

State of Nebraska - INVITATION TO BID ONE TIME PURCHASE

| | | | |
|-----------------------|--------------------|------|--------|
| Date | 4/18/23 | Page | 1 of 3 |
| Solicitation Number | 6770 OF | | |
| Opening Date and Time | 05/03/23 2:00 PM | | |
| Buyer | ROBERT TAYLOR (AS) | | |

DESTINATION OF GOODS
 DEPARTMENT OF AGRICULTURE
 BUREAU OF ANIMAL INDUSTRY
 245 FALLBROOK BLVD STE 200
 LINCOLN NE 68521-6730

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.

X **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.

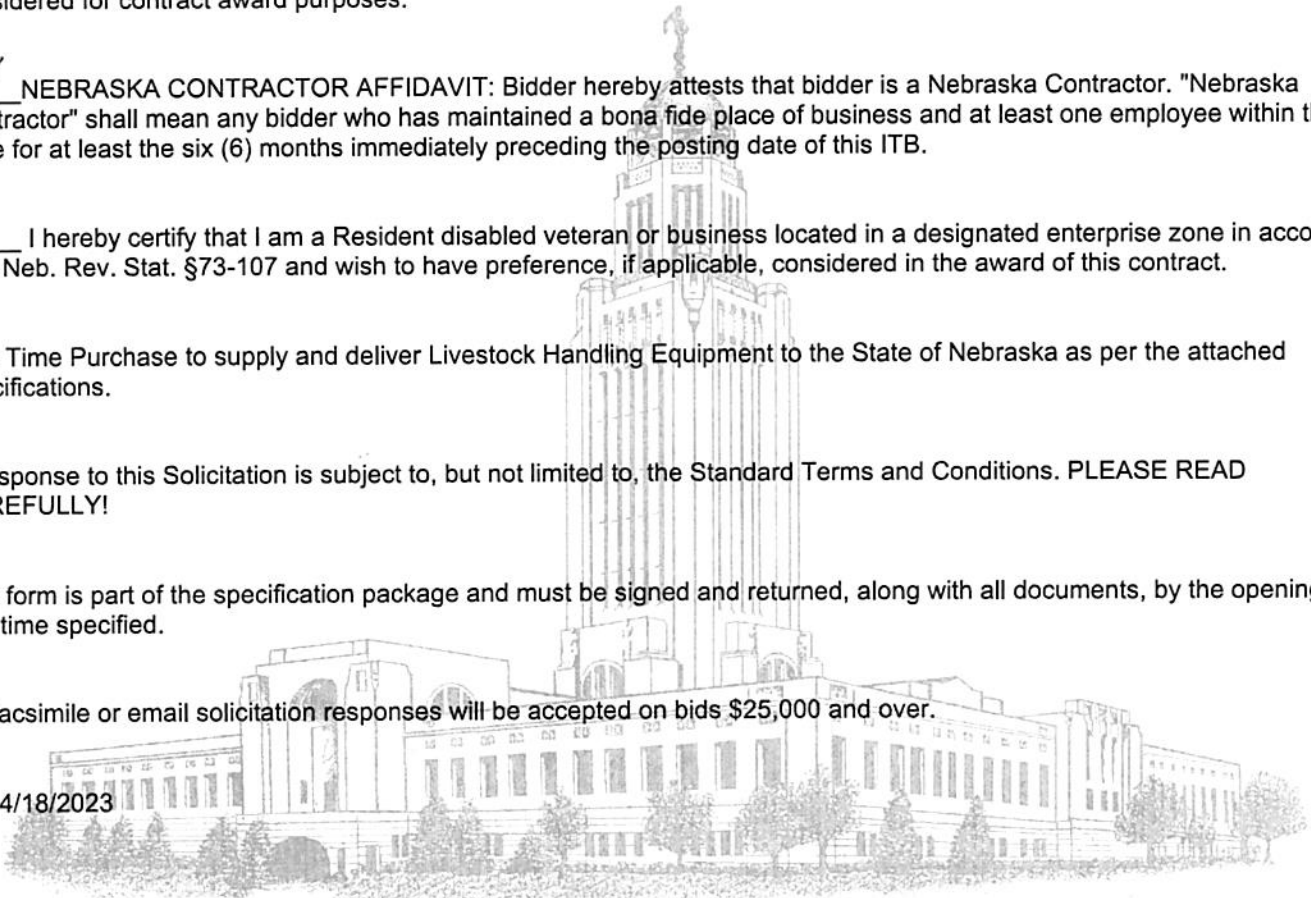
One Time Purchase to supply and deliver Livestock Handling Equipment to the State of Nebraska as per the attached specifications.

