**State of Nebraska State Purchasing Bureau**

# REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES

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| --- | --- |
| **REQUEST FOR PROPOSAL NUMBER** | **RELEASE DATE** |
| RFP 6675 Z1 | March 18, 2022 |
| **OPENING DATE AND TIME** | **PROCUREMENT CONTACT** |
| April 19, 2022, 2:00 P.M. Central Time | Dianna Gilliland/Connie Heinrichs |

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 6675 Z1 for the purpose of selecting a qualified bidder to provide laboratory services to support the Nebraska Pesticide Act. 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 year commencing upon execution of the contract by the State and the Contractor (Parties)/notice to proceed. The Contract includes the option to renew for four additional one-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**](http://das.nebraska.gov/materiel/purchasing.html).

**IMPORTANT NOTICE: Pursuant to Neb. Rev. Stat. § 84-602.04, State contracts in effect as of January 1, 2014, and contracts entered into thereafter, must be posted to a public website. The resulting contract, the Request for Proposal, and the successful awarded bidder’s proposal and response will be posted to a public website managed by DAS, which can be found at**

[**http://statecontracts.nebraska.gov**](http://statecontracts.nebraska.gov) **And** <https://www.nebraska.gov/das/materiel/purchasing/contract_search/index.php>**.**

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

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

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

**To facilitate such public postings, with the exception of proprietary information, the State of Nebraska reserves a royalty-free, nonexclusive, and irrevocable right to copy, reproduce, publish, post to a website, or otherwise use any contract, proposal, or response to this Request for Proposal 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 Request for Proposal, specifically waives any copyright or other protection the contract, proposal, or response to the Request for Proposal 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 Request for Proposal, and award of a contract. Failure to agree to the reservation and waiver will result in the proposal or response to the Request for Proposal being found non-responsive and rejected.**

**Any entity awarded a contract or submitting a proposal or response to the Request for Proposal 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 Request for Proposal, 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 Request for Proposal.

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

Bidder: A vendor who submits a proposal in response to a written Request for Proposal.

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

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

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

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

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

Change Order: Document that provides an addendum and/or amendments to an executed purchase order or contract.

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

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

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

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

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

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

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

Contract Period: The duration of the contract.

Contractor: An individual or entity lawfully conducting business in the State, or licensed to do so, who seeks to provide goods or services under the terms of a written Request for Proposal.

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 Request for Proposal or contract.

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

Evaluation Committee: Individuals selected by the requesting agency for the evaluation of proposals (offers made in response to written Request for Proposals).

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 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 Point of Origin: The delivery charges are not included in the quoted price and are the responsibility of the agency. Agency is responsible for all claims associated with damages during delivery of product.

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

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

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

Mandatory/Must: Required, compulsory, or obligatory.

May: Discretionary, permitted; used to express possibility.

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

**Non-Responsive Proposal**: **Any proposal** that does not comply with the requirements of the Request For Proposal.

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

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.

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

Proposal: Bidder’s response to a written Request for Proposal.

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

Protest/Grievance: A complaint about a governmental action or decision related to a Request for Proposal or resultant contract, brought by a bidder who has submitted a proposal response by the opening date and time in connection with the award in question, to AS Materiel Division or another designated agency with the intention of achieving a remedial result.

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

Recommended Hardware Configuration: The data processing hardware (including all terminals, auxiliary storage, communication, and other peripheral devices) to the extent utilized by the State as recommended by the Contractor.

Release Date: The date of public release of the written Request for Proposal 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 Request for Proposal utilized for obtaining competitive offers.

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

Responsive Bidder: A bidder who has submitted a proposal which conforms to all requirements of the Request for Proposal document.

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

Should: Expected; suggested, but not necessarily mandatory.

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

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

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

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

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

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

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

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

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

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

Will: See Mandatory/Shall/Will/Must.

# ACRONYM LIST

ARO – After Receipt of Order

ACH – Automated Clearing House

BAFO – Best and Final Offer

COI – Certificate of Insurance

DAS – Department of Administrative Services

F.O.B. – Free on-Board

RFP – Request for Proposal

SPB – State Purchasing Bureau

1. PROCUREMENT PROCEDURE
	1. GENERAL INFORMATION

The Request for Proposal is designed to solicit proposals from qualified bidder who will be responsible for providing laboratory services to support the Nebraska Pesticide Act at a competitive and reasonable cost. Terms and Conditions, Project Description and Scope of Work, Proposal instructions, and Cost Proposal Requirements may be found in Sections II through VI.

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

* 1. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS

Procurement responsibilities related to this Request for Proposal reside with State Purchasing Bureau. The point of contact (POC) for the procurement is as follows:

Name: Dianna Gilliland/Connie Heinrichs, Procurement Contracts Officers

RFP #: 6675 Z1

Agency: State Purchasing Bureau

Address: 1526 K Street, Suite 130

 Lincoln, NE 68508

Telephone: 402-471-4193 and 402-471-0975

E-Mail: dianna.gilliland@nebraska.gov and connie.heinrichs@nebraska.gov

From the date the Request for Proposal is issued until the Intent to Award is issued, communication from the bidder is limited to the POC listed above. After the Intent to Award is issued, the bidder may communicate with individuals the State has designated as responsible for negotiating the contract on behalf of the State. No member of the State Government, employee of the State, or member of the Evaluation Committee is empowered to make binding statements regarding this Request for Proposal. The POC will issue any answers, clarifications or amendments regarding this Request for Proposal in writing. Only the SPB or awarding agency can award a contract. Bidder shall not have any communication with or attempt to communicate or influence any evaluator involved in this Request for Proposal.

