</b>		
General Aggregate		\$2,000,000
Products/Completed Operations Aggregate		\$2,000,000
Personal/Advertising Injury		\$1,000,000 per occurrence
Bodily Injury/Property Damage		\$1,000,000 per occurrence
Medical Payments		\$10,000 any one person
Damage to Rented Premises (Fire)		\$300,000 each occurrence
Contractual		Included
Independent Contractors		Included
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>		
<b>WORKER'S COMPENSATION</b>		
Employers Liability Limits		\$500K/\$500K/\$500K
Statutory Limits- All States		Statutory - State of Nebraska
Voluntary Compensation		Statutory
<b>COMMERCIAL AUTOMOBILE LIABILITY</b>		
Bodily Injury/Property Damage		\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability		Included
Motor Carrier Act Endorsement		Where Applicable
<b>UMBRELLA/EXCESS LIABILITY</b>		
Over Primary Insurance		\$5,000,000 per occurrence
<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:

State Purchasing Bureau  
 Attn: Annette Walton, Buyer  
 RFP # 6549 Z1 / Contract #:  
 Email: [annette.walton@nebraska.gov](mailto:annette.walton@nebraska.gov)

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

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

**4. DEVIATIONS**

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

**I. ANTITRUST**

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

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:
JC			

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:
JC			

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:
JC			

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:
JC			

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. NEBRASKA TECHNOLOGY ACCESS STANDARDS (Statutory)**

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

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

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

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

**P. DRUG POLICY**

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

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

**Q. WARRANTY**

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

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 90 days from performance of the service, perform the services again, at no cost to the State, or if Contractor is unable to perform the services as warranted, the Contractor shall reimburse the State all fees paid to Contractor for the unsatisfactory services. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

**IV. PAYMENT**

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

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

**B. TAXES (Statutory)**

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

**C. INVOICES**

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

Invoices for payments must be submitted by the Contractor to the agency requesting the services with sufficient detail to support payment. Itemized invoices should be submitted to:

**Nebraska State Capitol  
1445 K St. 7<sup>th</sup> floor  
Lincoln, Ne 68508**

The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

**D. INSPECTION AND APPROVAL**

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

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

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

**E. PAYMENT (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.