A response to this Solicitation is subject to, but not limited to, the Standard Terms and Conditions. **PLEASE READ CAREFULLY!**

This form is part of the specification package and must be signed and returned, along with all documents, by the opening date and time specified.

No facsimile or email solicitation responses will be accepted on bids \$25,000 and over.

RT, 4/18/2023



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 45 days after receipt of order. Failure to enter Delivery Date may cause quotation to be REJECTED.

Sign Here Mark Speck
 (Authorized Signature Mandatory - Form must be signed manually in ink or by DocuSign)

Enter Contact Information Below

VENDOR# _____
 VENDOR: Ogallala Ag Supply LLC
 Address: 420 Hwy 67 North
Ogallala, Ne 69153

Contact Mark Speck
 Telephone 308-726-5665
 Email ogallalag@yaho.com

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INVITATION

| Line | Description | Quantity | Unit of Measure | Unit Price | Extended Price |
|------|--|----------|-----------------|--------------|----------------|
| 1 | "THE GENERAL" HYDRAULIC CHUTE BASE CHUTE | 1.0000 | EA | <u>29950</u> | <u>29950</u> |
| 2 | NECK EXTENDER FOR "THE GENERAL" | 1.0000 | EA | <u>3125</u> | <u>3125</u> |
| 3 | PORTABLE KIT FOR "THE GENERAL" | 1.0000 | EA | <u>5950</u> | <u>5950</u> |
| 4 | STERNUM BAR FOR "THE GENERAL" | 1.0000 | EA | <u>425</u> | <u>425</u> |
| 5 | TRACTION BAR KIT FOR "THE GENERAL" | 1.0000 | EA | <u>430</u> | <u>430</u> |
| 6 | RH8700 CHUTE W/ VET CAGE 8' ALLEY AND LH 8 FT TUB | 1.0000 | EA | <u>23450</u> | <u>23450</u> |
| 7 | ELECTRIC/HYDRAULIC JACKS FOR MANUAL 8700 CHUTE | 1.0000 | EA | <u>4985</u> | <u>4985</u> |
| 8 | BUD FLOW FOR 8' TUB FOR MANUAL 8700 CHUTE | 1.0000 | EA | <u>1850</u> | <u>1850</u> |
| 9 | STERNUM BAR FOR MANUAL 8700 CHUTE | 1.0000 | EA | <u>425</u> | <u>425</u> |
| 10 | PORTABLE LH 18' ALLEY/8' TUB BASE ALLEY & TUB | 1.0000 | EA | <u>16000</u> | <u>16000</u> |
| 11 | ROLLING DOOR FOR PORTABLE ALLEY & TUB | 1.0000 | EA | <u>855</u> | <u>855</u> |
| 12 | BUD FLOW FOR 8' TUB FOR PORTABLE ALLEY & TUB | 1.0000 | EA | <u>1850</u> | <u>1850</u> |
| 13 | "THE HEELER" - PORTABLE CORRAL ALL INCLUSIVE | 1.0000 | EA | <u>38000</u> | <u>38000</u> |
| 14 | 12' LOADING CHUTE ADJUSTABLE | 1.0000 | EA | <u>5300</u> | <u>5300</u> |
| 15 | PORTABLE OPTION FOR LOADING CHUTE | 1.0000 | EA | <u>2400</u> | <u>2400</u> |