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 Request for Proposal POC; and
		3. Contact required for negotiation and execution of the final contract.

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

* 1. SCHEDULE OF EVENTS

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

| ACTIVITY | DATE/TIME |
| --- | --- |
| 1. 1
 | Release Request for Proposal | March 18, 2022 |
|  | Last day to submit written questionsShareFile link for uploading questions:<https://nebraska.sharefile.com/r-rcae5c1afbe5243d18974608ca2be18da>  | March 25, 2022 |
| 1. 1
 | State responds to written questions through RFP “Addendum” and/or “Amendment” to be posted to the Internet at: and/or<https://das.nebraska.gov/materiel/bidopps.html>  | March 31, 2022 |
| 1. 1
 | Electronic Proposal Opening IT IS THE BIDDER’S RESPONSIBILTY TO UPLOAD ELECTRONIC FILES WITH ENOUGH AMOUNT OF TIME IN CASE OF USER ISSUE OR SOFTWARE ISSUE.**ShareFile link to upload RFP response:**<https://nebraska.sharefile.com/r-rb8038406fd8741f7a5874d9ac1a3aa57> **Join Zoom Meeting**<https://us02web.zoom.us/j/86860315691?pwd=UTJpaExKSXJ5R2p5ci9rNHU5akJXQT09>Meeting ID: 868 6031 5691Passcode: 770083One tap mobile+13462487799,,86860315691#,,,,\*770083# US (Houston)+16699006833,,86860315691#,,,,\*770083# US (San Jose)Dial by your location        +1 346 248 7799 US (Houston)        +1 669 900 6833 US (San Jose)        +1 253 215 8782 US (Tacoma)        +1 312 626 6799 US (Chicago)        +1 929 205 6099 US (New York)        +1 301 715 8592 US (Washington DC)Meeting ID: 868 6031 5691Passcode: 770083Find your local number: <https://us02web.zoom.us/u/kQiBhS4sd> | April 19, 20222:00 PMCentral Time |
| 1. 1
 | Review for conformance to Request for Proposal requirements  | April 19, 2022 |
| 1. 1
 | Evaluation period | April 20, 2022 – April 26, 2022 |
| 1. 1
 | Post “Notification of Intent to Award” to Internet at: <https://das.nebraska.gov/materiel/bidopps.html>  | April 27, 2022 |
| 1. 1
 | Contract finalization period  | April 27, 2022 – May 6, 2022 |
| 1. 1
 | Contract award | May 9, 2022 |
| 1. 2
 | Contractor start date | May 10, 2022 |

* 1. WRITTEN QUESTIONS AND ANSWERS

Questions regarding the meaning or interpretation of any Request for Proposal provision must be submitted in writing to State Purchasing Bureau and clearly marked “RFP Number 6675 Z1; Laboratory services to support the Nebraska Pesticide Act Questions. The POC is not obligated to respond to questions that are received late per the Schedule of Events.

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

Questions should be uploaded using the following ShareFile link:

<https://nebraska.sharefile.com/r-rcae5c1afbe5243d18974608ca2be18da>

It is recommended that Contractors submit questions using the following format.

|  |  |  |
| --- | --- | --- |
| RFP Section Reference | RFP Page Number | Question |
|  |  |  |

Written answers will be posted at <https://das.nebraska.gov/materiel/bidopps.html> per the Schedule of Events.

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

All bidders must be authorized to transact business in the State of Nebraska and comply with all Nebraska Secretary of State Registration requirements. The bidder who is the recipient of an Intent to Award may be required to certify that it has complied and produce a true and exact copy of its current (within ninety (90) calendar days of the intent to award) Certificate 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 <https://das.nebraska.gov/materiel/purchase_bureau/vendor-info.html> . This must be accomplished prior to execution of the contract.

* 1. ETHICS IN PUBLIC CONTRACTING

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

* + 1. Offering or giving, directly or indirectly, a bribe, fee, commission, compensation, gift, gratuity, or anything of value to any person or entity in an attempt to influence the bidding process,
		2. Utilize the services of lobbyists, attorneys, political activists, or consultants to influence or subvert the bidding process,
		3. Being considered for, presently being, or becoming debarred, suspended, ineligible, or excluded from contracting with any state or federal entity,
		4. Submitting a proposal on behalf of another Party or entity; and
		5. Collude with any person or entity to influence the bidding process, submit sham proposals, preclude bidding, fix pricing or costs, create an unfair advantage, subvert the proposal, or prejudice the State.

