

State of Nebraska - INVITATION TO BID ONE TIME PURCHASE

Date	5/1/23	Page	1 of 2
Solicitation Number	6781 OF		
Opening Date and Time	05/23/23 2:00 PM		
Buyer	BRENDA SENSIBAUGH (AS)		

DESTINATION OF GOODS
 EDUCATIONAL TELECOMM COMM
 CARROLL
 56263 HIGHWAY 98
 CARROLL NE 68723-2358

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.

NW 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.

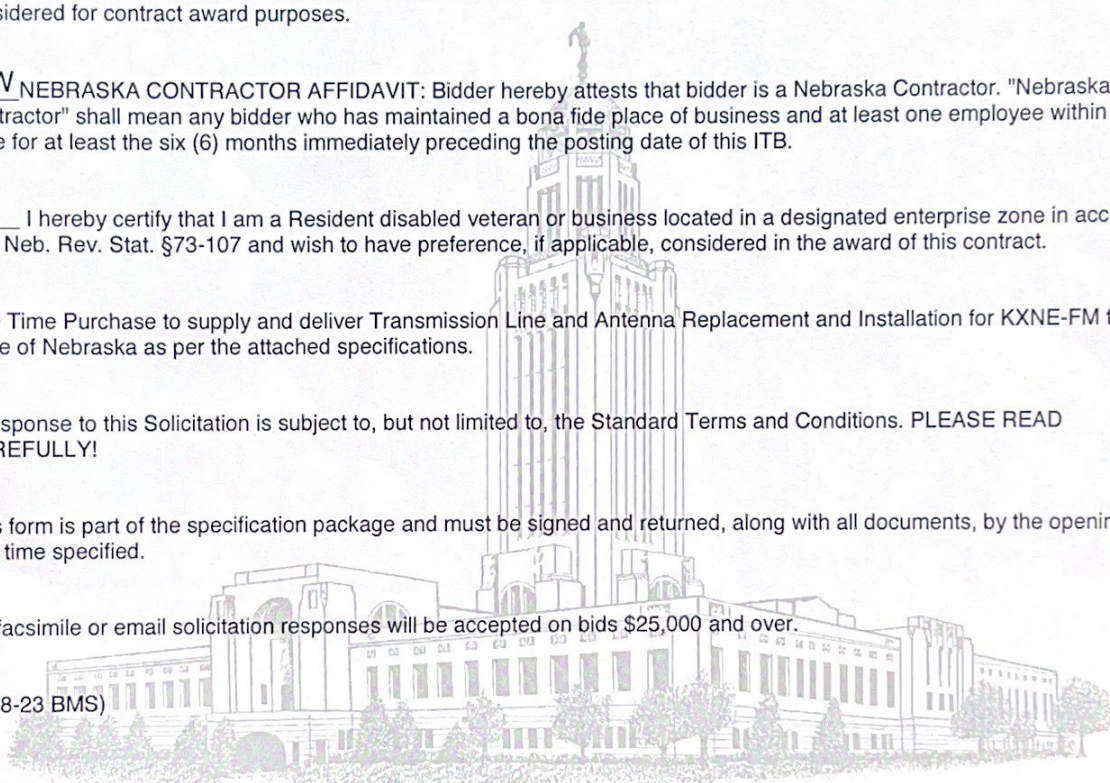
One Time Purchase to supply and deliver Transmission Line and Antenna Replacement and Installation for KXNE-FM to the State of Nebraska as per the attached specifications.

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.

(4-18-23 BMS)



BIDDER MUST COMPLETE THE FOLLOWING

DISCOUNT PAYMENT TERMS: 0 % 30 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 90-120 days after receipt of order. Failure to enter Delivery Date may cause quotation to be REJECTED.

Sign Here *[Signature]*
 (Authorized Signature Mandatory - Form must be signed manually in ink or by DocuSign)

Enter Contact Information Below

VENDOR# 2030099
 VENDOR: National Tower Controls
 Address: 46623 Highway 38 Suite #1
Hartford, SD 57033

Contact Nick Wagner
 Telephone 605-929-1928
 Email nick@nationaltowercontrols.com