State of Nebraska - INVITATION TO BID

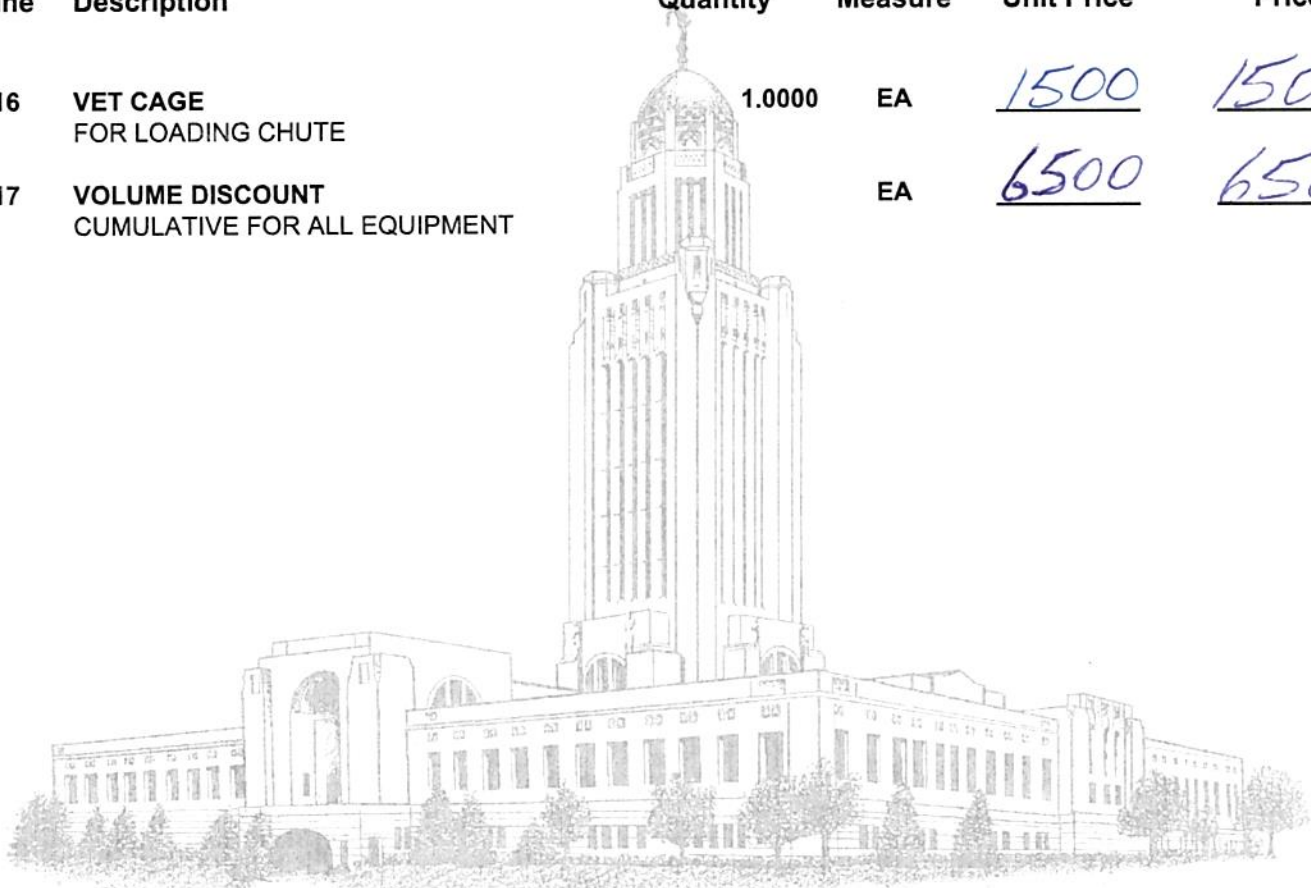
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| Line | Description | Quantity | Unit of Measure | Unit Price | Extended Price |
|------|---|----------|-----------------|-------------|----------------|
| 16 | VET CAGE FOR LOADING CHUTE | 1.0000 | EA | <u>1500</u> | <u>1500</u> |
| 17 | VOLUME DISCOUNT CUMULATIVE FOR ALL EQUIPMENT | | EA | <u>6500</u> | <u>6500</u> |