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

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

* 1. DEVIATIONS FROM THE REQUEST FOR PROPOSAL

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

* 1. SUBMISSION OF PROPOSALS

The State is accepting only electronically submitted responses. The State will not accept proposals by email, voice, or telephone.

Pages may be consecutively numbered for the entire proposal or may 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. The Technical Proposal should not contain any reference to dollar amounts. However, information such as data concerning labor hours and categories, materials, subcontracts and so forth, shall be considered in the Technical Proposal so that the bidder’s understanding of the scope of work may be evaluated. The Technical Proposal shall disclose the bidder’s technical approach in as much detail as possible, including, but not limited to, the information required by the Technical Proposal instructions.

It is the bidder’s responsibility to ensure the RFP is received electronically by the date and time indicated in the Schedule of Events. Proposals must be submitted via ShareFile by the date and time of the proposal opening per the Schedule of Events. No late proposals will be accepted.

It is the responsibility of the bidder to check the website for all information relevant to this RFP to include addenda and/or amendments issued prior to the opening date. Website address is as follows: [<https://das.nebraska.gov/materiel/bidopps.html>](http://das.nebraska.gov/materiel/purchasing.html).

Emphasis should be concentrated on conformance to the RFP 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.

* + 1. **Bidders must submit responses via ShareFile using the proposal submission link.**

Note to bidders: Not all browsers are compatible with ShareFile. Currently Chrome, Internet Explorer and Firefox are compatible. After the bidder clicks the proposal submission link, the bidder will be prompted to enter contact information including an e-mail address. By entering an e-mail address, the bidder should receive a confirmation email confirming the successful upload directly from ShareFile.

Proposal submission link: <https://nebraska.sharefile.com/r-rb8038406fd8741f7a5874d9ac1a3aa57>

* + - 1. The Technical, Cost Proposal and Proprietary information should be uploaded as separate and distinct files.
				1. If duplicated proposals are submitted, the State will retain only the most recently submitted response.
				2. If it is the bidder’s intent to submit multiple proposals, the bidder must clearly identify the separate submissions.
				3. It is the bidder’s responsibility to allow time for electronic uploading. All file uploads must be completed by the Opening date and time per the Schedule of Events. No late proposals will be accepted.
			2. ELECTRONIC PROPOSAL FILE NAMES

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

* + - * 1. RFP 6675 Z1, Company Name, Description of Service
				2. If multiple files are submitted for one RFP proposal, add number of files to file names:

RFP 6675 Z1 Company Name, Description of Service, File 1 of 2.

RFP 6675 Z1 Company Name, Description of Service, File 2 of 2.

* + - * 1. If multiple RFP proposals are submitted for the same RFP, add the proposal number to the file names:

RFP 6675 Z1 Company Name, Description of Service, Proposal 1 File 1 of 2.

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

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

* 1. PROPOSAL PREPARATION COSTS

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

* 1. 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.

* 1. PRICES

Prices quoted shall be net, including transportation and delivery charges fully prepaid by the contractor, F.O.B. destination named in the Request for Proposal. 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 an award is made, or the Request for Proposal is cancelled.

Prices submitted on the cost proposal form, once accepted by the State, shall remain fixed for the first year of the contract.  The request for a price increase must be submitted in writing to the State Purchasing Bureau a minimum of 120 days [include enough time to replace the contract] 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.**

* 1. 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.

* 1. FAILURE TO COMPLY WITH REQUEST FOR PROPOSAL

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

* + 1. Rejection of a bidder’s proposal,
		2. Withdrawal of the Intent to Award,
		3. Withdrawal of the Award,
		4. Negative Vendor Performance Report(s),
		5. Termination of the resulting contract,
		6. Legal action; and
		7. Suspension of the bidder from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.
	1. PROPOSAL CORRECTIONS

A bidder may correct a mistake in a proposal prior to the time of opening by uploading a revised and completed proposal if the original proposal was electronically submitted.

**1.** If a corrected electronic proposal is submitted, the file name(s) date/time stamped with latest date/time stamp will be accepted. The corrected proposal file name(s) should be identified as:

**a.** Corrected 6675 Z1 Company Name Proposal #1 Description of Service, File 1 of 2,

**b.** Corrected 6675 Z1 Company Name Proposal #2 Description of Service, File 2 of 2, etc.

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.

* 1. LATE PROPOSALS

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

* 1. PROPOSAL OPENING

The opening of proposals will be public via Zoom and the bidders’ names 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 bidder, in accordance with the Request for Proposal and state statute, will not be posted. If the state determines submitted information should not be withheld, in accordance with the [Public Records Act](https://ago.nebraska.gov/public_records/statutes), or if ordered to release any withheld information, said information may then be released. The submitting bidder will be notified of the release and it shall be the obligation of the submitting bidder to take further action if it believes the information should not be release (See RFP signature page for further details). Once proposals are opened, they become the property of the State of Nebraska and will not be returned.

