

# State of Nebraska - INVITATION TO BID CONTRACT

|                              |                        |             |        |
|------------------------------|------------------------|-------------|--------|
| <b>Date</b>                  | 1/16/24                | <b>Page</b> | 1 of 3 |
| <b>Solicitation Number</b>   | 6856 OF                |             |        |
| <b>Opening Date and Time</b> | 02/21/24               | 2:00 pm     |        |
| <b>Buyer</b>                 | JOSHUA RIEKENBERG (AS) |             |        |

**DESTINATION OF GOODS**  
**MULTIPLE DELIVERY LOCATIONS**  
**PLEASE REFER TO DOCUMENTATION**  
**FOR DELIVERY ADDRESSES.**

Per Nebraska's Transparency in Government Procurement Act, DAS is required to collect statistical information regarding the number of contracts awarded to Nebraska contractors. This information is for statistical purposes only and will not be considered for contract award purposes.

\_\_\_\_ NEBRASKA CONTRACTOR AFFIDAVIT: Bidder hereby attests that bidder is a Nebraska Contractor. "Nebraska Contractor" shall mean any bidder who has maintained a bona fide place of business and at least one employee within this state for at least the six (6) months immediately preceding the posting date of this ITB.

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

Contract to supply and deliver Canteen Product Categories: Food, Ice Cream, Personal Hygiene, Health and Beauty, Household, School/Legal, Clothing, Dental, Pharmacy, and Beverages) to the State of Nebraska as per the attached specifications for a two (2) year period from date of award. The contract may be renewed for two (2) additional two (2) year periods when mutually agreeable to the vendor and the State of Nebraska.

(1/16/2024 JR)

## INVITATION

SEE ATTACHMENT A - PRICE SHEET

### BIDDER MUST COMPLETE THE FOLLOWING

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

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

**Sign**

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

Enter Contact Information Below

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

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

**State of Nebraska (State Purchasing Bureau)  
INVITATION TO BID FOR COMMODITIES CONTRACT**

|                                          |                                                  |
|------------------------------------------|--------------------------------------------------|
| <b>INVITATION TO BID NUMBER</b>          | <b>RELEASE DATE</b>                              |
| ITB 6856 OF                              | January 16, 2024                                 |
| <b>OPENING DATE AND TIME</b>             | <b>PROCUREMENT CONTACT</b>                       |
| February 21, 2024 2:00 p.m. Central Time | Joshua Riekenberg - Procurement Contract Officer |

**PLEASE READ CAREFULLY  
SCOPE**

The State of Nebraska (State), Department of Administrative Services (DAS), Materiel Division, State Purchasing Bureau (SPB), is issuing this solicitation for a commodity contract, ITB Number 6856 OF for the purpose of selecting a qualified Contractor to provide Canteen Product Categories: Food, Ice Cream, Personal Hygiene, Health and Beauty, Household, School/Legal, Clothing, Dental, Pharmacy, and Beverages options to the State of Nebraska. A more detailed description can be found in Section V. The resulting contract may not be an exclusive contract as the State reserves the right to contract for the same or similar goods from other sources now or in the future.

The term of the contract will be two (2) years commencing upon execution of the contract by the State and the Contractor (Parties). The Contract includes the option to renew for two (2) additional two (2) year periods upon mutual agreement of the Parties. The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Parties.

In the event that a contract with the awarded bidder(s) is cancelled or in the event that the State needs additional contractors to supply the solicited commodities, this ITB may be used to procure the solicited goods for up to eighteen (18) months from the date the Intent to Award is posted, provided that 1) the solicited goods will be provided by a bidder (or a successive owner) who submitted a bid pursuant to this ITB, 2) the bidder's bid was evaluated, and 3) the bidder will honor the bidder's original bid, including the proposed cost, allowing for any price increases that would have otherwise been allowed if the bidder would have received the initial award.

