

# State of Nebraska - INVITATION TO BID CONTRACT

<b>Date</b>	11/29/22	<b>Page</b>	1 of 1
<b>Solicitation Number</b>	6744 OF		
<b>Opening Date and Time</b>	12/19/22	2:00 pm	
<b>Buyer</b>	CHRISTIE KELLY (AS)		

**DESTINATION OF GOODS**  
**GAME & PARKS COMMISSION**  
**WILDLIFE DIV**  
**2200 N 33RD ST**  
**LINCOLN NE 68503-0370**

Per Nebraska's Transparency in Government Procurement Act, 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 ITB.

\_\_\_\_ 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.

Contract to supply and deliver Adult Pen Reared Rooster Pheasants to the State of Nebraska as per the attached specifications for a one (1) year period from date of award. The contract may be renewed for four (4) additional one (1) year periods when mutually agreeable to the vendor and the State of Nebraska.

(11/28/22 sc)

## INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
1	<b>ADULT ROOSTER PHEASANTS FOR TWO RELEASES AT 19 SITES IN LATE OCTOBER</b>	9,110.0000	EA	_____	_____
2	<b>ADULT ROOSTER PHEASANTS FOR TWO RELEASES AT 19 SITES IN LATE NOVEMBER</b>	7,390.0000	EA	_____	_____

### BIDDER MUST COMPLETE THE FOLLOWING

DISCOUNT PAYMENT TERMS: \_\_\_\_\_ % \_\_\_\_\_ DAYS

By signing this Invitation to Bid form, the bidder guarantees compliance with the provisions stated in this Invitation to Bid, agrees to the terms and conditions unless otherwise agreed to and certifies that bidder maintains a drug free work place environment. Vendor will furnish the items requested within \_\_\_\_\_ days after receipt of order. Failure to enter Delivery Date may cause quotation to be REJECTED.

**Sign**

**Here** \_\_\_\_\_ (Authorized Signature Mandatory – Form must be signed manually in ink or by DocuSign)

Enter Contact Information Below

**VENDOR#** \_\_\_\_\_  
**VENDOR:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
 \_\_\_\_\_

**Contact** \_\_\_\_\_  
**Telephone** \_\_\_\_\_  
**Email** \_\_\_\_\_

**STATE OF NEBRASKA  
GAME AND PARKS COMMISSION  
ADULT PENREARED ROOSTER PHEASANTS TO RELEASE SITES  
INVITATION TO BID  
6744 OF**

The State of Nebraska (State), Department of Administrative Services (DAS), Materiel Division, State Purchasing Bureau (SPB), is issuing this solicitation for a commodity contract, ITB Number 6744 OF for the purpose of selecting a qualified Bidder to provide **Adult Pen-reared Rooster Pheasants to Nebraska Release Sites Prior to the Youth Season (Late October) and Thanksgiving Weekend (Late November)**. A more detailed description can be found in Section VI. The resulting contract may not be an exclusive contract as the State reserves the right to contract for the same or similar goods from other sources now or in the future.

The term of the contract will be one (1) year commencing upon execution of the contract by the State and the Bidder. The Contract includes the option to renew for four (4) additional one (1) year periods upon mutual agreement of the Parties. The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Parties.

**INFORMATION PERTINENT TO THIS SOLICITATION CAN BE FOUND ON THE INTERNET AT:**

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

**PUBLIC POSTING NOTICE:**

Pursuant to the Taxpayer Transparency Act (Neb. Rev. Stat. §§ 84-602.01 to 84-602.04) and in furtherance of public records statutes (Neb. Rev. Stat. § 84-712 et seq.), State contracts, must be posted to a public website. The resulting Contract, the ITB, and the successful Bidder's entire bid and response will be posted to a public website managed by DAS, which can be found at:

<https://statecontracts.nebraska.gov> & [https://www.nebraska.gov/das/materiel/purchasing/contract\\_search/index.php](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 bids or responses received regarding this solicitation will be posted to the SPB public website. **These postings will include the entire bid.**

**When submitting proprietary information, the following steps must be followed:**

1. **The bidder(s) must request that proprietary information be excluded from the posting;**
2. **The bidder must identify and mark the proprietary information with the words "PROPRIETARY INFORMATION" according to State law;**
3. **Any proprietary information must be submitted as a separate electronic file(s) titled "PROPRIETARY INFORMATION" or in a separate container or envelope marked conspicuously;**
  - a. **If file(s) are submitted electronically they must not be password protected.**
4. **The bidder must submit a detailed written document showing that the release of the proprietary information would give a business advantage to named business competitor(s) and explain how the named business competitor(s) will gain an actual business advantage by disclosure of information.**
  - a. **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).**
5. **The bidder may not assert that the entire bid is proprietary.**
6. **Bids 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 Agency 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 or bid to this solicitation for any purpose, and to authorize others to use the documents. Any individual or entity awarded a contract, or who submits a bid to this solicitation, specifically waives any copyright or other protection the bidder bid to the solicitation may have; and, acknowledges that they have the ability and authority to enter into such waiver. This reservation and waiver is a prerequisite for submitting a bid to this solicitation, and award of a contract. **Failure to agree to the reservation and waiver will result in the bid to the solicitation being found non-responsive and rejected.**

Any entity awarded a contract or submitting a bid to the solicitation agrees not to sue, file a claim, or make a demand of any kind, and will indemnify and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials from and against

**INVITATION TO BID  
6744 OF**

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 bids and responses to the solicitation, awards, and other documents.

**If the Bidder wishes to withhold proprietary or other commercial information from disclosure, the Bidder must do the following:**

- a. **Identify the Proprietary Information;**
- b. **Mark the Proprietary Information; and**
- c. **Submit the Proprietary Information under separate cover marked clearly using an indelible method with the words "PROPRIETARY INFORMATION".**
- d. **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 BID IS PROPRIETARY. COST WILL NOT BE CONSIDERED PROPRIETARY AND IS A PUBLIC RECORD SUBJECT TO DISCLOSURE.**  
The State may require a Bidder to submit more information, including, but not limited to, a detailed explanation as to how and why the designated information is Proprietary.