* 1. REQUEST FOR PROPOSAL/PROPOSAL REQUIREMENTS

The proposals will first be examined to determine if all requirements listed below have been addressed and whether further evaluation is warranted. Proposals not meeting the requirements may be rejected as non-responsive. The requirements are:

* + 1. Original Request for Proposal for Contractual Services form signed manually in ink or by DocuSign,
		2. Clarity and responsiveness of the proposal,
		3. Completed Sections II through VI,
		4. Completed State Cost Proposal Template.
	1. EVALUATION OF PROPOSALS

All proposals that are responsive to the Request for Proposal will be evaluated based on the following:

* + 1. Cost Proposal

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

**Neb. Rev. Stat. §73-107 allows for a preference for a resident disabled veteran or business located in a designated enterprise zone.** When a state contract is to be awarded to the lowest responsible bidder, a resident disabled veteran or a business located in a designated enterprise zone under the Enterprise Zone Act shall be allowed a preference over any other resident or nonresident bidder, if all other factors are equal.

**Resident disabled veterans means any person (a) who resides in the State of Nebraska, who served in the United States Armed Forces, including any reserve component or the National Guard, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), and who possesses a disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense and (b)(i) who owns and controls a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this subsection and (ii) the management and daily business operations of the business are controlled by one or more persons described in subdivision(a) of this subsection. Any contract entered into without compliance with this section shall be null and void.**

Therefore, if a resident disabled veteran or business located in a designated enterprise zone submits a proposal in accordance with Neb. Rev. Stat. §73-107 and has so indicated on the Request for Proposal cover page under “Bidder must complete the following” requesting priority/preference to be considered in the award of this contract, the following will need to be submitted by the bidder within ten (10) business days of request:

* + 1. Documentation from the United States Armed Forces confirming service,
		2. Documentation of discharge or otherwise separated characterization of honorable or general (under honorable conditions),
		3. Disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense; and
		4. Documentation which shows ownership and control of a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this subsection; and the management and daily business operations of the business are controlled by one or more persons described in subdivision (a) of this subsection.

Failure to submit the requested documentation within ten (10) business days of notice will disqualify the bidder from consideration of the preference.

* 1. BEST AND FINAL OFFER (BAFO)

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

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

* 1. 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 Request for Proposal, the bidder grants to the State the right to contact or arrange a visit in person with any or all of the bidder’s clients. Reference and credit checks may be grounds to reject a proposal, withdraw an intent to award, or rescind the award of a contract.

* 1. 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 Request for Proposal process, the State of Nebraska may take one or more of the following actions:

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

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

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

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

Any protests must be filed by a bidder 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:

<https://das.nebraska.gov/materiel/docs/pdf/ProtestGrievanceWithGuidance_08042021.pdf>

* 1. ALTERNATE/EQUIVALENT PROPOSALS

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

* 1. LUMP SUM OR “ALL OR NONE” PROPOSALS

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

* 1. EMAIL SUBMISSIONS

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

* 1. 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.

* 1. 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.

1. TERMS AND CONDITIONS

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

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

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

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

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| **Accept(Initial)** | **Reject(Initial)** | **Reject & Provide Alternative within RFP Response (Initial)** | **NOTES/COMMENTS:** |
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* + 1. The contract resulting from this Request for Proposal shall incorporate the following documents:
			1. Request for Proposal and Addenda,
			2. Amendments to the Request for Proposal,
			3. Questions and Answers,
			4. Bidder’s proposal (Request for Proposal 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.

* + 1. 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. Addendum One to the executed Contract,
			3. The executed Contract and any additional attached Addenda,
			4. Amendments to Request for Proposal and any Questions and Answers,
			5. The original Request for Proposal document and any Addenda, and
			6. 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.

* 1. NOTIFICATION

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| **Accept(Initial)** | **Reject(Initial)** | **Reject & Provide Alternative within RFP Response (Initial)** | **NOTES/COMMENTS:** |
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Contractor and State shall identify the contract manager who shall serve as the point of contact for the executed contract.

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

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

* 1. 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 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.

* 1. 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.

* 1. BEGINNING OF WORK

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| **Accept(Initial)** | **Reject(Initial)** | **Reject & Provide Alternative within RFP Response (Initial)** | **NOTES/COMMENTS:** |
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The awarded bidder shall not commence any billable work until a valid contract has been fully executed by the State. The awarded bidder will be notified in writing when work may begin.

* 1. AMENDMENT

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

* 1. CHANGE ORDERS OR SUBSTITUTIONS

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| **Accept(Initial)** | **Reject(Initial)** | **Reject & Provide Alternative within RFP Response (Initial)** | **NOTES/COMMENTS:** |
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The State and the Contractor, upon the written agreement, may make changes to the contract within the general scope of the Request for Proposal. 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\*\*\***

* 1. VENDOR PERFORMANCE REPORT(S)

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| **Accept(Initial)** | **Reject(Initial)** | **Reject & Provide Alternative within RFP Response (Initial)** | **NOTES/COMMENTS:** |
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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 Request for Proposal 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.