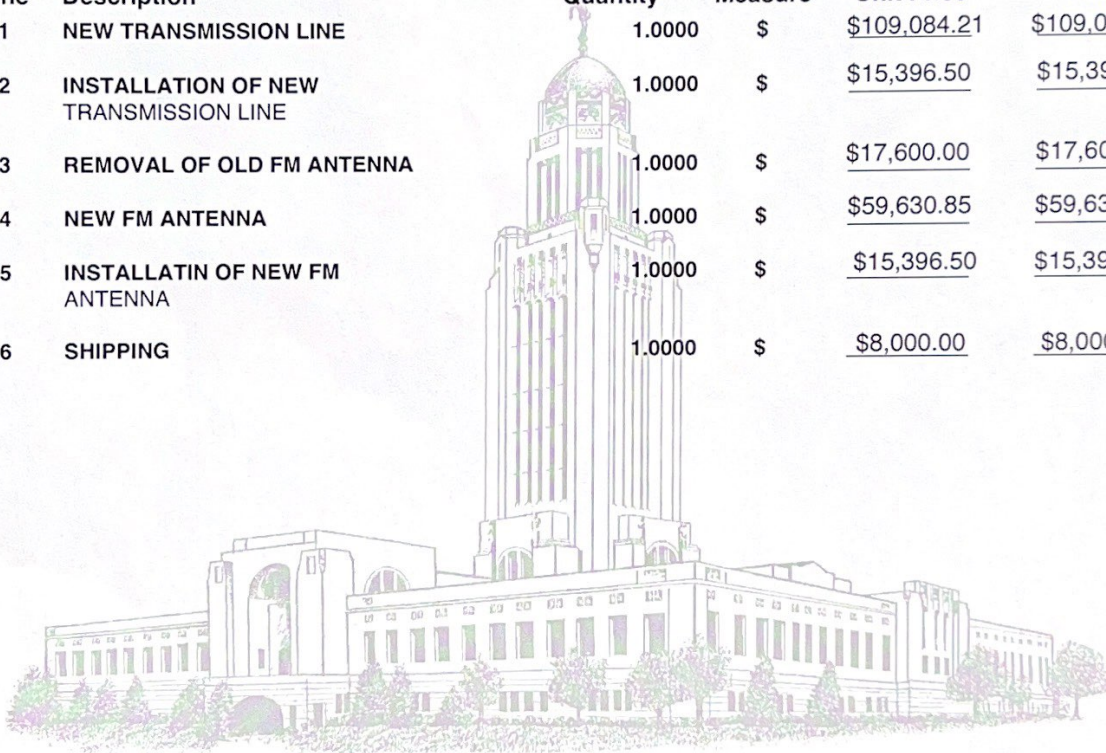
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INVITATION

Line	Description	Quantity	Unit of Measure	Unit Price	Extended Price
1	NEW TRANSMISSION LINE	1.0000	\$	<u>\$109,084.21</u>	<u>\$109,084.21</u>
2	INSTALLATION OF NEW TRANSMISSION LINE	1.0000	\$	<u>\$15,396.50</u>	<u>\$15,396.50</u>
3	REMOVAL OF OLD FM ANTENNA	1.0000	\$	<u>\$17,600.00</u>	<u>\$17,600.00</u>
4	NEW FM ANTENNA	1.0000	\$	<u>\$59,630.85</u>	<u>\$59,630.85</u>
5	INSTALLATIN OF NEW FM ANTENNA	1.0000	\$	<u>\$15,396.50</u>	<u>\$15,396.50</u>
6	SHIPPING	1.0000	\$	<u>\$8,000.00</u>	<u>\$8,000.00</u>



INVITATION TO BID

Number 6781 OF

The State of Nebraska (State), Department of Administrative Services (DAS), Materiel Division, State Purchasing Bureau (SPB), is issuing this solicitation for a one-time purchase contract, ITB Number 6781 OF for the purpose of selecting a qualified Contractor to provide **transmission line and antenna replacement and installation for KXNE-FM**. 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.

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

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

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<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

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 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.

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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

After Receipt of Order: After Receipt of Order

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 proposals 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

Bid: An offer or quote submitted by a bidder in a response to a written solicitation

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

Catalog/Non-Core: A printed or electronic list of products a bidder may provide at a discounted rate or discount off list price to the State. Initial contract award(s) is not based on Catalog/Non-Core items

Central Processing Unit: Any computer or computer system that is used by the State to store, process, or retrieve data or perform other functions using Operating Systems and applications software

Change Order: Document that provides amendments to an executed purchase order

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

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

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

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

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

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

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

Contract 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

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 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

Core List: Items specifically listed on the solicitation upon which a bid is evaluated for award.