**The State will determine, in its sole discretion, if the disclosure of the designated Proprietary Information would:**

- a. **Give advantage to Business competitors; and**
- b. **Serve no public purpose.**

**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.**

**In the event that disclosure of Proprietary Information is ordered or requested, it will be the Bidder's responsibility to assert and defend the non-disclosure.**

**To facilitate public postings, with the exception of Proprietary Information, the State reserves a royalty-free, nonexclusive, and irrevocable right to copy, reproduce, publish, post to a website, or otherwise use any contract, bid, or response to this ITB for any purpose, and to authorize others to use the documents. Any individual or entity Awarded a contract, or who submits a bid in response to this ITB, specifically waives any Copyright or other protection the contract, bid, or response to the ITB may have; and acknowledges that they have the ability and authority to enter into such waiver. This reservation and waiver are a prerequisite for submitting a bid or response to this ITB, and Award of a contract. Failure to agree to the reservation and waiver will result in the bid being found non-responsive and rejected.**

**Any entity Awarded a contract or submitting a bid or response to the ITB 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 bids and responses to the ITB, Awards, and other documents.**

**INVITATION TO BID  
6744 OF**

**TABLE OF CONTENTS**

<b>GLOSSARY OF TERMS.....</b>	<b>v</b>
<b>ACRONYM LIST .....</b>	<b>viii</b>
<b>I. PROCUREMENT PROCEDURE .....</b>	<b>1</b>
A. GENERAL INFORMATION.....	1
B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS .....	1
C. SCHEDULE OF EVENTS .....	2
D. WRITTEN QUESTIONS AND ANSWERS.....	2
E. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS (Statutory) .....	2
F. ETHICS IN PUBLIC CONTRACTING .....	3
G. DEVIATIONS FROM THE ITB.....	3
H. ELECTRONIC SUBMISSION OF BIDS .....	3
I. BID PREPARATION COSTS .....	4
J. BID CORRECTIONS .....	4
K. LATE BIDS .....	4
L. BID OPENING .....	4
M. ITB REQUIREMENTS .....	4
N. EVALUATION OF BIDS.....	4
O. BEST AND FINAL OFFER.....	5
P. REFERENCE AND CREDIT CHECKS .....	5
Q. AWARD .....	5
R. DISCOUNTS.....	6
S. PRICES .....	6
T. SPECIFICATIONS.....	6
U. ALTERNATE/EQUIVALENT BIDS.....	7
V. LUMP SUM OR "ALL OR NONE" BIDS.....	7
W. EMAIL SUBMISSIONS .....	7
X. BID TABULATIONS.....	7
Y. REJECTION OF BIDS .....	7
Z. RESIDENT BIDDER .....	7
<b>II. TERMS AND CONDITIONS .....</b>	<b>8</b>
A. GENERAL.....	8
B. NOTIFICATION .....	9
C. PCO REPRESENTATIVE .....	9
D. GOVERNING LAW (Statutory) .....	9
E. AMENDMENT.....	9
F. SUBSTITUTIONS .....	9
G. VENDOR PERFORMANCE REPORT(S) .....	10
H. NOTICE OF POTENTIAL BIDDER BREACH .....	10
I. BREACH.....	10
J. NON-WAIVER OF BREACH.....	10
K. SEVERABILITY .....	11
L. INDEMNIFICATION .....	11
M. ATTORNEY'S FEES.....	11
N. ASSIGNMENT, SALE, OR MERGER .....	12
O. CONTRACTING WITH OTHER POLITICAL SUB-DIVISIONS OF THE STATE OR ANOTHER STATE .....	12
P. FORCE MAJEURE .....	12
Q. CONFIDENTIALITY .....	12
R. EARLY TERMINATION .....	13
S. CONTRACT CLOSEOUT .....	13
<b>III. BIDDER DUTIES .....</b>	<b>15</b>
A. INDEPENDENT BIDDER / OBLIGATIONS .....	15
B. EMPLOYEE WORK ELIGIBILITY STATUS.....	15
C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Statutory).....	16
D. COOPERATION WITH OTHER BIDDERS.....	16

**INVITATION TO BID  
6744 OF**

E.	COST CLARIFICATION.....	16
F.	PERMITS, REGULATIONS, LAWS .....	16
G.	NOTICE OF POTENTIAL BIDDER BREACH .....	16
H.	ANTITRUST.....	17
I.	CONFLICT OF INTEREST .....	17
J.	STATE PROPERTY.....	17
K.	SITE RULES AND REGULATIONS.....	17
L.	ADVERTISING .....	18
M.	DISASTER RECOVERY/BACK UP PLAN.....	18
N.	DRUG POLICY .....	18
O.	WARRANTY .....	18
<b>IV.</b>	<b>PAYMENT .....</b>	<b>19</b>
A.	PROHIBITION AGAINST ADVANCE PAYMENT (Statutory).....	19
B.	TAXES (Statutory) .....	19
C.	INVOICES.....	19
D.	PAYMENT (Statutory).....	19
E.	LATE PAYMENT (Statutory).....	19
F.	SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Statutory).....	19
G.	RIGHT TO AUDIT (First Paragraph is Statutory) .....	19
<b>V.</b>	<b>SCOPE .....</b>	<b>21</b>
A.	SCOPE .....	21
<b>VI.</b>	<b>TECHNICAL SPECIFICATIONS .....</b>	<b>22</b>
A.	BIDDER INSTRUCTIONS .....	22
B.	NON-COMPLIANCE STATEMENT .....	22
C.	ADULT PEN-REARED ROOSTER PHEASANTS .....	22
D.	TRANSPORTATION OF ROOSTERS.....	23
E.	ANNUAL USAGE, ESTIMATED .....	23
F.	TRANSPORTATION, LOCATIONS, AND ESTIMATED ANNUAL USAGE OF ADULT ROOSTER PHEASANTS FOR LATE OCTOBER EACH YEAR: .....	23
G.	TRANSPORTATION, LOCATIONS, AND ESTIMATED ANNUAL USAGE OF ADULT ROOSTER PHEASANTS FOR LATE NOVEMBER EACH YEAR:.....	24
H.	TRANSPORTATION AFTER RECEIPT OF ORDER.....	25
I.	REQUIRED TESTING .....	26
J.	USAGE REPORT .....	26
K.	INVOICING .....	26
L.	ORDERS .....	26
M.	QUALITY .....	27
N.	PACKAGING .....	27
O.	QUALITY .....	27
P.	WARRANTY .....	27

**INVITATION TO BID  
6744 OF**

**GLOSSARY OF TERMS**

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

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

**Agency:** Using agencies shall mean and include all officers of the state, departments, bureaus, boards, commissions, councils, and institutions receiving legislative appropriations

**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

**Automated Clearing House:** Electronic network for financial transactions in the United States

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

**Best and Final Offer:** In a competitive bid, the final offer submitted which contains bidder's most favorable terms for price

**Bidder:** A contractor who submits a bid in response to a written solicitation

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

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

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

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

**Cancellation:** To call off or revoke a bid, purchase order or contract without expectation of conducting or performing at a later time

**Collusion:** An agreement or cooperation between two (2) or more persons or entities to accomplish a fraudulent, deceitful, or unlawful purpose

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

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

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

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

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

**Contract 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 Bidder

**Contract Period:** The duration of the contract

## INVITATION TO BID 6744 OF

**Contractor:** An individual or entity lawfully conducting business in the State, who seeks or agrees to provide goods or services under the terms of a written contract.