INFORMATION PERTINENT TO THIS INVITATION TO BID CAN BE FOUND ON THE INTERNET AT:  
<https://das.nebraska.gov/materiel/bidopps.html>

**IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602.04, State contracts in effect as of January 1, 2014, and contracts entered into thereafter must be posted to a public website. The resulting contract, the solicitation and the successful Contractor's bid or response will be posted to a public website managed by DAS, which can be found at: <https://statecontracts.nebraska.gov> and [https://www.nebraska.gov/das/materiel/purchasing/contract\\_search/index.php](https://www.nebraska.gov/das/materiel/purchasing/contract_search/index.php).

In addition and in furtherance of the State's public records statute (Neb. Rev. Stat. § 84-712 et seq.) all bids or responses received regarding this solicitation will be posted to the SPB website.

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

If the State determines it is required to release withheld 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 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, bid, or response to this Invitation to Bid for any purpose, and to authorize others to use the documents. Any individual or entity awarded a contract, or who submits a bid or response to this Invitation to Bid, specifically waives any copyright or other protection the contract, bid, or response to the Invitation to Bid 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 or response to this Invitation to Bid, and award of a contract. Failure to agree to the reservation and waiver will result in the bid or response to the Invitation to Bid being found non-responsive and rejected.

Any entity awarded a contract or submitting a bid or response to the Invitation to Bid 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 Invitation to Bid, 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 (ARO):** 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 (ACH):** Electronic network for financial transactions in the United States
- Award:** All purchases, leases, or contracts which are based on competitive bids will be awarded according to the provisions in the solicitation
- Best and Final Offer (BAFO):** In a competitive bid, the final offer submitted which contains contractor's most favorable terms for price
- Bid:** An offer, bid, or quote submitted by a contractor in a response to a written solicitation
- Bid Bond:** An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the contractor will not withdraw the bid
- Bidder:** A contractor who submits an offer 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 contractor 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 (CPU):** 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
- Centralized Canteen:** Located at Tecumseh State Correctional Institution, centralized canteen operations make sales, track inventory and is the location for canteen stock order deliveries.
- 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 Contractor

**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 Contractor

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

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

**Direct Orders:** Orders that are not carried in stock at the Central Canteen. These are items that are pre-approved by Nebraska Department of Correctional Services Administration. An incarcerated individual may purchase these items through the facility canteen. These orders will be delivered directly to the individual facility and not Central Canteen that is located in Tecumseh.

**Evaluation:** The process of examining an offer after opening to determine the contractor'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 (F.O.B.) Destination:** The delivery charges are included in the quoted price and prepaid by the contractor. Contractor is responsible for all claims associated with damages during delivery of product.

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

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

**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 (ITB):** A written solicitation used 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 Contractor 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/Must:** 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/Must and Shall/Will/Must

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

**Non-core:** See Catalog

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

**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 that an organization may have previously performed internally or for which an organization has a new need to an independent organization from which the process is purchased back

**Payroll & Financial Center (PFC):** 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 Contractor 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 (POC):** The person designated to receive communications and to communicate

**Pre-Bid Conference:** A meeting scheduled for the purpose of clarifying a written solicitation and related expectations

**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 that produces unintended results or actions or that 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:** Trade secrets, academic and scientific research work that is in progress and unpublished or other information that 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/Grievance:** A complaint about a governmental action or decision related to the solicitation or resultant contract, brought by a contractor 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



**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 used 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”

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

**Responsive Contractor:** A Contractor 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

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

**System (see Module):** Any collection or aggregation of two (2) or more Modules that is designed to function, or is represented by the Contractor 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 that 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 subcontractors 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 contractor 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:** Inclusive term for any Bidder or Contractor.