Critical Program Error: Any Program Error, whether or not known to the State, which prohibits or significantly impairs use of the Licensed Software as set forth in the documentation and intended in the contract

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 an offer after opening to determine the bidder's responsibility, responsiveness to requirements, and to ascertain other characteristics of the offer that relate to determination of the successful award

Evaluation Committee: Committee(s) appointed by the requesting agency that advises and assists the procuring office in the evaluation of bids (offers made in response to written solicitations)

Extension: Continuance of a contract for a specified duration upon the agreement of the parties beyond the original Contract Period. Not to be confused with "Renewal Period"

Free on-Board Destination: The delivery charges are included in the quoted price and prepaid by the Bidder. Bidder is responsible for all claims associated with damages during delivery of product

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

Freight – Pre-Paid and Add: The delivery charges are paid by the shipper and agency pays after receipt of goods when invoiced.

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

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

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

Invalid 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

Licensed Software Documentation: The user manuals and any other materials in any form or medium customarily provided by the

Bidder to the users of the Licensed Software which will provide the State with sufficient information to operate, diagnose, and maintain the Licensed Software properly, safely, and efficiently

Mandatory: Required, compulsory, or obligatory

May: Discretionary, permitted; used to express possibility

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

Must: See “Mandatory”

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

Non-core: See “Catalog”.

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

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

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

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

Payroll & Financial Center: Electronic procurement system of record

Performance Bond: An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the Bidder fulfills any and all obligations under the contract

Platform: A specific hardware and Operating System combination that is different from other hardware and Operating System combinations to the extent that a different version of the Licensed Software product is required to execute properly in the environment established by such hardware and Operating System combination

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

Program Error: Code in Licensed Software which produces unintended results or actions, or which produces results or actions other than those described in the specifications. A program error includes, without limitation, any Critical Program Error

Program Set: The group of programs and products, including the Licensed Software specified in the solicitation, plus any additional programs and products licensed by the State under the contract for use by the State

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

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”

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

Release Date: The date of public release of the written 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 "Must"

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

Sole Source – Commodity: When an item is available from only one source due to the unique nature of the requirement, its contractor, or market conditions

Sole Source – Service: A service of such a unique nature that the contractor selected is clearly and justifiably the only practical source to provide the service. Determination that the contractor selected is justifiably the sole source is based on either the uniqueness of the service or sole availability at the location required

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 Bidder enters a contract to perform a portion of the work awarded to the bidder

System (see Module): Any collection or aggregation of two (2) or more Modules that is designed to function, or is represented by the Bidder as functioning or being capable of functioning, as an entity

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"

Work Day: See "Business Day"

ACRONYM LIST

ACH – Automated Clearing House

ARO – After Receipt of Order

BAFO – Best and Final Offer

COI – Certificate of Insurance

CPU – Central Processing Unit

DAS – Department of Administrative Services

F.O.B. – Free on Board

ITB – Invitation to Bid

NIGP – National Institute for Governmental Purchasing

PA – Participating Addendum

PCO: Procurement Contracts Officer

POC: Point of Contact

RFI – Request for Information

RFP – Request for Proposal

SPB – State Purchasing Bureau

I. PROCUREMENT PROCEDURE

A. GENERAL INFORMATION

The ITB is designed to solicit bids from qualified Bidders who will be responsible for providing **Transmission Line and Antenna Replacement and Installation for KXNE-FM.** at a competitive and reasonable cost. Terms and Conditions, Project Description and Scope of Work, Bid instructions, and Cost Proposal Requirements may be found in Sections II through VI.

The State may utilize this ITB to procure **Transmission Line and Antenna Replacement and Installation for KXNE-FM.** following the Intent to Award, provided the Bidders honor and agree to their bids in this ITB.

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

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 point of contact (POC) for the procurement is as follows:

Name: Brenda Sensibaugh, PCO
Agency: State Purchasing Bureau
Address: 1526 K Street, Suite 130
Lincoln, NE 68508

Telephone: 402-471-6500

E-Mail: as.materielpurchasing@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 member of the Evaluation Committee is empowered to make binding statements regarding this solicitation. The POC will issue any answers, clarifications, or amendments regarding this solicitation in writing. Only the SPB or awarding agency can award a contract. 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.

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.	Release solicitation	May 3, 2023
2.	Last day to submit written questions. Upload questions for 6781 OF via ShareFile to: https://nebraska.sharefile.com/r-rf54afae1c5f34eb3958694d9701f0193	May 15, 2023
3.	State responds to written questions through a solicitation "Addendum" and/or "Amendment" to be posted to the Internet at: https://das.nebraska.gov/materiel/bidopps.html#	May 17, 2023
4.	Electronic Bid Opening via Zoom: Upload electronic Bid submissions for 6781 OF via Sharefile to: https://nebraska.sharefile.com/r-r74ca8739d5ce451ab438591dad79dc17 Zoom Meeting Information: Topic: 6781 OF, 115622 OR Antenna One Time Purchase Time: May 23, 2023, 02:00 PM Central Time (US and Canada) Join Zoom Meeting https://us02web.zoom.us/j/2629176739?pwd=NkhobXNpOU94UmFmTG1wYmJqTXhpUT09 Meeting ID: 262 917 6739 Passcode: 5VwBuR 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.	May 26, 2023 2:00 PM Central Time
5.	Review for conformance with bid requirements	TBD
6.	Evaluation period	TBD
7.	Post "Notification of Intent to Award" to Internet at: http://das.nebraska.gov/materiel/purchasing.html	TBD
8.	Purchase Order finalization period	TBD
9.	Purchase Order award	TBD
10.	Purchase Order Issuance	TBD