**Cooperative Purchasing:** The combining of requirements of two (2) or more political entities to obtain advantages of volume purchases, reduction in administrative expenses or other public benefits

**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 goods provided by a Bidder

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

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

**Evaluation:** The process of examining a bid 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

**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"

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

**Grievance:** A complaint about a governmental action or decision related to the solicitation or resultant contract, brought by a bidder who has timely submitted a bid response in connection with the award in question, to AS Materiel Division or another designated agency with the intention of achieving a remedial result

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

**Invalid Bid:** A bid that does not meet the requirements of the solicitation or cannot be evaluated against the other bids.

**Invitation to Bid:** A written solicitation utilized for obtaining competitive offers for Services or Goods

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

**Mandatory:** Required, compulsory, or obligatory

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

**Must:** See "Mandatory"

**National Institute for Governmental Purchasing:** Source used for assignment of universal commodity codes to goods and services

**Open Market Purchase:** Authorization may be given to an agency to purchase items above direct purchase authority due to the unique nature, price, quantity, location of the using agency, or time limitations by the AS Materiel Division, SPB

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

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

**Payroll & Financial Center:** Electronic procurement system of record

**Point of Contact:** The person designated to receive communications and to communicate

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

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

**Proposal:** An offer, bid, or quote submitted by a contractor/vendor in a response to a written solicitation

## INVITATION TO BID 6744 OF

**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 service 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:** See "Grievance"

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

**Quote:** See "Bid"

**Release Date:** The date of public release of the written solicitation to seek offers

**Renewal Period:** Optional contract periods subsequent to the original Contract Period for a specified duration with previously agreed to terms and conditions. Not to be confused with Extension

**Request for Information:** A general invitation to bidder is requesting information for a potential future solicitation. The RFI is typically used as a research and information gathering tool for preparation of a solicitation

**Responsible Bidder:** A Bidder 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 bid which conforms to all requirements of the solicitation document

**Shall:** See "Mandatory"

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

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

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

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

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

**Termination:** Occurs when the contract expires or 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 bidder 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 of service

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

**Vendor:** Inclusive term for any Bidder or Contractor.

**Will:** See "Mandatory"

**INVITATION TO BID  
6744 OF**

**ACRONYM LIST**

**ACH:** Automated Clearing House

**ARO:** After Receipt of Order

**BAFO:** Best and Final Offer

**FOB:** Free on Board

**ITB:** Invitation to Bid

**NGPC:** Nebraska Game and Parks Commission

**NIGP:** National Institute for Governmental Purchasing

**NRD:** National Resources District

**PCO:** Procurement Contracts Officer

**POC:** Point of Contact

**RFI:** Request for Information

**WMA:** Wildlife Management Area

**INVITATION TO BID  
6744 OF**

**I. PROCUREMENT PROCEDURE**

**A. GENERAL INFORMATION**

This ITB is designed to solicit bids from qualified Bidders who will be responsible for providing **Adult Pen-reared Rooster Pheasants to Nebraska Release Sites** at a competitive and reasonable cost.

The State may utilize this ITB to procure **Adult Pen-reared Rooster Pheasants to Nebraska Release Sites** following the Intent to Award, provided the Bidders honor and agree to their bids in this ITB.

Bidders shall respond to each requirement in the format prescribed with emphasis on conformance to the ITB. Bids should be clear and complete. Bids may be found non-responsive if they do not conform to the prescribed format and/or if not presented clearly or are difficult to discern.

By signing the ITB, the Vendor guarantees compliance with the provisions stated in this ITB.

***The State reserves the right to reject a Bidder's bid, withdraw an Intent to Award, and terminate a contract...***

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

Procurement responsibilities related to this solicitation reside with SPB. The POC for the procurement is as follows:

ITB#                    6744 OF  
Name:                  Christie Kelly, PCO  
Agency:              SPB  
Address:               1526 K Street, Suite 130  
                             Lincoln, NE 68508

Telephone:           402-471-6500

E-Mail:                [as.materie purchasing@nebraska.gov](mailto:as.materie purchasing@nebraska.gov)

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

The following exceptions to these restrictions are permitted:

1. Contact made pursuant to pre-existing contracts or obligations;
2. Contact required by the schedule of events, or an event scheduled later by POC; and
3. Contact required for negotiation and execution of the final contract.

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

**INVITATION TO BID  
6744 OF**

**C. SCHEDULE OF EVENTS**

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

ACTIVITY	DATE/TIME
1. ITB Posted to Website at: <a href="https://das.nebraska.gov/materiel/bidopps.html#">https://das.nebraska.gov/materiel/bidopps.html#</a>	November 29, 2022
2. Last day to submit written questions.  <b>Upload questions for 6744 OF via ShareFile to:</b> <a href="https://nebraska.sharefile.com/r-rc94f170089a441da85ed12a97a2bca1f">https://nebraska.sharefile.com/r-rc94f170089a441da85ed12a97a2bca1f</a>	December 6, 2022
3. State responds to written questions through an Addendum to be posted to the Internet at: <a href="https://das.nebraska.gov/materiel/bidopps.html#">https://das.nebraska.gov/materiel/bidopps.html#</a>	December 13, 2022
4. Electronic Bid Opening via Zoom:  <b>Upload electronic Bid submissions for 6744 OF via ShareFile to:</b> <a href="https://nebraska.sharefile.com/r-rea2db27a60ae4df1a027010912762de7">https://nebraska.sharefile.com/r-rea2db27a60ae4df1a027010912762de7</a>  <b>Zoom Meeting Information:</b> <a href="https://us02web.zoom.us/j/7318536781?pwd=cHRFNkJzRzBwSitiVDZSQytEa2Zwdz09">https://us02web.zoom.us/j/7318536781?pwd=cHRFNkJzRzBwSitiVDZSQytEa2Zwdz09</a>  Meeting ID: 731 853 6781 Passcode: 4Gkv2t  <b>IT IS THE BIDDERS' RESPONSIBILITY TO ENSURE ALL BIDS SHALL BE SUBMITTED AND RECEIVED BY THE DATE AND TIME INDICATED IN THE SCHEDULE OF EVENTS FOR EACH BID SUBMITTED.</b>	December 19, 2022 2:00 PM Central Time

**D. WRITTEN QUESTIONS AND ANSWERS**

Questions regarding the meaning or interpretation of any aspect of this ITB should be submitted in writing to SPB and clearly titled “ITB Number 6744 OF Adult Pen-reared Rooster Pheasants to Nebraska Release Sites Questions”. The POC is not obligated to respond to questions which are received late per the Schedule of Events.