* 1. NOTICE OF POTENTIAL CONTRACTOR BREACH

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

* 1. BREACH

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| **Accept(Initial)** | **Reject(Initial)** | **Reject & Provide Alternative within RFP Response (Initial)** | **NOTES/COMMENTS:** |
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Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party’s discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby. The State may recover from the Contractor as damages the difference between the costs of covering the breach. Notwithstanding any clause to the contrary, the State may also recover the contract price together with any incidental or consequential damages defined in UCC Section 2-715, but less expenses saved in consequence of Contractor’s breach.

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

* 1. NON-WAIVER OF BREACH

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

* 1. SEVERABILITY

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| **Accept(Initial)** | **Reject(Initial)** | **Reject & Provide Alternative within RFP Response (Initial)** | **NOTES/COMMENTS:** |
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If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the provision held to be invalid or illegal.

* 1. INDEMNIFICATION

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| **Accept(Initial)** | **Reject (Initial)** | Reject & Provide Alternative within RFP Response (Initial) | **NOTES/COMMENTS:** |
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* + 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.

* + 1. **INTELLECTUAL PROPERTY**

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 Request for Proposal.

* + 1. **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.

* + 1. **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.

* + 1. 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.
	1. ATTORNEY'S FEES

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

* 1. ASSIGNMENT, SALE, OR MERGER

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

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

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

* 1. FORCE MAJEURE

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

* 1. CONFIDENTIALITY

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

* 1. EARLY TERMINATION

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| **Accept(Initial)** | **Reject(Initial)** | **Reject & Provide Alternative within RFP Response (Initial)** | **NOTES/COMMENTS:** |
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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:
			1. if directed to do so by statute,
			2. 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,
			3. a trustee or receiver of the Contractor or of any substantial part of the Contractor’s assets has been appointed by a court,
			4. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders,
			5. 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,
			6. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code,
			7. Contractor intentionally discloses confidential information,
			8. Contractor has or announces it will discontinue support of the deliverable; and,
			9. In the event funding is no longer available.
	1. CONTRACT CLOSEOUT

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

1. CONTRACTOR DUTIES
	1. INDEPENDENT CONTRACTOR / OBLIGATIONS

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| **Accept(Initial)** | **Reject(Initial)** | **Reject & Provide Alternative within RFP Response (Initial)** | **NOTES/COMMENTS:** |
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It is agreed that the Contractor is an independent contractor and that nothing contained herein is intended or should be construed as creating or establishing a relationship of employment, agency, or a partnership.

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

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

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

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

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

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

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

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

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

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

* 1. EMPLOYEE WORK ELIGIBILITY STATUS

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

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

* + 1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <https://das.nebraska.gov/materiel/docs/pdf/Individual%20or%20Sole%20Proprietor%20United%20States%20Attestation%20Form%20English%20and%20Spanish.pdf>
		2. The completed United States Attestation Form should be submitted with the Request for Proposal 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.
	1. 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 Request for Proposal.

* 1. COOPERATION WITH OTHER CONTRACTORS

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

* 1. PERMITS, REGULATIONS, LAWS

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

* 1. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES

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

* 1. INSURANCE REQUIREMENTS

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| **Accept(Initial)** | **Reject(Initial)** | **Reject & Provide Alternative within RFP Response (Initial)** | **NOTES/COMMENTS:** |
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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 three years of termination or expiration of the contract, the contractor shall obtain an extended discovery or reporting period, or a new insurance policy, providing coverage required by this contract for the term of the contract and three years following termination or expiration of the contract.

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

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

* + 1. **WORKERS’ COMPENSATION INSURANCE**

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

* + 1. **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.

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| **REQUIRED INSURANCE COVERAGE**  |
| COMMERCIAL GENERAL LIABILITY  |
| General Aggregate  | $2,000,000 |
| Products/Completed Operations Aggregate | $2,000,000 |
| Personal/Advertising Injury  | $1,000,000 per occurrence |
| Bodily Injury/Property Damage  | $1,000,000 per occurrence |
| Medical Payments | $10,000 any one person |
| Damage to Rented Premises (Fire) | $100,000 each occurrence |
| Contractual | Included |
| XCU Liability (Explosion, Collapse, and Underground Damage) | Included |
| Independent Contractors | Included |
| Abuse & Molestation | Included |
| ***If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.*** |
| WORKER’S COMPENSATION |
| Employers Liability Limits | $500K/$500K/$500K |
| Statutory Limits- All States | Statutory - State of Nebraska |
| USL&H Endorsement | Statutory |
| Voluntary Compensation | Statutory |
| COMMERCIAL AUTOMOBILE LIABILITY  |
| Bodily Injury/Property Damage  | $1,000,000 combined single limit |
| Include All Owned, Hired & Non-Owned Automobile liability | Included |
| Motor Carrier Act Endorsement | Where Applicable |
| UMBRELLA/EXCESS LIABILITY |
| Over Primary Insurance  | $5,000,000 per occurrence |
| PROFESSIONAL LIABILITY |
| All Other Professional Liability (Errors & Omissions)  | $1,000,000 Per Claim / Aggregate |
| CONTRACTOR’S POLLUTION LIABILITY |
| Each Occurrence/Aggregate Limit | $2,000,000 |
| Includes Non-Owned Disposal Sites |
| MANDATORY COI SUBROGATION WAIVER LANGUAGE  |
| “Workers’ Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska.” |
| MANDATORY COI LIABILITY WAIVER LANGUAGE |
| “Commercial General Liability & Commercial Automobile Liability policies shall name the State of Nebraska as an Additional Insured and the policies shall be primary and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory as additionally insured.” |

* + 1. **EVIDENCE OF COVERAGE**

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

State of Nebraska

State Purchasing Bureau

Attn: Dianna Gilliland

RFP #: 6675 Z1

Email: Dianna.gilliland@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.