II. TERMS AND CONDITIONS

Contractors should complete Section II through VI as part of their proposal. Contractor is expected to read the Terms and Conditions and must initial either accept, reject, or reject and provide alternative language for each clause. The Contractor should also provide an explanation of why the Contractor rejected the clause or rejected the clause and provided alternate language using "Track Changes". Upon request an electronic copy of the proposal with "Track Changes" must be submitted in an editable Word format. By signing the solicitation, Contractor is agreeing to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the proposal. The State reserves the right to negotiate rejected or proposed alternative language. If the State and Contractor fail to agree on the final Terms and Conditions, the State reserves the right to reject the proposal. The State is soliciting proposals in response to the solicitation. The State reserves the right to reject proposals that attempt to substitute the Contractor's commercial contracts and/or documents for this solicitation.

The Contractor should submit with their proposal any license, user agreement, service level agreement, or similar documents that the Contractor wants incorporated in the Contract. Upon notice of Intent to Award, the Contractor 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 Contractor's proposal. 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 within Solicitation Response (Initial) | NOTES/COMMENTS: |
|---------------------|---------------------|--|-----------------|
| MS | | | |

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. Contractor's proposal 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 Contractor's submitted Proposal.

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

B. NOTIFICATION

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

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

Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered electronically to the parties at their respective addresses.

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

C. NOTICE (POC)

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

D. GOVERNING LAW (Statutory)

Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this 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. CHANGE ORDERS OR SUBSTITUTIONS

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

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

The Contractor shall prepare a written description of the work required due to the change and an itemized cost sheet for the change. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable unit prices if any, a pro-rated value, or through negotiations. The State shall not incur

a price increase for changes that should have been included in the Contractor's proposal, were foreseeable, or result from difficulties with or failure of the Contractor's proposal or performance.

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

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

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

F. VENDOR PERFORMANCE REPORT(S)

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

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.

G. NOTICE OF POTENTIAL CONTRACTOR BREACH

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

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

H. BREACH

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

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 Contractor, the State may, without unreasonable delay, make a good faith effort to make a reasonable purchase or contract to purchased goods in substitution of those due from the contractor. The State may recover from the Contractor as damages the difference between the costs of covering the breach. Notwithstanding any clause to the contrary, the State may also recover the contract price together with any incidental or consequential damages defined in UCC Section 2-715, but less expenses saved in consequence of Contractor's breach. OR In case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

The State's failure to make payment shall not be a breach, and the Contractor shall retain all available statutory remedies. (See Indemnity - Self-Insurance and Payment)

I. NON-WAIVER OF BREACH

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

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.

J. SEVERABILITY

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

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.

K. INDEMNIFICATION

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

1. GENERAL

The Contractor agrees to defend, indemnify, and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State for personal injury, death, or property loss or damage, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, Subcontractors, consultants, representatives, and agents, resulting from this contract, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

2. 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, Contractor 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.

L. ATTORNEY'S FEES

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

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.

M. ASSIGNMENT, SALE, OR MERGER

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

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

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

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

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

The Contractor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. § 81-145, to use this contract. The terms and conditions, including price, of the contract may not be amended. The State shall not be contractually obligated or liable for any contract entered into pursuant to this clause.

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

O. FORCE MAJEURE

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

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 granted 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.