Questions should be uploaded to ShareFile at <https://nebraska.sharefile.com/r-rc94f170089a441da85ed12a97a2bca1f>.

Bidder Should present, as questions, any assumptions upon which the Bidder's bid is or might be developed. Bids will be evaluated without consideration of any known or unknown assumptions. The Contract will not incorporate any known or unknown assumptions.

It is recommended that Bidders submit questions using the following format. Bidder

Solicitation Section Reference	Solicitation Page Number	Question

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

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

All Bidders must be authorized to transact business in the State and comply with all Nebraska Secretary of State Registration requirements. The Bidder who is the recipient of an Intent to Award will be required to certify that it has complied and produce a true and correct copy of its current (within ninety (90) calendar days of the intent to award) Certificate or Letter of Good Standing, or in the case of a sole proprietorship, provide written documentation of sole proprietorship and the United States Citizenship Attestation Form, available on the DAS website at: <http://das.nebraska.gov/materiel/purchasing.html>. This must be accomplished prior to execution of the contract.

## INVITATION TO BID 6744 OF

### F. ETHICS IN PUBLIC CONTRACTING

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

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

### G. DEVIATIONS FROM THE ITB

The requirements contained in the ITB become a part of the Terms and Conditions of the Contract resulting from this ITB. Any Deviations from the ITB must be clearly defined by the Bidder in its bid and, if accepted by the State, will become part of the Contract. Deviations must not be in conflict with the nature of the ITB, requirements or applicable State or Federal law. The State discourages Deviations and reserves the right to reject proposed Deviations.

### H. ELECTRONIC SUBMISSION OF BIDS

All bids must be submitted to SPB in the matter set forth below. It is the Bidder's responsibility to submit the Electronic Bid(s) and be received by the date and time of the Bid Opening indicated in the Schedule of Events. The State is not responsible for bids that are late or lost, regardless of cause (e.g., hardware, software, or electronic failure) or fault. Late bids will not be accepted.

#### 1. UPLOADING ELECTRONIC BID(S) TO SHAREFILE (SUBMITTED DOCUMENTS MUST NOT BE PASSWORD PROTECTED)

- a. Bidders should upload bid(s) via ShareFile to: <https://nebraska.sharefile.com/r-rea2db27a60ae4df1a027010912762de7>
- b. Each bid will have an individual ShareFile link. **Bidders must sure to upload their Bid(s) to the correct ShareFile link.**
- c. Not all browsers are compatible with ShareFile. Currently Chrome, Internet Explorer and Firefox are compatible, but Microsoft Edge is not.
- d. **After the bidder clicks the bid submission link, the bidder will be prompted to enter contact information including an e-mail address so that the bidder will receive a confirmation email confirming the successful upload directly from ShareFile.**
- e. If it is the bidder's intent to submit multiple bids, the bidder must clearly identify each submission separately (see "Electronic ITB File Names" below).
- f. The Bidder is solely responsible for any variance between the copies submitted.
- g. If multiple bids are submitted, the State will retain only the most recently submitted bid.
- h. Any **Proprietary information** (if applicable) should be uploaded as separate and distinct files.
- i. **Do not submit bid file(s) more than 30 days prior to the Bid Opening. Once uploaded the bid documents are only available for 30 days.**

#### 2. ELECTRONIC ITB FILE NAMES

- a. The Bidder should clearly identify the uploaded Bid files.
- b. **DO NOT ADD any language to the naming conventions below.** Long titles can make the files difficult to work with.

**INVITATION TO BID  
6744 OF**

- c. **If the bidder submits the bid/bid documents as one (1) complete packet (preferred method), please use the following naming convention:**
  - 6744 OF Adult Rooster Pheasants **NAME OF BIDDER** Bid.
- d. **If the bidder submits the bid/bid documents as separate files, please use the following naming convention(s):**
  - 6744 OF Adult Rooster Pheasants **NAME OF BIDDER** Bid/File 1/File 2, etc....
- e. **If multiple bids are submitted for the same ITB number and Attachment, follow the same naming convention as letter “e”, for example:**
  - 6744 OF Adult Rooster Pheasants **NAME OF BIDDER** Bid 2/Bid 2 File 1/Bid 2 File 2, etc...

SPB will **ONLY** accept bids by mail, email, voice, or telephone for one-time purchases under \$50,000.00.

It is the responsibility of the Bidder to check the website often at <https://das.nebraska.gov/materiel/bidopps.html> for all information relevant to this ITB to include Addenda issued prior to the Opening Date and Time.

**I. BID PREPARATION COSTS**

The State shall not incur any liability for any costs incurred by Bidders responding to this ITB, including, for example, costs associated with the submission of the bid FAILURE TO COMPLY WITH ITB, Violation of the terms and conditions contained in this solicitation or any resultant contract, at any time before or after the award, shall be grounds for action by the State which may include, but is not limited to, the following:

1. Rejection of a Contractor's bid;
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; or,
7. Suspension of the Contractor from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.

**J. BID CORRECTIONS**

A contractor may correct a mistake in a bid prior to the time of opening by giving written notice to the State of intent to withdraw the bid for modification or to withdraw the bid completely. Changing a bid 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.

**K. LATE BIDS**

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

**L. BID OPENING**

Anyone may attend the opening. It is considered a public opening. The PCO will read the names of the respondents. Depending upon the complexity of the bid for goods, the PCO may read the bids aloud or allow bids to be available for viewing by the public during the bid opening. Once the bid opening has concluded, the bids will not be available for viewing until the Intent to Award has been posted. An initial bid tabulation will be posted to the website as soon as feasible. Information identified as proprietary by the submitting contractor, in accordance with the solicitation and state statute, will not be posted. If the state determines submitted information should not be withheld, in accordance with the [Public Records Act](#), or if ordered to release any withheld information, said information may then be released. The submitting contractor will be notified of the release and it shall be the obligation of the submitting contractor to take further action if it believes the information should not be released.

**M. ITB REQUIREMENTS**

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

1. Original Commodity ITB form signed using an indelible method (electronic signatures are acceptable);
2. Clarity and responsiveness of the bid;
3. Completed Sections II through VI;
4. Completed ITB Form or State's Cost Sheet.

**N. EVALUATION OF BIDS**

**Neb. Rev. Stat. § 81-161 allows the quality of performance of previous contracts to be considered when evaluating responses to competitively bid solicitations in determining the lowest responsible bidder.** Information obtained from any

## INVITATION TO BID 6744 OF

Vendor Performance Report (See Terms & Conditions, Section H) may be used in evaluating responses to solicitations for goods and services to determine the best value for the State.