**Will:** See Mandatory/Must/Shall

**Work Day:** See Business Day

## ACRONYM LIST

**ARO** – After Receipt of Order

**ACH** – Automated Clearing House

**BAFO** – Best and Final Offer

**CCC-L** – Community Corrections Center – Lincoln

**CCC-O** – Community Corrections Center – Omaha

**CNVH** – Central Nebraska Veterans’ Home

**COI** – Certificate of Insurance

**DAS** – Department of Administrative Services

**DHHS** – Department of Health and Human Services

**ENVH** – Eastern Nebraska Veterans’ Home

**F.O.B.** – Free on Board

**ITB** – Invitation to Bid

**NCCW** – Nebraska Correctional Center for Women

**NCYF** – Nebraska Correctional Youth Facility

**NDCS** – Nebraska Department of Correctional Services

**NDVA** – Nebraska Department of Veterans’ Affairs

**NIGP** – National Institute for Governmental Purchasing

**NSP** – Nebraska State Penitentiary

**NVH** – Norfolk Veterans; Home

**OCC** – Omaha Correctional Center

**PA** – Participating Addendum

**RTC** – Reception and Treatment Center

**SPB** – State Purchasing Bureau

**TSCI** - Tecumseh State Correctional Institution

**WEC** – Work Ethic Camp

**WNVH** – Western Nebraska Veterans’ Home

# I. PROCUREMENT PROCEDURE

## A. GENERAL INFORMATION

This Invitation to Bid is designed to solicit bids from qualified Contractors who will be responsible for providing canteen product categories: Food, Ice Cream, Personal Hygiene, Health and Beauty, Household, School/Legal, Clothing, Dental, Pharmacy, and Beverages options to the State of Nebraska at a competitive and reasonable cost. Terms and Conditions, Project Description and Scope of Work, Bid instructions, and Cost Bid Requirements may be found in Sections II through VI.

Bids shall conform to all instructions, conditions, and requirements included in the solicitation. Prospective Contractors 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.

## 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:

ITB Number: 6856 OF  
Name: Joshua Riekenberg - Procurement Contract Officer(s)  
Agency: State Purchasing Bureau  
Address: 1526 K Street, Suite 130  
Lincoln, NE 68508  
Telephone: 402-471-6500  
E-Mail: [as.materielpurchasing@nebraska.gov](mailto:as.materielpurchasing@nebraska.gov)

From the date the solicitation is issued until the Intent to Award is issued, communication from the Contractor is limited to the POC listed above. After the Intent to Award is issued, the Contractor 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. Contractors 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 contractor'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                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | January 16, 2024                             |
| 2.       | Last day to submit written questions<br><br><a href="https://nebraskastategov.sharefile.com/r-r6175c84c1a5b40e1afe17c0757cd6cc3">https://nebraskastategov.sharefile.com/r-r6175c84c1a5b40e1afe17c0757cd6cc3</a>                                                                                                                                                                                                                                                                                                                                           | January 22, 2024                             |
| 3.       | State responds to written questions through a solicitation "Addendum" and/or "Amendment" to be posted to the Internet at:<br><a href="https://das.nebraska.gov/materiel/bidopps.html">https://das.nebraska.gov/materiel/bidopps.html</a>                                                                                                                                                                                                                                                                                                                  | January 25, 2024                             |
| 4.       | Electronic Bid Opening via Zoom Meeting<br><br>Join Zoom Meeting<br><br><a href="https://us02web.zoom.us/j/82432458588?pwd=R0l3OHkzb2V3RXAvVzRDTDZ4M1RiQT09">https://us02web.zoom.us/j/82432458588?pwd=R0l3OHkzb2V3RXAvVzRDTDZ4M1RiQT09</a><br><br>Meeting ID: 830 4302 4470<br>Passcode: 583246<br><br><b>Upload electronic Bid submissions for 6856 OF via ShareFile to:</b><br><br><a href="https://nebraskastategov.sharefile.com/r-r9afc83a3bc98445798697c22c2f60ea4">https://nebraskastategov.sharefile.com/r-r9afc83a3bc98445798697c22c2f60ea4</a> | February 21, 2024<br>2:00 PM<br>Central Time |

**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 6856 OF; Canteen Product Categories: Food, Ice Cream, Personal Hygiene, Health and Beauty, Household, School/Legal, Clothing, Dental, Pharmacy, and Beverages options to the State of Nebraska Questions". POC is not obligated to respond to questions that are received late per the Schedule of Events.

Contractors should present, as questions, any assumptions upon which the Contractor's bid is or might be developed. Bids will be evaluated without consideration of any known or unknown assumptions of a Contractor. The contract will not incorporate any known or unknown assumptions of a Contractor.