* + 1. **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.

* 1. NOTICE OF POTENTIAL CONTRACTOR BREACH

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

* 1. ANTITRUST

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

* 1. CONFLICT OF INTEREST

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

* 1. STATE PROPERTY

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| **Accept(Initial)** | **Reject(Initial)** | **Reject & Provide Alternative within RFP Response (Initial)** | **NOTES/COMMENTS:** |
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The Contractor shall be responsible for the proper care and custody of any State-owned property which is furnished for the Contractor's use during the performance of the contract. The Contractor shall reimburse the State for any loss or damage of such property; normal wear and tear is expected.

* 1. SITE RULES AND REGULATION

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

* 1. ADVERTISING

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

* 1. NEBRASKA TECHNOLOGY ACCESS STANDARDS (Statutory)

Contractor shall review the Nebraska Technology Access Standards, found at <https://das.nebraska.gov/materiel/docs/pdf/Technology%20Access%20Clause%2020210608%20FINAL.pdf> 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.

* 1. DISASTER RECOVERY/BACK UP PLAN

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

* 1. DRUG POLICY

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

* 1. WARRANTY

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

1. PAYMENT
	1. 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.”

* 1. TAXES (Statutory)

The State is not required to pay taxes and assumes no such liability as a result of this Request for Proposal. 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

* 1. INVOICES

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| **Accept(Initial)** | **Reject(Initial)** | **Reject & Provide Alternative within RFP Response (Initial)** | **NOTES/COMMENTS:** |
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Invoices for payments must be submitted, at a minimum, on a quarterly basis, by the Contractor to the agency requesting the services with sufficient detail to support payment. Invoices will show sample number, date of analysis, specific charge for each analyte, total charge for each sample, and total charge for the invoice. A summary of the detail may be provided electronically in a spreadsheet. Invoice should be submitted to AGR.Finance@Nebraska.gov.

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.

* 1. INSPECTION AND APPROVAL

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

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.

* 1. PAYMENT (Statutory)

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

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.

* 1. 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).

* 1. 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 year 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.

* 1. 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 RFP 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.

1. PROJECT DESCRIPTION AND SCOPE OF WORK

The contractor should provide the following information in response to this Request for Proposal.

1. PROJECT OVERVIEW

The Nebraska Department of Agriculture requires analytical services for pesticide formulation and residue samples. The Department will send samples to the contractor’s site, where they will be tested under approved protocols. After analysis, reports showing sample results will be forwarded to the Department.

1. SCOPE OF WORK

The Department, as a part of their normal inspections and investigations in the Pesticide Program, collects samples of pesticide products and other materials which may contain pesticide residues. The Department is looking for a laboratory they can enter into a contract with to perform these services.

**BIDDER INSTRUCTIONS**

Bidder must respond to each of the following statements. Specifications listed are minimum conditions that must be met in order for a Bidder to qualify for the award.

“YES” response means the Bidder guarantees they can meet this condition.

“NO” response means the Bidder cannot meet this condition and will not be considered.

“NO & PROVIDE ALTERNATIVE” responses should be used only with a narrative response in the NOTES/COMMENTS section explaining in detail any deviation from the Bidder’s ability to meet the condition, and an explanation of how this would be determined to be an acceptable alternative to meeting the condition. Alternatives must be detailed in such a way that allows such deviations to be fully evaluated. The State of Nebraska shall determine at its sole discretion whether or not the Bidder’s alternative is an acceptable alternative.

1. BUSINESS REQUIREMENTS
	* 1. **QUALITY ASSURANCE PROJECT PLAN (QAPP)**

|  |  |  |  |
| --- | --- | --- | --- |
| **YES** | **NO** | **NO & PROVIDE ALTERNATIVE** | Quality Assurance Project Plan (QAPP) |
|  |  |  | Bidder has a Quality Assurance Project Plan (QAPP) for Pesticide Cooperative Agreements and have attached one to this bid as an exhibit. If required by the U.S. EPA, the awarded bidder will submit their QAPP within 30 days of Contractor Start Date.  |
| **NOTES/COMMENTS:**  |

* + 1. **MONTHLY REPORTS**

|  |  |  |  |
| --- | --- | --- | --- |
| **YES** | **NO** | **NO & PROVIDE ALTERNATIVE** | **Monthly Reports** |
|  |  |  | Monthly Reports: Contractor must provide monthly reports of samples analyzed by sample number and should include summary of the costs being billed to the Department. |
| **NOTES/COMMENTS:**  |