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

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

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

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

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

**O. BEST AND FINAL OFFER**

If BAFOs are requested by the State and submitted by the bidder, they will be evaluated (using the stated BAFO criteria) and ranked by the Evaluation Committee. The State reserves the right to conduct more than one BAFO. The award will then be granted to the lowest responsible contractor. However, a contractor should provide its best offer in its original bid. Contractors should not expect that the State will request a BAFO.

**P. 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 bid in response to this solicitation, the contractor grants to the State the right to contact or arrange a visit in person with any or all of the contractor's clients. Reference and credit checks may be grounds to reject a bid, withdraw an intent to award, or rescind the award of a contract.

**Q. AWARD**

The State reserves the right to evaluate bids 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 bids, or at any point in the solicitation process, the State of Nebraska may take one or more of the following actions:

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

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

## INVITATION TO BID 6744 OF

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

The solicitation does not commit the State to award a contract. Once intent to award decision has been determined, it will be posted to the Internet at:

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

Any protests must be filed by a contractor within ten (10) business days after the intent to award decision is posted to the Internet. Grievance and protest procedure is available on the Internet at:

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

### R. DISCOUNTS

Prices quoted shall be inclusive of ALL trade discounts. Cash discount terms of less than 30 days will not be considered as part of the bid. 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.

### S. PRICES

Prices quoted shall be net, bidder must identify if they are including transportation and delivery as part of their bid.

If the Roosters are delivered the delivery charges are FOB Destination which means the delivery charges are included in the quoted price, prepaid by the Bidder, and the Bidder is responsible for all claims associated with damages during delivery of product.

If the Roosters are picked up by NGPC Staff the delivery charges are FOB Origin which means the delivery charges are not included in the quoted price, are the responsibility of the Agency, and the Agency is responsible for all claims associated with damages during transportation of the Roosters.

No additional charges will be allowed for packing, packages, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern.

Prices submitted on the Bid Sheet, once accepted by the State, shall remain fixed and valid commencing on the opening date of the bid and shall remain firm for the first year of the contract award.

Any request for a price increase subsequent to the first year must be submitted in writing to SPB a minimum of thirty (30) days. Documentation must be provided 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.**

**If the Vendor requests to substitute any contracted item and the substitute meets or exceeds the original specifications, the State may accept or reject the substitution.**

**If the Vendor requests to substitute any contracted item, which meets or exceeds the original specifications, and the cost of the substitute is higher, the State may accept or reject the substitution and price change.**

If the State and the Vendor do not agree to the requested substitution and price change, the Contract may be terminated immediately by the State. In the event any product is discontinued or replaced upon mutual consent and prior to delivery during the Contract Period the State reserves the right to amend the contract or purchase order to include the alternate product.

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

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

### T. SPECIFICATIONS

Any manufacturer's names, trade names, brand names, information and/or catalog numbers listed in a specification are for reference and not intended to limit competition but will be used as the standard by which equivalent material offered will be judged. The Materiel Administrator will be the sole judge of equivalency. The Bidder may offer any brands which meets or exceeds the specification. When a specific product is required, the solicitation will so state. Any item bid is to be the latest

**INVITATION TO BID  
6744 OF**

current model under standard production at the time of order. No used or refurbished equipment will be accepted, unless otherwise stated.

**U. ALTERNATE/EQUIVALENT BIDS**

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

**V. LUMP SUM OR "ALL OR NONE" BIDS**

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

**"LUMP SUM" OR "ALL OR NONE" BIDS SHOULD BE CONSPICUOUSLY MARKED ON THE FIRST PAGE OF THE ITB AND BID SHEET (IF APPLICABLE)**

**W. EMAIL SUBMISSIONS**

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

**X. BID TABULATIONS**

Bid tabulations are available on the website at: [DAS Website: Materiel \(nebraska.gov\)](http://DAS Website: Materiel (nebraska.gov)) .

**Y. REJECTION OF BIDS**

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

**Z. 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.

**INVITATION TO BID  
6744 OF**

**II. TERMS AND CONDITIONS**

**Bidders should complete Section II through VI as part of their bid.** Bidder is expected to read the Terms and Conditions and must 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 using "Track Changes". Upon request an electronic copy of the bid with "Track Changes" must be submitted in an editable Word format. By signing the solicitation, Bidder is agreeing to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the bid. 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 bid. The State is soliciting bids in response to the solicitation. The State reserves the right to reject bids that attempt to substitute the Bidder's commercial contracts and/or documents for this solicitation.

The Bidder should submit with their bid any license, user agreement, service level agreement, or similar documents that the Bidder wants incorporated in the Contract. Upon notice of Intent to Award, the Bidder must submit a copy of these documents in an editable Word format. The State will not consider incorporation of any document not submitted with the Bidder's bid. 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 addendums have been negotiated and agreed to, the addendums shall be interpreted as follows:

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

**A. GENERAL**

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

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

1. Invitation to Bid and Addenda;
2. Amendments to the solicitation;
3. Questions and Answers;
4. Bidder's bid response;
5. The executed Contract and any Addenda, if applicable, and properly submitted documents; and,
6. Amendments to the Contract

These documents constitute the entirety of the contract.

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

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.

**INVITATION TO BID  
6744 OF**

**B. NOTIFICATION**

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

Communication regarding the executed contract shall be given in writing and deemed to have been delivered via email to the specified Contract Contact information provided on the submitted ITB form with the submitted bid(s). The Vendor should send written notice to the SPB. The State will send notices to the authorized contact provided on the ITB form.

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

**C. PCO REPRESENTATIVE**

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

**D. GOVERNING LAW (Statutory)**

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

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

**E. AMENDMENT**

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

**F. SUBSTITUTIONS**

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

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

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

**INVITATION TO BID  
6744 OF**

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

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

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

**H. NOTICE OF POTENTIAL BIDDER BREACH**

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

If Bidder breaches the contract or anticipates breaching the contract, the Bidder 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.

**I. BREACH**

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

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time.

In case of breach by the Bidder, the State may, without unreasonable delay, make a good faith effort to make a reasonable purchase or contract to purchased goods in substitution of those due from the bidder. The State may recover from the Bidder 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 Bidder's breach. OR In case of default of the Bidder, the State may contract the service from other sources and hold the Bidder responsible for any excess cost occasioned thereby.

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

**J. NON-WAIVER OF BREACH**

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

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

**INVITATION TO BID  
6744 OF**

**K. SEVERABILITY**

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

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

**L. INDEMNIFICATION**

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

**1. GENERAL**

The Bidder 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 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 Bidder, its employees, Subcontractors, consultants, representatives, and agents, resulting from this contract, except to the extent such Bidder liability is attenuated by any action of the State which directly and proximately contributed to the claims.