D. WRITTEN QUESTIONS AND ANSWERS

Questions regarding the meaning or interpretation of any solicitation provision must be submitted in writing to SPB and clearly marked "ITB Number 6781 OF; **Transmission Line and Antenna Replacement and Installation for KXNE-FM.** Questions". POC is not obligated to respond to questions that are received late per the Schedule of Events.

Questions should be uploaded to ShareFile at:

<https://nebraska.sharefile.com/r-rf54afae1c5f34eb3958694d9701f0193>

Bidders 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 of a Bidder. The contract will not incorporate any known or unknown assumptions of a Bidder.

It is preferred that questions be sent via e-mail to as.materiel purchasing@nebraska.gov, but may be delivered by hand or by U.S. Mail. It is recommended that Bidders submit questions using the following format.

Solicitation Section Reference	Solicitation Page Number	Question

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

E. 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.

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 INVITATION TO BID

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

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-r74ca8739d5ce451ab438591dad79dc17>
- 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.
- c. **If the bidder submits the bid/bid documents as one (1) complete packet (preferred method), please use the following naming convention:**
 - 6781 OF Transmission Line and Antenna Replacement and Installation for KXNE-FM
NAME OF BIDDER Bid.
- d. **If the bidder submits the bid/bid documents as separate files, please use the following naming convention(s):**
 - 6781 OF Transmission Line and Antenna Replacement and Installation for KXNE-FM
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:**
 - 6781 OF Transmission Line and Antenna Replacement and Installation for KXNE-FM
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 in replying to this solicitation, including any activity related to bidding on this solicitation.

J. FAILURE TO COMPLY WITH INVITATION TO BID

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

1. Rejection of a Bidder's 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 Bidder from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.

K. BID CORRECTIONS

A bidder 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.

L. 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.

M. BID OPENING

Anyone may attend the opening. It is considered a public opening. The Buyer will read the names of the respondents. Depending upon the complexity of the bid for goods, the buyer may read the bids aloud or allow bids 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 Bidder, 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 Bidder will be notified of the release and it shall be the obligation of the submitting Bidder to take further action if it believes the information should not be released.

N. 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.

O. EVALUATION OF BIDS

All bids that are responsive to the solicitation will be evaluated based on the following:

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

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

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

Therefore, if a resident disabled veteran or business located in a designated enterprise zone submits a proposal in accordance with Neb. Rev. Stat. §73-107 and has so indicated on the 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.

P. BEST AND FINAL OFFER

If BAFO's 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 bidder. However, a bidder should provide its best offer in its original bid. Bidders should not expect that the State will request a BAFO.

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

R. 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 bidder bids that are not material, do not compromise the solicitation process or a bidder's bid, and do not improve a bidder'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 bidders; or,
9. Award one or more all-inclusive contracts.

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

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

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>

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

T. ALTERNATE/EQUIVALENT BIDS

Bidder 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. Bidder 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 proposal will be accepted as in strict compliance with all terms, conditions and specification, and the Bidder shall be held liable, therefore.

U. 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. Bidders 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 Bidder 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 proposals if all items are purchased but agrees to deliver individual items at the prices quoted.

V. EMAIL SUBMISSIONS

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

W. BID TABULATIONS

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

X. 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.

Y. RESIDENT BIDDER

Pursuant to Neb. Rev. Stat. §§ 73-101.01 through 73-101.02, a Resident Bidder shall be allowed a preference against a Non-resident Bidder from a state which gives or requires a preference to Bidders from that state. The preference shall be equal to the preference given or required by the state of the Nonresident Bidders. Where the lowest responsible bid from a resident Bidder is equal in all respects to one from a nonresident Bidder from a state which has no preference law, the resident Bidder shall be awarded the contract. The provision of this preference shall not apply to any contract for any project upon which federal funds would be withheld because of the provisions of this preference.

II. TERMS AND CONDITIONS

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 proposal 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:
NW			

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. Bidders 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.