Questions should be uploaded using the ShareFile link provided in the ITB Schedule of Events, Section I.C. It is recommended that Contractors submit questions using the following format.

| Solicitation Section Reference | Solicitation Page Number | Question |
|--------------------------------|--------------------------|----------|
|                                |                          |          |

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

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

All Contractors must be authorized to transact business in the State and comply with all Nebraska Secretary of State Registration requirements. The Contractor 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 Contractor 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. Using 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. Colluding 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 Contractor shall include this clause in any subcontract entered into for the exclusive purpose of performing this contract.

Contractor shall report any violations of this clause throughout the bidding process and throughout the term of this contract for both the successful Contractor and its 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. The State discourages deviations and reserves the right to reject proposed deviations.

**H. SUBMISSION OF BIDS**

The State is only accepting electronic responses submitted in accordance with this ITB. The State will not accept bids by mail, email, voice, or telephone, unless otherwise explicitly stated in writing by the State. Bids must be submitted via ShareFile by the date and time of the bid opening per the Schedule of Events. No late bids will be accepted.

Pages may be consecutively numbered for the entire bid or may be numbered consecutively within sections. Figures and tables should be numbered and referenced in the text by that number. They should be placed as close as possible to the referencing text.

It is the responsibility of the bidder to check the website for all information relevant to this ITB to include addenda and/or amendments issued prior to the opening date. The website can be found here: <https://das.nebraska.gov/materiel/bidopps.html>. If the bidder's bid is presented in such a fashion that makes evaluation difficult or overly time consuming the State reserves the right to reject the bid as non-conforming.

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

The ShareFile link for uploading ITB response(s) is provided in the ITB Schedule of Events, Section I.C.

**\*\*\*UNLESS OTHERWISE NOTED, DO NOT SUBMIT DOCUMENTS  
THAT CAN ONLY BE ACCESSED WITH A PASSWORD\*\*\***

1. The Bid and Proprietary information should be uploaded as separate and distinct files.
  - a. If duplicated bids are submitted, the State will retain only the most recently submitted response.
  - b. If it is the bidder's intent to submit multiple bids, the bidder must clearly identify the separate submissions.
  - c. It is the bidder's responsibility to allow time for electronic uploading. All file uploads must be completed by the Opening date and time per the Schedule of Events. No late bids will be accepted.
  
2. ELECTRONIC BID FILE NAMES The bidder should clearly identify the uploaded ITB bid files. To assist in identification the bidder should use the following naming convention:
  - a. 6856 OF , Canteen Product Categories: Food, Ice Cream, Personal Hygiene, Health and Beauty, Household, School/Legal, Clothing, Dental, Pharmacy, and Beverages NAME OF BIDDER Bid
  - b. If multiple files are submitted for one bid, add number of files to file names, e.g.,
    - i. 6856 OF, Canteen Product Categories: Food, Ice Cream, Personal Hygiene, Health and Beauty, Household, School/Legal, Clothing, Dental, Pharmacy, and Beverages OF BIDDER Bid File 1 of 2;
    - ii. 6856 OF, Canteen Product Categories: Food, Ice Cream, Personal Hygiene, Health and Beauty, Household, School/Legal, Clothing, Dental, Pharmacy, and Beverages NAME OF BIDDER Bid File 2 of 2, etc.

The "Invitation to Bid for Commodities Contract" form must be signed manually in ink or by DocuSign and returned by the bid opening date and time along with the bidder's bid and any other requirements as stated in the Invitation to Bid document in order for the bidder's Invitation to Bid response to be evaluated.

By signing the "Invitation to Bid for Commodities Contract" form, the bidder guarantees compliance with the provisions stated in this Invitation to Bid.

**I. BID PREPARATION COSTS**

The State shall not incur any liability for any costs incurred by Contractors 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 Contractor's bid;
2. Withdrawal of the Intent to Award;
3. Withdrawal of the Award;
4. Negative documentation regarding vendor performance;
5. Termination of the resulting contract;
6. Legal action; or,
7. Suspension of the Contractor from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.