**2. PERSONNEL**

The Bidder 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 Bidder.

**3. SELF-INSURANCE (Statutory)**

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

**M. ATTORNEY’S FEES**

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

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

**INVITATION TO BID  
6744 OF**

**N. ASSIGNMENT, SALE, OR MERGER**

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

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

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

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

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

The Bidder 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.

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

**P. FORCE MAJEURE**

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

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

**Q. CONFIDENTIALITY**

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

All materials and information provided by the Parties or acquired by a Party on behalf of the other Party shall be regarded as confidential information. All materials and information provided or acquired shall be handled in accordance with federal and

**INVITATION TO BID  
6744 OF**

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 \$5,000.00.

**R. EARLY TERMINATION**

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

The contract may be terminated as follows:

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

**S. CONTRACT CLOSEOUT**

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

Upon termination of the contract for any reason the Bidder shall within thirty (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 Bidder is permitted to keep the information or data by contract or rule of law. Bidder may retain one copy of any information or data as required to comply with applicable work

**INVITATION TO BID  
6744 OF**

product documentation standards or as are automatically retained in the course of Bidder'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 Bidder to surrender intellectual property, real or person property, or information or data owned by the Bidder for which the State has no legal claim.

**INVITATION TO BID  
6744 OF**

**III. BIDDER DUTIES**

**A. INDEPENDENT BIDDER / OBLIGATIONS**

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

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

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

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

By-name personnel commitments made in the Bidder's bid 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.

The Bidder warrants that all persons assigned to the project shall be employees of the Bidder or a Subcontractor and shall be fully qualified to perform the work required herein. Personnel employed by the Bidder or a subcontractor to fulfill the terms of the contract shall remain under the sole direction and control of the Bidder or the subcontractor respectively.

With respect to its employees, the Bidder 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 Bidder's employees, including all insurance required by state law;
3. Damages incurred by Bidder'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 Bidder'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 Bidder, its officers, agents, or subcontractors or subcontractor's employees).

If the Bidder intends to utilize any subcontractor, the Subcontractor's level of effort, tasks, and time allocation must be clearly defined in the Bidder's bid. The Bidder shall agree that it will not utilize any Subcontractors not specifically included in its bid in the performance of the contract without the prior written authorization of the State.

The State reserves the right to require the Bidder to reassign or remove from the project any Bidder or Subcontractor employee.

Bidder shall insure that the terms and conditions contained in any contract with a sub-contractor does not conflict with the terms and conditions of this contract.

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

**B. EMPLOYEE WORK ELIGIBILITY STATUS**

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

1. The Bidder must complete the United States Citizenship Attestation Form, available on the DAS website at <http://das.nebraska.gov/materiel/purchasing.html>

The completed United States Attestation Form should be submitted with the solicitation response.

**INVITATION TO BID  
6744 OF**

2. If the Bidder indicates on such attestation form that he or she is a qualified alien, the Bidder agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify the Bidder's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Bidder understands and agrees that lawful presence in the United States is required, and the Bidder may be disqualified, or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

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

The Bidder 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 Bidders of the State, and their Subbidders, 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 through 48-1125). The Bidder guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Bidder shall insert a similar provision in all Subcontracts for goods or services to be covered by any contract resulting from this solicitation.

**D. COOPERATION WITH OTHER BIDDERS**

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

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

**E. COST CLARIFICATION**

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

**F. PERMITS, REGULATIONS, LAWS**

Accept (Initial)	Reject (Initial)	Reject & provide Alternative Response (Initial)	NOTES/COMMENTS:

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

**G. NOTICE OF POTENTIAL BIDDER BREACH**

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

If Bidder breaches the contract or anticipates breaching the contract the Bidder 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

**INVITATION TO BID  
6744 OF**

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.

**H. ANTITRUST**

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

The Bidder 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.

**I. CONFLICT OF INTEREST**

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

By submitting a bid, 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 ITB 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 bid 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.

**J. STATE PROPERTY**

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

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

**K. SITE RULES AND REGULATIONS**

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

The Bidder 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 Bidder 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 Bidder.

**INVITATION TO BID  
6744 OF**

**L. ADVERTISING**

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

The Bidder 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 and 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.

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

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

The Bidder 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.

**N. DRUG POLICY**

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

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

**O. WARRANTY**

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

Despite any clause to the contrary, the Bidder 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 Contract. For any breach of this warranty, the Bidder shall, for a period of ninety (90) days from performance of the service, perform the services again, at no cost to Customer, or if Bidder is unable to perform the services as warranted, Bidder shall reimburse Customer the fees paid to Bidder 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.

**INVITATION TO BID  
6744 OF**

**IV. PAYMENT**

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

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

**B. TAXES (Statutory)**

The State is not required to pay taxes and assumes no such liability as a result of this solicitation. The Bidder 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 Bidder's equipment which may be installed in a state-owned facility is the responsibility of the Bidder.

**C. INVOICES**

Invoices for payments must be submitted by the Bidder to the agency requesting the services with sufficient detail to support payment. Invoices are to be sent to:

Nebraska Game and Parks Commission  
Wildlife Division  
2200 N 33rd Street  
Lincoln, NE 68503

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

**D. PAYMENT (Statutory)**

Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. § 81-2403). The State may require the Bidder 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 Bidder prior to the Effective Date of the contract, and the Bidder hereby waives any claim or cause of action for any such services.

**E. LATE PAYMENT (Statutory)**

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

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

The State's obligation to pay amounts due on the Contract for a fiscal 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 Bidder 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 Bidder 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 Bidder be paid for a loss of anticipated profit.

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

The State shall have the right to audit the Bidder's performance of this contract upon a thirty (30) day written notice. Bidder 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 Bidder 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 Bidder shall make the Information available to the State at Bidder's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Bidder so elects, the Bidder 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. In no circumstances will bidder be required to create or maintain documents not kept in the ordinary course of bidder's business operations, nor will bidder be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to bidder.

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

**INVITATION TO BID  
6744 OF**

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 Bidder, the Bidder 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 Bidder agrees to correct any material weaknesses or condition found as a result of the audit.

**INVITATION TO BID  
6744 OF**

**V. SCOPE**

The Bidder must provide the following information in response to this solicitation.

**A. SCOPE**

It is the intent of this bid invitation to establish a contract to provide **Adult Pen-reared Rooster Pheasants to Nebraska Sites Prior to the Youth Season (Late October) and Thanksgiving Weekend (Late November)** per the attached specifications from date of award for a period of one (1) year with the option to renew for an additional four (4), one (1) year periods when mutually agreeable to the bidder and the State. The State reserves the right to extend the period of this contract beyond the end date when mutually agreeable to the bidder and the State.