B. NOTIFICATION

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

Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or five (5) calendar days following deposit in the mail.

Contractor Contract Manager	Brian Zittlau
Contractor	Nebraska Educational Telecommunications Commission
Contractor Street Address	1800 N 33 rd St.
Contractor City, State, Zip	Lincoln, NE 68503

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. BEGINNING OF WORK

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

F. AMENDMENT

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

G. CHANGE ORDERS OR SUBSTITUTIONS

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

The State and the Bidder, 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 Bidder may not claim forfeiture of the contract by reasons of such changes.

The Bidder 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 Bidder 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 Bidder's bid, were foreseeable, or result from difficulties with or failure of the Bidder's bid or performance.

No change shall be implemented by the Bidder 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.

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

H. VENDOR PERFORMANCE REPORT(S)

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

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

I. NOTICE OF POTENTIAL BIDDER BREACH

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

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.

J. BREACH

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

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 contractor. 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. (See Indemnity - Self-Insurance and Payment)

K. NON-WAIVER OF BREACH

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

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.

L. SEVERABILITY

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

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

M. INDEMNIFICATION

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

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.

N. ATTORNEY’S FEES

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

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

O. ASSIGNMENT, SALE, OR MERGER

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

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.

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

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

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.

Q. FORCE MAJEURE

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

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.

R. CONFIDENTIALITY

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

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. BIDDER DUTIES

A. INDEPENDENT BIDDER / OBLIGATIONS

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

It is agreed that the Bidder 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 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.

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 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 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:
NW			

Bidder 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 Bidder 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. Bidder is not required to compromise Bidder'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 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.

F. PRICES

Prices quoted shall be net, F.O.B. Destination – Pre-Paid and Add for transportation and delivery charges to the 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 an award is made or the solicitation is cancelled.

All prices, costs, and terms and conditions submitted in the bid shall remain fixed and valid commencing on the opening date of the bid until an award is made or the solicitation is cancelled.

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 bid 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 Response (Initial)	NOTES/COMMENTS:
NW			

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.

I. INSURANCE REQUIREMENTS

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative Response (Initial)	NOTES/COMMENTS:
		NW	Will submit COI once contract is received if awarded the bid.

The Bidder shall throughout the term of the contract maintain insurance as specified herein and provide the State a current Certificate of Insurance/Accord Form (COI) verifying the coverage. The Bidder shall not commence work on the contract until the insurance is in place. If Bidder subcontracts any portion of the Contract the Bidder must, throughout the term of the contract, either:

1. Provide equivalent insurance for each subcontractor and provide a COI verifying the coverage for the subcontractor;
2. Require each subcontractor to have equivalent insurance and provide written notice to the State that the Bidder has verified that each subcontractor has the required coverage; or,
3. Provide the State with copies of each subcontractor's Certificate of Insurance evidencing the required coverage.

The Bidder shall not allow any Subcontractor to commence work until the Subcontractor has equivalent insurance. The failure of the State to require a COI, or the failure of the Bidder to provide a COI or require subcontractor insurance shall not limit, relieve, or decrease the liability of the Bidder hereunder.

In the event that any policy written on a claims-made basis terminates or is canceled during the term of the contract or with in one (1) years of termination or expiration of the contract, the bidder shall obtain an extended discovery or reporting period, or a new insurance policy, providing coverage required by this contract for the term of the contract and one (1) years following termination or expiration of the contract.

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

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

1. WORKERS' COMPENSATION INSURANCE

The Bidder shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contactors' employees to be engaged in work on the project under this contract and, in case any such work is sublet, the Bidder shall require the Subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for

the state in which the work is to be performed, including Occupational Disease. **The policy shall include a waiver of subrogation in favor of the State. The COI shall contain the mandatory COI subrogation waiver language found hereinafter.** The amounts of such insurance shall not be less than the limits stated hereinafter. For employees working in the State, the policy must be written by an entity authorized by the State of Nebraska Department of Insurance to write Workers' Compensation and Employer's Liability Insurance for Nebraska employees.

2. COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE

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

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

REQUIRED INSURANCE COVERAGE		
COMMERCIAL GENERAL LIABILITY		
General Aggregate		\$2,000,000
Products/Completed Operations Aggregate		\$2,000,000
Personal/Advertising Injury		\$1,000,000 per occurrence
Bodily Injury/Property Damage		\$1,000,000 per occurrence
Fire Damage		\$50,000 any one fire
Medical Payments		\$10,000 any one person
Damage to Rented Premises		\$300,000 each occurrence
Contractual		Included
XCU Liability (Explosion, Collapse, and Underground Damage)		Included
Independent Contractors		Included
If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.		
WORKER'S COMPENSATION		
Employers Liability Limits		\$500K/\$500K/\$500K
Statutory Limits- All States		Statutory - State of Nebraska
Voluntary Compensation		Statutory
COMMERCIAL AUTOMOBILE LIABILITY		
Bodily Injury/Property Damage		\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability		Included
Motor Carrier Act Endorsement		Where Applicable
UMBRELLA/EXCESS LIABILITY		
Over Primary Insurance		\$5,000,000 per occurrence
MANDATORY COI SUBROGATION WAIVER LANGUAGE		
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."		
MANDATORY COI LIABILITY WAIVER LANGUAGE		
"Commercial General Liability & Commercial Automobile Liability policies shall be primary, and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory. State of Nebraska shall be included as additionally insured."		

3. EVIDENCE OF COVERAGE

The Bidder should furnish the State, prior to beginning work and upon, a certificate of insurance coverage complying with the above requirements to the attention of:

Agency: Nebraska State Purchasing Bureau
 Attention: Brenda Sensibaugh
 1526 K Street, Suite 130
 Lincoln NE 668508
Brenda.sensibaugh@nebraska.gov

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

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

4. DEVIATIONS

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

J. NOTICE OF POTENTIAL BIDDER BREACH

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

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 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.

K. ANTITRUST

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

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.

L. CONFLICT OF INTEREST

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

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 Request for Bid 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.

M. STATE PROPERTY

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

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.

N. SITE RULES AND REGULATIONS

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

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.

O. ADVERTISING

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

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.

P. DISASTER RECOVERY/BACK UP PLAN

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

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.

Q. DRUG POLICY

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

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.

R. WARRANTY

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

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.

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. **Email invoices to accounting@nebraskapublicmedia.org** 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. INSPECTION AND APPROVAL

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative Response (Initial)	NOTES/COMMENTS:
NW			NTC requests to invoice for materials only upon delivery to site, all remaining charges after work is completed.

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

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 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.

F. 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).

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 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.

H. 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 contractor be required to create or maintain documents not kept in the ordinary course of bidder'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 bidder.

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

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 three percent (3%) 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.

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 transmission line and antenna replacement and installation for KXNE-FM. 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 bid for the IDENTICAL items bid. 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 bid document. If manufacturer's information necessary to show compliance with these specifications is not attached to the bid document, the Bidder 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 bid.

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	
NW			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 bid. Non-compliance to any single specification can void your bid.
NW			2. It is the responsibility of Bidders 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 Bidder.
NW			3. No interpretation related to the meaning of solicitation specifications or other pre-bid documents will be made orally to any Bidder by the State. Any solicitation interpretation must be put in writing by the Bidder to the State Purchasing Bureau, any request for Bid interpretation must be put in writing and submitted to the SPB per the Schedule of Events.
NOTES/COMMENTS:			

C. TECHNICAL SPECIFICATIONS: TRANSMISSION LINE AND ASSOCIATED HARDWARE

YES	NO	NO & PROVIDE ALTERNATIVE	
NW			4. Removal of old transmission line and installation of new approx. 930' of FM transmission line with 50 Ohm 3 1/8" air dielectric rigid coax.
NW			5. New hangers, line pullers and misc. hardware required to mount transmission line and secure transmission line to tower that meets TIA-222H Specification.
NW			6. New hangers and hardware used for installation shall be of a type recommended by transmission line manufacturer.
NW			7. New line is to be installed on inside of tower. Existing line to be removed from inside tower. New line should be installed before old line

			is removed to minimize off air time. Required completion date prior to or on June 15, 2023.
NW			8. Transmission line should include "expansion joints" or "bellows" on the inner conductor to allow for temperature related expansion or contraction of inner conductor.
NW			9. Grounding kits should be installed on every 300' on vertical run of transmission line.
NW			10. New line is to be run from existing gas barrier inside building to matching section at center fed antenna. Existing gas barrier will be retained in new installation.
NOTES/COMMENTS:			

D. TECHNICAL SPECIFICATION: REMOVAL AND DISPOSAL FROM JOB SITE OF EXISTING TRANSMISSION LINE

YES	NO	NO & PROVIDE ALTERNATIVE	
NW			1. All line that is removed from tower shall be removed from premises by Bidder.
NW			2. Line from transmitter to existing gas barrier at ground level will be retained in new installation.
NOTES/COMMENTS:			

E. TECHNICAL SPECIFICATION: TRANSMISSION LINE INSTALLATION AND SAFETY

YES	NO	NO & PROVIDE ALTERNATIVE	
NW			1. Bidder shall install transmission line per manufacturers specifications.
NW			2. Bidder will install and replace all of the line.
NW			3. Does the crew have a climber certification program?
NW			4. Does the crew have a site safety plan (emergency phone numbers, site address, etc.?)
		Will provide upon request	5. Does the crew have a written rigging plan?
NW			6. Does the crew have a man rated hoist?
NW			7. Does the crew wear hard hats?