1. TECHNICAL REQUIREMENTS
	* 1. **SPECIFIC REQUIREMENTS**

|  |  |  |  |
| --- | --- | --- | --- |
| **YES** | **NO** | **NO & PROVIDE ALTERNATIVE** | **Specific Requirements** |
|  |  |  | The Contractor shall analyze all samples submitted by the Department. It is estimated that a minimum of 100 samples and a maximum of 200 samples may be submitted to the Contractor annually. The Contractor is cautioned that the minimum and maximum number of samples are only estimates, and that the Department does not guarantee a specific amount of work on the contract. |
| **NOTES/COMMENTS:**  |

* + - 1. **REQUIREMENTS REGARDING SAMPLE ANALYSIS**

|  |  |  |  |
| --- | --- | --- | --- |
| **YES** | **NO** | **NO & PROVIDE ALTERNATIVE** | **Requirements Regarding Sample Analysis: The Contractor shall conduct sample analysis adhering to, but not necessarily limited to the following requirements.** |
|  |  |  | * + - * 1. Minimum detection levels must be in accordance with generally accepted method detection limits.
 |
|  |  |  | * 1. The Contractor must use one of the following methods: the EPA Manual of Chemical Methods for Pesticides and Devices, Official Methods of Analysis of the AOAC International (current edition), the Collaborative International Pesticide Analytical Council (CIPAC) Manual, or other standard analytical methods in accordance with the Contractor’s Quality Assurance Plan.

Bidder to select the method to be used from the list below:\_\_\_ Analytical Methods\_\_\_ EPA Manual of Chemical Methods for Pesticides and Devices\_\_\_ Official Methods of Analysis of the AOAC International (current edition)\_\_\_ Collaborative International Pesticide Analytical Council (CIPAC) Manual\_\_\_ Other standard analytical methods in accordance with the Contractor’s Quality Assurance Plan |
|  |  |  | * 1. When AOAC International, EPA, CIPAC, or equivalent methods of analysis or materials are necessary to perform analyses are not available, the Contractor shall notify the Department in writing within five (5) working days of sample receipt. At that time, a decision will be made as to what additional work, if any, will be performed on the sample/s.
 |
|  |  |  | * 1. The Contractor will conduct a cross contamination screening in accordance with EPA guidelines (National Enforcement Investigation Center (NEIC) Pesticide Product Laboratory Procedures Manual) when requested in writing by the Department. These guidelines set forth problem areas and screening tests to be conducted to determine cross contamination.
 |
|  |  |  | * 1. If a formulation analysis deviates from the labeled claim above or below the EPA-stipulated range, the samples will be reanalyzed, preferably by a different method and/or analyst. The Contractor must use the guidelines set out in the NEIC Pesticide Product Laboratory Procedures Manual, Laboratory Verification Guidelines, or additional guidelines as provided by the Department in determining if a sample should be re-analyzed. The Contractor’s final report of analysis will indicate whether the sample meets or fails the Horwitz test for pesticide formulations.
 |
| **NOTES/COMMENTS:**  |

* + - 1. **RETENTION OF SAMPLES AND RECORDS**

|  |  |  |  |
| --- | --- | --- | --- |
| **YES** | **NO** | **NO & PROVIDE ALTERNATIVE** | Retention of Samples and Records |
|  |  |  | * + - 1. Analyzed samples must be retained by the Contractor while maintaining sample integrity for a period of not more than two (2) years, or until such a time as the Contractor requests in writing for the disposal of analyzed samples and the Department responds in writing to the Contractor that the samples are no longer needed and are released for disposal. Disposal of contract related materials will be the responsibility of the Contractor. The Contractor will store samples for up to one (1) year beyond the completion of the testing at no charge. If the Department requests specific samples need to be stored longer than one (1) year, the Contractor may assess a storage fee per sample per month of storage. Alternatively, the Department may request that the Contractor ship samples to a designated location for further analysis or storage. The Contractor may charge a fee for handling and shipping expenses, if requested to do so.

The submitted bid will provide a line for direct reimbursement of costs for storage, handling and shipping expenses. Contractor must itemize storage, handling and shipping expenses on the invoice. |
|  |  |  | * + - 1. All records relating to services hereunder shall be retained by the Contractor for five (5) years and shall be made available to the Department upon request in writing during this time period.
 |
| **NOTES/COMMENTS:**  |

* + 1. **QUALITY ASSURANCE AND PROCUREMENT CERTIFICATION**

|  |  |  |  |
| --- | --- | --- | --- |
| **YES** | **NO** | **NO & PROVIDE ALTERNATIVE** | Quality Assurance and Procurement Certification |
|  |  |  | * + - 1. The Contractor’s laboratory must maintain and provide to the Department a Quality Assurance Program which will subsequently be provided to the U.S. EPA for review and approval under the Department’s QAPP and Quality Management Plan.
 |
|  |  |  | * + - 1. The Contractor’s laboratory must adhere to the Contractor’s Quality Assurance Plan.
 |
| **NOTES/COMMENTS:**  |

* + 1. **DELIVERY SCHEDULE**

|  |  |  |  |
| --- | --- | --- | --- |
| **YES** | **NO** | **NO & PROVIDE ALTERNATIVE** | Delivery Schedule |
|  |  |  | * + - 1. The Contractor shall provide all analytical reports to the Department within a maximum of forty (40) working days from receipt of the samples, except analytical records of formulation samples shall be mailed within one hundred and twenty (120) days from receipt of the samples. “Receipt date” shall be the date received by the Contractor.