**INVITATION TO BID  
6744 OF**

**VI. TECHNICAL SPECIFICATIONS**

**A. 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 shall determine at its sole discretion whether or not the Bidder’s alternative is an acceptable alternative.

**B. NON-COMPLIANCE STATEMENT**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Read these specifications carefully.
			2. Any and all exceptions to these specifications must be written on or attached to the bid.
			3. Any noncompliance may void your bid.
			4. Non-compliance to any single specification can void your bid.
			5. It is the responsibility of Bidders to obtain information and clarifications as provided below.
			6. The State is not responsible for any erroneous or incomplete understandings or wrongful interpretations of this solicitation by any Bidder.
			7. No interpretation related to the meaning of Bid Specifications or other Pre-Bid documents will be made orally to any Bidder by the State.
			8. Any request for Bid interpretation must be put in writing and submitted to the SPB per the Schedule of Events.
<b>NOTES/COMMENTS:</b>			

**C. ADULT PEN-REARED ROOSTER PHEASANTS**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Roosters must be marked either with a leg band provided by NGPC or by deformation of the nares resulting from being raised with an anti-pecking device inserted in the nares.
			2. Roosters must be at least eighteen (18) weeks old as determined by NGPC staff upon receipt of Roosters.
			3. Roosters must be fully feathered with adult plumage.
<b>NOTES/COMMENTS:</b>			

**INVITATION TO BID  
6744 OF**

**D. TRANSPORTATION OF ROOSTERS**

YES	NO	NO & PROVIDE ALTERNATIVE	
			<b>1.</b> A guarantee of satisfactory performance by the bidder and meeting due dates are an integral part of the contract resulting from this bid.
			<b>2.</b> Roosters must be alive and in good health upon receipt of birds.
			<b>3.</b> In the event of Rooster mortality during delivery to sites (if applicable), re-delivery of birds will occur as determined by NGPC staff.
			<b>4.</b> In the event that inclement weather or habitat conditions prevents one (1) or more sites from being conducive for release NGPC will coordinate with the awarded bidder(s) to re-distribute these Roosters to alternate sites as determined by NGPC.
			<b>5.</b> If Roosters have been delivered and re-deliveries or re-distribution of Roosters are required for any reason this will be at the expense of the awarded bidder(s).
<b>NOTES/COMMENTS:</b>			

**E. ANNUAL USAGE, ESTIMATED**

YES	NO	NO & PROVIDE ALTERNATIVE	
			<b>1.</b> Annual usage figures provided are estimates and are not to be construed as either a minimum or maximum purchase quantity.
			<b>2.</b> Bidder shall not impose minimum order requirements.
			<b>3.</b> See Sections "D" and "E" below for estimated annual usage.
<b>NOTES/COMMENTS:</b>			

**F. TRANSPORTATION, LOCATIONS, AND ESTIMATED ANNUAL USAGE OF ADULT ROOSTER PHEASANTS FOR LATE OCTOBER EACH YEAR:**

YES	NO	NO & PROVIDE ALTERNATIVE	
			<b>1.</b> A TOTAL of Nine thousand one hundred ten (9,110) adult roosters, at least eighteen (18) weeks of age, to nineteen (19) sites as listed below with the first due date being in late October of each year:
			<b>a.</b> 684 Roosters to Bordeaux WMA, five (5) miles East and one (1) mile South of Chadron in Dawes County, NE.
			<b>b.</b> 300 Roosters to Arnold Trupp WMA, six (6) miles North and one (1) mile West of Bayard in Morrill County, NE.
			<b>c.</b> 736 Roosters to N-CORPE (NRD), ten (10) miles North and four (4) miles West of Wellfleet in Lincoln County, NE.
			<b>d.</b> 407 Roosters to Pressey WMA, five (5) miles North of Oconto in Custer County, NE.
			<b>e.</b> 763 Roosters to Sherman Reservoir WMA, 4 miles east of Loup City in Sherman County, Nebraska
			<b>f.</b> 381 Roosters to Cornhusker State WMA, two (2) miles North of Alda in Hall County, NE.

**INVITATION TO BID  
6744 OF**

			<b>g.</b> 324 Roosters to George Syas WMA, two (2) miles East of Genoa in Nance County, NE.
			<b>h.</b> 547 Roosters to Wilkinson WMA, two and one half (2.5) miles South of Platte Center in Platte County, NE.
			<b>i.</b> 300 Roosters to Oak Valley WMA, two and one half (2.5) miles South and one (1) mile West of Battle Creek in Madison County, NE.
			<b>j.</b> 300 Roosters to Powder Creek WMA, four and one half (4.5) miles North of Martinsburg in Dixon County, NE.
			<b>k.</b> 300 Roosters to Kirkpatrick Basin North WMA, seven (7) miles Southwest of York in York County, NE.
			<b>l.</b> 899 Roosters to Branched Oak WMA, three (3) miles North of Malcolm in Lancaster County, NE.
			<b>m.</b> 386 Roosters to Yankee Hill WMA, three (3) miles East and one (1) mile South of Denton in Lancaster County, NE.
			<b>n.</b> 300 Roosters to Arrowhead WMA, three (3) miles East of Diller in Gage County, NE.
			<b>o.</b> 300 Roosters to Hickory Ridge WMA, three (3) miles East and two (2) miles South of Crab Orchard in Johnson County, NE.
			<b>p.</b> 506 Roosters to James N Douglas WMA (formerly Twin Oaks WMA), two (2) miles East and two (2) miles South of Tecumseh in Johnson County, NE.
			<b>q.</b> 885 Roosters to Randall W. Schilling WMA, two and one third (2.1/3) miles North of Plattsmouth in Cass County, NE.
			<b>r.</b> 492 Roosters to Peru Bottoms WMA, one (1) mile North of Peru in Nemaha County, NE.
			<b>s.</b> 300 Roosters to Rakes Creek WMA, three (3) miles East and three (3) miles South of Murray in Cass County, NE.