			8. For bidding distributor(s) and general contractors, provide in the NOTES/COMMENTS section below the name of transmission line installation tower crew company that will be used for this project. If subcontractor is being used, bidder must provide subcontractor references. Unsatisfactory references may result in disqualification.
NOTES/COMMENTS: National Tower Controls			

F. TECHNICAL SPECIFICATION: FM ANTENNA

YES	NO	NO & PROVIDE ALTERNATIVE	
NW			1. Install new FM transmit antenna. Antenna must be tuned to 89.3MHz (channel 207)
NW			2. Antenna should be 10 bays, side mount, center fed, omnidirectional, right hand circular polarization with a -.75° beam tilt.
NW			3. Tower specification: Tower is a Stainless G7. Top of steel is 938' AGL. Center of radiation of current. antenna is 896' AGL.
NW			4. ERP is 42kW (max 45kW) in the horizontal plane, 42kW (max 45kW) in the vertical plane. TPO (combined analog and digital) of transmitter is 9.85kW.
NW			5. Antenna should include radomes.
NW			6. Antenna must include matching section.
NW			7. Bidder is responsible for removal of old antenna from property.
NW			8. Bidder is responsible for tuning and proof of new antenna after installation.
NW			9. Bidder must include all hardware needed for mounting new antenna.
NW			10. Bidder must include removal of old antenna and installation of new antenna.
NOTES/COMMENTS:			

G. TECHNICAL SPECIFICATION: PERFORMANCE AND TESTING

YES	NO	NO & PROVIDE ALTERNATIVE	
NW			1. The transmission line and antenna must be fully tested with Proof of Performance documentation and operational upon completion of installation with written sign-off acceptance from NETC.
NW			2. Should there be a conflict regarding acceptable completion of performance testing, the State's opinion shall prevail.

NOTES/COMMENTS:

H. DELIVERY ARO

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Delivery desired within 90 days after receipt of order(s).

NOTES/COMMENTS:

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

YES	NO	NO & PROVIDE ALTERNATIVE	
NW			1. KXNE-TV/FM transmitter site, 56263 Highway 98, Carroll, NE 68723.
NW			2. Contact Operations Manager Robert Vos at 308-991-7443 at least three (3) business days prior to delivery.
NW			3. Bidder will be expected to provide equipment and crew necessary for delivery and off-loading of product(s). NETC will not provide equipment or crew for off-loading products at site.
NW			4. No loading dock available at site.

NOTES/COMMENTS:

J. PACKAGING

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

NOTES/COMMENTS:

K. ORDERS

YES	NO	NO & PROVIDE ALTERNATIVE	
NW			1. Orders will be placed either by, phone, e-mail or Internet (if available and not to the exclusion of the other methods).
NW			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:			

L. QUALITY

YES	NO	NO & PROVIDE ALTERNATIVE	
NW			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.
NW			2. A guarantee of satisfactory performance by the bidder and meeting delivery dates are considered to be an integral part of the purchase contract resulting from this bid invitation.
NW			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:			

M. GRAY MARKET PRODUCTS PROHIBITION

YES	NO	NO & PROVIDE ALTERNATIVE	
NW			<p>1. The State will not accept Gray Market Products for this solicitation. Gray Market is defined as the trade of a commodity through distribution channels which, while legal, are unofficial, unauthorized, or unintended by the original manufacturer. Gray Market items are not designed to be sold in a particular market and cannot be supported by the authorized importer because of various reasons.</p>
<p>NOTES/COMMENTS:</p>			

N. WARRANTY

YES	NO	NO & PROVIDE ALTERNATIVE	
NW			<p>1. The Bidder warrants for a period of one (1) year from the date of Acceptance that: (a) the Products perform according to all specific claims that the Bidder made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the State has relied on the Bidder's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Bidder will repair or replace (at no charge to the State) the Product whose nonconformance is discovered and made known to the Bidder. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Bidder will refund the full amount of any payments that have been made. 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.</p>
<p>NOTES/COMMENTS:</p>			



QUOTATION #2578

Date: May 24, 2023

Quote Number: 2578

To: Nebraska Educational Telecommunications

Location: Carroll, NE

Attention: Robert Vos

Phone: 308-991-7443

Email: rvos@netad.unl.edu

Reference: Cost estimate to provide and replace new 10 Bay FM and transmission line on one (1) 1,000' guyed tower near Carrol, NE.