P. CONFIDENTIALITY

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

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

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

III. CONTRACTOR DUTIES

A. INDEPENDENT CONTRACTOR / OBLIGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

B. EMPLOYEE WORK ELIGIBILITY STATUS

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

1. The Contractor 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.

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

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

The Contractor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State, and their Subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §§ 48-1101 through 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all Subcontracts for goods or services to be covered by any contract resulting from this solicitation.

D. COOPERATION WITH OTHER CONTRACTORS

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within Solicitation Response (Initial) | NOTES/COMMENTS: |
|------------------|------------------|---|-----------------|
| M5 | | | |

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

E. DISCOUNTS

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

F. PRICES

Prices quoted shall be net, including transportation and delivery charges fully prepaid by the contractor, F.O.B. destination named in the solicitation. No additional charges will be allowed for packing, packages, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern.

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

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

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

G. COST CLARIFICATION

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

H. PERMITS, REGULATIONS, LAWS

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

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

I. NOTICE OF POTENTIAL CONTRACTOR BREACH

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

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

J. ANTITRUST

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

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

K. CONFLICT OF INTEREST

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

By submitting a proposal, bidder certifies that no relationship exists between the bidder and any person or entity which either is, or gives the appearance of, a conflict of interest related to this Request for Proposal or project.

Bidder further certifies that bidder will not employ any individual known by bidder to have a conflict of interest nor shall bidder take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its contractual obligations hereunder or which creates an actual or appearance of conflict of interest.

If there is an actual or perceived conflict of interest, bidder shall provide with its proposal a full disclosure of the facts describing such actual or perceived conflict of interest and a proposed mitigation plan for consideration. The State will then consider such disclosure and proposed mitigation plan and either approve or reject as part of the overall bid evaluation.

L. STATE PROPERTY

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

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

M. SITE RULES AND REGULATIONS

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

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

N. ADVERTISING

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

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

O. DISASTER RECOVERY/BACK UP PLAN

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within Solicitation Response (Initial) | NOTES/COMMENTS: |
|------------------|------------------|---|-----------------|
| M/S | | | |

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

P. DRUG POLICY

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within Solicitation Response (Initial) | NOTES/COMMENTS: |
|------------------|------------------|---|-----------------|
| M/S | | | |

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

Q. WARRANTY

| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within Solicitation Response (Initial) | NOTES/COMMENTS: |
|------------------|------------------|---|-----------------|
| M/S | | | |

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

IV. PAYMENT

A. PROHIBITION AGAINST ADVANCE PAYMENT (Statutory)

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

B. TAXES (Statutory)

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

C. INVOICES

Invoices for payments must be submitted by the Contractor to the agency requesting the services with sufficient detail to support payment. The final invoice shall be mailed to the following address: NE Department of Agriculture – Animal & Plant Health Protection, P.O. Box 94756 Lincoln, NE 68509-4756. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

D. INSPECTION AND APPROVAL

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

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

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

E. PAYMENT (Statutory)

Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2403). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any goods and services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

F. LATE PAYMENT (Statutory)

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

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

The State's obligation to pay amounts due on the Contract for a fiscal years following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

H. RIGHT TO AUDIT (First Paragraph is Statutory)

The State shall have the right to audit the Contractor's performance of this contract upon a thirty (30) day written notice. Contractor shall utilize generally accepted accounting principles, and shall maintain the accounting records,

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

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

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 percent (1%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within ninety (90) days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

V. SCOPE OF WORK

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

A. SCOPE

It is the intent of this solicitation to issue a purchase order for the item(s) requested:

1. "The General" Hydraulic Chute
2. 8708-EF8 Manual Chute
3. Portable Alley/Tub System
4. "The Heeler" – All Inclusive Unit

All items proposed shall be of the latest manufacture in production as of the date of the solicitation and be of proven performance and under standard design complete as regularly advertised and marketed. All necessary materials for satisfactory performance of the supplies shall be incorporated into the Livestock Handling Equipment whether or not they may be specifically mentioned below.