**G. TRANSPORTATION, LOCATIONS, AND ESTIMATED ANNUAL USAGE OF ADULT ROOSTER PHEASANTS FOR LATE NOVEMBER EACH YEAR:**

YES	NO	NO & PROVIDE ALTERNATIVE	
			<b>1.</b> A TOTAL of Seven thousand three hundred and ninety (7,390) Adult Roosters, at least eighteen (18) weeks of age, to nineteen (19) sites as listed below, with the second delivery being in late November of each year.:
			<b>a.</b> 566 Roosters to Sherman Reservoir WMA, four (4) miles East of Loup City in Sherman County, NE.
			<b>b.</b> 302 Roosters to Pressey WMA, five (5) miles North of Oconto in Custer County, NE.
			<b>c.</b> 300 Roosters to Cornhusker State WMA, two (2) miles North of Alda in Hall County, NE.
			<b>d.</b> 300 Roosters to George Syas WMA, two (2) miles East of Genoa in Nance County, NE.
			<b>e.</b> 406 Roosters to Wilkinson WMA, two and one half (2.5) miles South of Platte Center in Platte County, NE.
			<b>f.</b> 300 Roosters to Oak Valley WMA, two one half (2.5) miles South and one (1) mile West of Battle Creek in Madison County, NE.
			<b>g.</b> 300 Roosters to Powder Creek WMA, four and one half (4.5) miles North of Martinsburg in Dixon County, NE.
			<b>h.</b> 300 Roosters to Kirkpatrick Basin North WMA, seven (7) miles Southwest of York in York County, NE.
			<b>i.</b> 667 Roosters to Branched Oak WMA, three (3) miles North of Malcolm in Lancaster County, NE.
			<b>j.</b> 300 Roosters to Yankee Hill WMA, three (3) miles East and one (1) mile South of Denton in Lancaster County, NE.
			<b>k.</b> 300 Roosters to Arrowhead WMA, three (3) miles East of Diller in Gage County, NE.

**INVITATION TO BID  
6744 OF**

			<b>l.</b> 300 Roosters to Hickory Ridge WMA, three (3) miles East and two (2) miles South of Crab Orchard in Johnson County, NE.
			<b>m.</b> 374 Roosters to James N. Douglas (formerly Twin Oaks WMA), two (2) miles East and two (2) miles South of Tecumseh in Johnson County, NE.
			<b>n.</b> 657 Roosters to Schilling WMA, two and one third (21/3) miles North of Plattsmouth in Cass County, NE.
			<b>o.</b> 364 Roosters to Peru Bottoms WMA, one (1) mile North of Peru in Nemaha County, NE.
			<b>p.</b> 300 Roosters to Rakes Creek WMA, three (3) miles East and three (3) miles South of Murray in Cass County, NE.
			<b>q.</b> 300 Roosters to Arnold Trupp WMA, six (6) miles North and one (1) mile West of Bayard in Morrill County, NE.
			<b>r.</b> 508 Roosters to Bordeaux WMA, five (5) miles East and one (1) mile South of Chadron in Dawes County, NE.
			<b>s.</b> 546 Roosters to N-CORPE (NRD), 10 miles north and 4 miles west of Wellfleet in Lincoln County, Nebraska

**NOTES/COMMENTS:**

**H. TRANSPORTATION AFTER RECEIPT OF ORDER**

YES	NO	NO & PROVIDE ALTERNATIVE	
			<b>1.</b> See schedule below for due dates.
			<b>2.</b> Dates are subject to change if youth or regular pheasant dates are modified.

YEAR	FIRST DUE DATE (FRIDAY PRIOR TO YOUTH SEASON)	YOUTH SEASON DATES	REGULAR SEASON OPENER	SECOND DUE DATE (THURSDAY PRIOR TO THANKSGIVING)	THANKSGIVING DATE
2023	October 20	October 21-22	October 28	November 21	November 23
2024	October 18	October 19-20	October 26	November 26	November 28
2025	October 17	October 18-19	October 25	November 25	November 27
2026	October 23	October 24-25	October 31	November 24	November 26
2027	October 22	October 23-24	October 30	November 23	November 25

**NOTES/COMMENTS:**

**INVITATION TO BID  
6744 OF**

**I. REQUIRED TESTING**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Bidder agrees to work with their local Department of Agriculture to complete any required testing (e.g., Avian Influenza) prior to transporting birds from their facility.
<b>NOTES/COMMENTS:</b>			

**J. USAGE REPORT**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. The Bidder shall, provide a usage report(s) of the resulting contract(s) by State Agencies and political subdivisions upon request by the State.
			2. Information will include, at a minimum, the procuring entity's name, contract number, purchase order number, item, item number, quantities, and dollar amounts.
			3. Usage Reports must be provided within five (5) Business days after receipt of request from the State.
<b>NOTES/COMMENTS:</b>			

**K. INVOICING**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Upon receipt of Roosters a designated State employee will sign the "invoice/packing slip" which indicates only that the order has been received and that the items delivered agree with the "invoice/packing slip".
			2. A signature on the "invoice/packing slip" does not indicate all items were received in good condition and/or that there is not possible hidden damage.
			3. Invoices are to be sent to the "Invoice to" address on the purchase order.
<b>NOTES/COMMENTS:</b>			

**L. ORDERS**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Orders will be placed either by, phone, e-mail, or Internet (if available and not to the exclusion of the other methods).
			2. The orders shall be for the actual quantities of each item ordered by or for any agency during the life of the contract.
			3. All orders must reference the contract number and purchase order number.
			4. The purchase order number must be referenced on the packing slip, and invoice.

**INVITATION TO BID  
6744 OF**

			5. Invoices are to be sent to the "Invoice to" address on the purchase order.
<b>NOTES/COMMENTS:</b>			

**M. QUALITY**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Product quality must meet specifications and be consistent for the term of the contract. All materials must be of first quality, under standard production by the manufacturer and be of standard design, complete as regularly advertised and marketed and be of proven performance.
			2. Products are to be fully guaranteed and may be returned for full credit or replacement (at the State's option) for any reason during the initial warranty period with no additional charges for shipping or restocking.
<b>NOTES/COMMENTS:</b>			

**N. PACKAGING**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Roosters shall be packaged in crates of suitable size and of sufficient strength to protect the birds during transportation.
			2. Crates shall be marked conspicuously with each destination location.
<b>NOTES/COMMENTS:</b>			

**O. QUALITY**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Product quality must meet specifications and be consistent for the term of the contract. All materials must be of first quality, under standard production by the manufacturer and be of standard design, complete as regularly advertised and marketed and be of proven performance.
			2. A guarantee of satisfactory performance by the bidder and meeting delivery dates are an integral part of the purchase contract resulting from this bid.
<b>NOTES/COMMENTS:</b>			

**P. WARRANTY**

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. The Vendor warrants for a period of one (1) year from the date of Acceptance that:

**INVITATION TO BID  
6744 OF**

			<b>a.</b> The Products perform according to all specific claims that the Vendor made in its response to the ITB,
			<b>b.</b> The product is suitable for the ordinary purposes for which such product is used; and,
			<b>c.</b> The product is suitable for any special purposes identified in the ITB or for which the State has relied on the Vendor's skill or judgment.
			<b>2.</b> Upon Breach of the warranty, the Vendor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the Vendor.
			<b>3.</b> If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the Vendor will refund the full amount of any payments that have been made.
			<b>4.</b> 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.

**NOTES/COMMENTS:**