Bidder is to select how the State will receive the analytical reports below, i.e. mail, e-mail, on-line.\_\_\_ Analytical Reports Delivery Type\_\_\_ Mail – United States Post Office\_\_\_ E-mail\_\_\_ On-line |
| **NOTES/COMMENTS:**  |

* + 1. **OBLIGATIONS OF THE DEPARTMENT**

|  |  |  |  |
| --- | --- | --- | --- |
| **YES** | **NO** | **NO & PROVIDE ALTERNATIVE** | Obligations of the Department: The following are performance requirements of the Department: |
|  |  |  | * + - 1. Chain of Custody: Samples will be delivered to the Contractor along with a “Laboratory Sample Transmittal Form” (see Attachment A-2), sealed in a barrier laminate bag or other suitable material with an official Department or EPA seal (see Attachment A-3). The seal will have the following information: Sample Number, Date of Collection, and Signature of the Collector. Other documentation such as the collection report, pesticide label, and any other documentation necessary for the Contractor will be submitted with each sample.
 |
| **NOTES/COMMENTS:**  |

* + 1. **LABORATORY PERSONNEL**

|  |  |  |  |
| --- | --- | --- | --- |
| **YES** | **NO** | **NO & PROVIDE ALTERNATIVE** | Laboratory Personnel |
|  |  |  | * + - 1. The Contractor should provide a resume including references, detailed educational qualifications, and previous work assignments as may relate to this contract for key personnel who may be assigned to the project with the proposal response. If the resumes are not included with the proposal response, they must be provided within five (5) business days upon written request from the State.
 |
| **NOTES/COMMENTS:**  |

* + 1. **SAMPLE FILE**

|  |  |  |  |
| --- | --- | --- | --- |
| **YES** | **NO** | **NO & PROVIDE ALTERNATIVE** | Sample File |
|  |  |  | * + - 1. The Contractor must assemble into a sample file all forms submitted with the sample by the Department, including laboratory sample transmittal forms, sample collection reports and sample custody seals (see Attachments A-2, A-3 and A-4) and other documents concerning the samples which have been submitted to the Contractor, including labels or technical documents. Said sample files must also include a completed “Report of Analysis” for the sample, the format of which can be created by the Contractor but approved by the Department. Upon completion of the sample analysis the original documentation submitted by the Department with the sample shall be returned to the Department.

 The Report of Analysis shall include the minimum detection limit and concentration detected for each analyte for each sample submitted by the Department and tested by the Contractor. |
| **NOTES/COMMENTS:**  |

* + 1. **PAYMENT SCHEDULE**

|  |  |  |  |
| --- | --- | --- | --- |
| **YES** | **NO** | **NO & PROVIDE ALTERNATIVE** | Payment Schedule |
|  |  |  | * + - 1. The payment schedule for the project is tied to specific dates and deliverables. Invoices may be submitted by the Contractor on specific dates based on the completion and acceptance of related deliverables. No invoice will be approved unless the associated deliverables have been approved. A percentage of the total contract cost may then be invoiced based on the following schedule.

 The Department will review the monthly reports and Contractor’s submissions for reimbursements and authorize payments within thirty (30) days of receipt of such reimbursement requests. The amount of payment will be based upon the agreed fixed price rate for each type of formulation or residue analyzed by the Contractor. The Contractor shall be penalized fifty percent (50%) of the price of each sample, as specified herein, for any sample which is not analyzed and reported to the Department within forty (40) days from receipt of samples for residue samples, or one hundred and twenty (120) days from receipt of samples for formulation samples, unless the Contractor notifies the Department in accordance with the following exception. The Department recognizes there may be periods of time when the Contractor is overwhelmed with samples submitted by the Department and other clients, and that it may not be possible for the Contractor to complete testing within the agreed upon delivery schedule. In addition, the Department often requests testing for new and/or unusual chemicals, which requires time for the Contractor to locate or develop suitable methodology and procure required chemical standards. The Contractor will not be penalized for missing the delivery schedule, provided the Department is notified, within five (5) days of receipt of the samples, of the delay and reason for the delay. |
| **NOTES/COMMENTS:**  |

1. DELIVERABLES

Please see Cost Proposal.

# Form ABidder Proposal Point of Contact

Request for Proposal Number 6675 Z1

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

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

Each bidder should also designate a specific contact person who will be responsible for responding to the State if any clarifications of the 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 |
| Bidder Name: |  |
| Bidder Address: |  |
| Contact Person & Title: |  |
| E-mail Address: |  |
| Telephone Number (Office): |  |
| Telephone Number (Cellular): |  |
| Fax Number: |  |

REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES FORM

|  |
| --- |
| BIDDER MUST COMPLETE THE FOLLOWING |

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

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

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

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

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