Complete specifications, manufacturer's current descriptive literature and/or advertising data sheets with cuts or photographs must be included with the proposal for the IDENTICAL items proposed. Any information necessary to show compliance with these specifications not given on the manufacturer's descriptive literature and/or advertising data sheets must be supplied in writing on or attached to the proposal document. If manufacturer's information necessary to show compliance with these specifications is not attached to the proposal document, the Contractor may be required to submit requested information within three (3) business days of a written request. Failure to submit requested descriptive literature or advertising data sheets may be grounds to reject the proposal.

VI. TECHNICAL SPECIFICATIONS

A. CONTRACTOR INSTRUCTIONS

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

"YES" response means the Contractor guarantees they can meet this condition.

"NO" response means the Contractor 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 Contractor'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 Contractor's alternative is an acceptable alternative.

B. NON-COMPLIANCE STATEMENT

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|-----------------|----|--------------------------|--|
| ✓ | | | 1. Read these specifications carefully. Any and all exceptions to these specifications must be written on or attached to solicitation response. Any noncompliance may void your proposal. Non-compliance to any single specification can void your proposal. |
| ✓ | | | 2. It is the responsibility of Contractors to obtain information and clarifications as provided below. The State is not responsible for any erroneous or incomplete understandings or wrongful interpretations of this solicitation by any Contractor. |
| ✓ | | | 3. No interpretation related to the meaning of solicitation specifications or other pre-proposal documents will be made orally to any Contractor by the State. Any solicitation interpretation must be put in writing by the Contractor to: the State Purchasing Bureau, E-mail questions to SPB. as.materieelpurchasing@nebraska.gov by the last day to submit written questions per the Schedule of Events. (Inquiries received after the last day to submit written questions may not be addressed). |
| NOTES/COMMENTS: | | | |

C. TECHNICAL SPECIFICATIONS: "The General" Hydraulic Chute

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|-----------------|----|--------------------------|--|
| ✓ | | | 1. "The General" Base Chute |
| ✓ | | | 2. Neck Extender |
| ✓ | | | 3. Portable Kit |
| ✓ | | | 4. Sternum Bar |
| ✓ | | | 5. Traction Bar Kit |
| ✓ | | | 6. Only Arrowquip brand is acceptable for each specification listed above. |
| NOTES/COMMENTS: | | | |

D. TECHNICAL SPECIFICATION: 8708-EF8 Portable Manual Chute w/ Vet Cage

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|-----------------|----|--------------------------|--|
| ✓ | | | 1. Right Hand 8700 Chute |
| ✓ | | | 2. 8 ft Alley |
| ✓ | | | 3. Left Hand 8 ft tub |
| ✓ | | | 4. Electric Jack compatible with system |
| ✓ | | | 5. Bud flow for 8 ft tub |
| ✓ | | | 6. Sternum bar |
| ✓ | | | 7. Only Arrowquip brand is acceptable for each specification listed above. |
| NOTES/COMMENTS: | | | |

E. TECHNICAL SPECIFICATION: Portable Alley/Tub System

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|-----------------|----|--------------------------|--|
| ✓ | | | 1. Base Left Hand 18 ft Alley |
| ✓ | | | 2. 8 ft Tub |
| ✓ | | | 3. Rolling Door |
| ✓ | | | 4. Bud Flow for 8 ft Tub |
| ✓ | | | 5. Only Arrowquip brand is acceptable for each specification listed above. |
| NOTES/COMMENTS: | | | |

F. TECHNICAL SPECIFICATION: "The Heeler" Portable Corral System

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|-----------------|----|--------------------------|--|
| ✓ | | | 1. Should include all components that come standard from Arrowquip, the manufacturer of this product (The Heeler Portable Corral System Arrowquip) |
| NOTES/COMMENTS: | | | |

G. TECHNICAL SPECIFICATION: 12' Adjustable Loading Chute

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|---|----|--------------------------|--|
| ✓ | | | 1. Base Unit |
| ✓ | | | 2. Vet Cage |
| ✓ | | | 3. Rolling Door |
| ✓ | | | 4. Only Arrowquip brand is acceptable for each specification listed above. |
| <p>NOTES/COMMENTS: <i>There is not a rolling door but there is a portable option which I have included in my bid.</i></p> | | | |