Tower Scope of Work:

1. Provide rigging plan.
2. Procure and unload approximately 900' of 3-1/8" rigid coax line with elbows, hangers, and associated hardware.
3. Rig Tower.
4. Install new NTC provided Dielectric 10 Bay FM antenna w/Radomes.
5. Install new NTC provided line and associated hardware from existing gas-block to new antenna input.
6. Make customer rigid line sections as needed.
7. Purge line/antenna with nitrogen.
8. Sweep test line.
9. Remove and take possession of old coax line and antenna and remove from tower site.
10. Unrig tower.
11. Submit closeout photos and documentation as necessary to NET.

NTC Provided Material List:

- **(1) Dielectric 10 Bay FM Antenna w/Radomes**
- **(900') 3 1/8" Rigid Transmission line**
- **Elbows and Custom Length Transmission line**
- **Horizontal and Vertical Hangers**



QUOTATION #2578

Compensation for Tower Work

Labor: \$40,700.00

Materials: \$161,815.06

Est. Shipping: \$8,000.00

Tuning & Sweep Testing: \$6,900.00

Mileage: \$403.00

Travel Time: \$1,530.00

Subsistence: \$5,760.00

Subtotal: \$225,108.06





QUOTATION #2578

Terms and Conditions:

Totals are billed upon completion of the job. A 1% per month finance charge will be added to all invoices that are 30 days past due. Any work completed outside the scope of work will be billed at a time and material rate. This bid also considers the following:

- This quote is proprietary, confidential and a trade secret of National Tower Controls, LLC. This proposal is being provided for the exclusive use of our client and is not to be disclosed to any third parties.
- Federal, state, and/or local permits and/or taxes are not included.
- National Tower Controls, LLC two –man down day rate due to weather, customer furnished materials not available, or unforeseen events are charged at a rate of \$1,250.00 per day.
- National Tower Controls, LLC four –man down day rate due to weather, customer furnished materials not available, or unforeseen events are charged at a rate of \$2,500.00 per day.
- Normal site access by four-wheel drive construction vehicles.
- If site becomes muddy and construction equipment cannot traverse the terrain, customer or owner is responsible to make site accessible to contractor equipment or contractor will make it accessible at customer/owner expense.
- Non-frozen ground conditions.
- TIA 222-G “normal” soils are assumed with no underground obstructions.
- Normal weather and site conditions to allow personnel safe access to tower during daylight hours including ground winds below 20 mph, no precipitation, temperatures above 55 degrees F for all tower painting activities. Work stoppage due to conditions outside these parameters may result in additional charges.
- All customer furnished job materials will be on-site or otherwise available at the time the job is ordered to begin.
- Site civil construction such as roads, crane pads, drainage, landscaping, etc. is not included.
- Furnishing or installing site electrical or telephone service is not included.
- Furnishing or installing equipment shelter or shelter grounding is not included.
- Furnishing or installing antennas, coax, or other associated materials is not included.
- Bid assumes owner will allow RF compliance during daylight hours by reducing power or switching to stand-by antenna systems when workers are in RF fields above allowable thresholds.
- Customer agrees that neither party will solicit the other party’s employees for employment with its company or affiliates during the performance of this work or for one year thereafter.
- No prevailing, Union, or Davis-Bacon wages are included.
- No warranty on incandescent beacon bulbs or obstruction light bulbs used for tower re-lamping projects.
- Insurance for Existing Structures - The owner shall purchase and maintain “all-risks” property insurance, on a replacement cost basis protecting the existing structures against direct physical loss or damage.
- Loss of Use, Business Interruption, and Delay in Completion Insurance – The Owner, at the Owner’s option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner’s property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor for loss of use of the Owner’s property, due to fire or other hazards however caused.
- Waivers of Subrogation – The Owner and Contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of insurance.

Invoicing Terms:

National Tower Controls proposes to invoice for the work quoted above in the amount of **\$225,108.06** before any applicable taxes, if any, in the following terms.

Invoice #1 – 100% of material costs and shipping due upon delivery of materials to site (NET 30).

Invoice #2 – Remaining project costs upon completion of project (NET 30).



QUOTATION #2578

Payment Options:

National Tower Controls accepts the following methods of payments:



Credit/Debit cards are subject to all applicable transaction fees. Please contact us for more information or questions about our payment options.

Approvals:

Nick Wagner
Nick Wagner – National Tower Controls, LLC

5/24/2023
Date

Bid Acceptance:

Authorized Clients Signature

Date