H. ACCEPTABLE BRANDS

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|------------------------|----|--------------------------|--|
| ✓ | | | 1. Products proposed must be the brand AND model numbers as specified on each line of the Solicitation Document. The State will not be accepting alternatives to the brands specified (Arrowquip). |
| ✓ | | | 2. Equipment proposed shall be the latest current models in production as of the date of the solicitation and be of proven performance and under standard design, complete as regularly advertised and marketed and shall be delivered complete with all necessary parts, specified accessories, tools, and special features, whether or not they may be specifically mentioned below. |
| ✓ | | | 3. Used, demonstrator, prototype, or discontinued equipment is not acceptable. Complete specifications, manufacturer's descriptive literature and/or advertising data sheets with cuts or photographs may be required prior to an award and should be included with the proposal on the IDENTICAL equipment proposed. |
| ✓ | | | 4. Literature should be complete and the latest published. Any information necessary to show compliance with these specifications not given on the manufacturer's descriptive literature and/or advertising data sheets should be supplied in writing on or attached to the proposal document. Only Arrowquip Brand is acceptable for all items requested. proposal must meet or exceed the following requirements. |
| <p>NOTES/COMMENTS:</p> | | | |

I. DELIVERY ARO

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|--|----|--------------------------|--|
| ✓ | | | At the time of delivery, a designated State employee will sign the "invoice/packing slip." This signature will only indicate that the order has been received and that the items actually delivered agree with the delivery invoice. This signature does not indicate all items were received in good condition and/or that there is not possible hidden damage. |
| <p>NOTES/COMMENTS: <i>How will good condition be recognized?</i></p> | | | |

J. DELIVERY LOCATIONS / INSTRUCTIONS (CONTRACTOR AGREES THAT THEY CAN MEET THE DELIVERY LOCATIONS/INSTRUCTIONS)

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|-----------------|----|--------------------------|---|
| ✓ | | | 1. 4200 W 2nd St, Hastings, NE 68901 |
| ✓ | | | 2. Equipment must be delivered, unloaded, and set up at the address stated above. Nebraska Department of Agriculture (NDA) employees will not assist or be involved with the initial unloading and set up of the equipment at its destination. NDA staff will observe use of and take down of equipment before delivery is deemed complete. |
| NOTES/COMMENTS: | | | |

K. PACKAGING

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|-----------------|----|--------------------------|---|
| ✓ | | | 1. Packages are to be clearly marked with size, weight, color, quantity, and the purchase order number. |
| ✓ | | | 2. Packaging must be of suitable size and of sufficient strength to protect the contents during shipping, handling and storage. |
| NOTES/COMMENTS: | | | |

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. All orders must reference a purchase order number and the purchase order number must be referenced on the packing slip, and invoice. Invoices are to be sent to the "Invoice to" address on the purchase order. |
| NOTES/COMMENTS: | | | |

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. A guarantee of satisfactory performance by the contractor and meeting delivery dates are considered to be an integral part of the purchase contract resulting from this proposal invitation. |
| ✓ | | | 3. 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. |
| NOTES/COMMENTS: | | | |

N. AUTHORIZED DEALER & WARRANTY

| YES | NO | NO & PROVIDE ALTERNATIVE | |
|------------------------|----|--------------------------|---|
| ✓ | | | 1. To the extent required by the manufacturer, the Contractor shall be an authorized dealer. Contractor may be required to substantiate that he/she is an authorized dealer. Proof, if required, must be submitted to SPB within three (3) business days of the request and prior to the award of any contract. |
| ✓ | | | 2. The terms of the original manufacturer's standard warranty shall apply to all equipment acquired from this solicitation for the entire warranty period. |
| NOTES/COMMENTS: | | | |