**K. BID CORRECTIONS**

A contractor may correct a mistake in a bid prior to the time of opening by giving written notice to the State of intent to withdraw the bid for modification or to withdraw the bid completely. Changing a bid after opening may be permitted if the change is made to correct a minor error that does not affect price, quantity, quality, delivery, or contractual conditions. In case of a mathematical error in extension of price, unit price shall govern.

**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 Contractor and at Contractor'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 contractor, in accordance with the solicitation and state statute, will not be posted. If the state determines submitted information should not be withheld, in accordance with the [Public Records Act](#), or if ordered to release any withheld information, said information may then be released. The submitting contractor will be notified of the release and it shall be the obligation of the submitting contractor to take further action, if it believes the information should not be released.

**N. INVITATION TO BID 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 as follows:

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

**O. EVALUATION OF BIDS**

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

1. Neb. Rev. Stat. § 81-161 allows the State to consider a variety of factors, including, but not limited to, 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 Notice or any Vendor Improvement Request (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.

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

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

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

- a. Documentation from the United States Armed Forces confirming service;
- b. Documentation of discharge or otherwise separated characterization of honorable or general (under honorable conditions);
- c. 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
- d. 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 best and final offers (BAFO) are requested by the State and submitted by the contractor, they will be evaluated (using the stated BAFO criteria) and ranked by the Evaluation Committee. The State reserves the right to conduct more than one BAFO. The award will then be granted to the lowest responsible contractor. However, a contractor should provide its best offer in its original bid. Contractors should not expect that the State will request a BAFO.

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

**R. AWARD**

The State reserves the right to evaluate bids and award contracts in a manner using criteria selected at the State's discretion and in the State's best interest. After evaluation of the bids, or at any point in the solicitation process, the State of Nebraska may take one or more of the following actions:

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

The 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: <https://das.nebraska.gov/materiel/bidopps.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: [https://das.nebraska.gov/materiel/docs/pdf/ProtestGrievanceWithGuidance\\_08042021.pdf](https://das.nebraska.gov/materiel/docs/pdf/ProtestGrievanceWithGuidance_08042021.pdf)

**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 or his or her designee will be the sole judge of equivalency. The Contractor 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. CORE LIST AND CATALOG/NON-CORE**

The State of Nebraska intends to enter into a Contract(s) for state agencies and/or facilities. The contract(s) will be for a list of common use items identified as a Core List and additional items identified as a Catalog/Non-Core List. Catalog/Non-Core List items shall be represented by a catalog or current manufacturer price list(s) containing items not called out in the Core List, as shown in Attachment A, 6856 OF, BID SHEET.

1. The Core List shall contain the most repetitively purchased items and will represent those products which the State wishes to establish as standard items based upon their value to the State in terms of quality and price. The Core List shall be subject to a greater discount than the Catalog/Non-Core item list. The State will not accept substitutions on the products listed on the Core List.
2. The Core List identifies the most commonly purchased items but is not a complete list of items purchased by the State, nor does it guarantee future purchase of these products. The State reserves the right to add or remove items from the Core Item list based on usage.
3. Catalog/Non-Core List items are defined as those additional items available from the contractor not listed as part of the Core List. Prices for Catalog/Non-Core items shall be determined by applying the quoted discount for the item(s)/category to the manufacturer's current catalog or manufacturer contractor's price list(s). The discount percentage for the Catalog/Non-Core items shall remain firm for the duration of the contract period.
4. All items not included on the Core List shall be considered Catalog/Non-Core Items.
5. At the request of the State Purchasing Bureau, the contractor shall block availability on certain Catalog/Non-Core items as identified by State Purchasing Bureau (i.e. printing, weapons, furniture, vehicles, micrographic equipment/copiers, mail equipment, and office supplies).
6. Any quantities stated are estimated annual quantities and shall not be construed to be either a minimum or a maximum. The State will not accept substitutions.
7. A manufacturer's model/number has been provided for each item, if requested.
8. In those cases where items may have been more than one brand name, the contractor may submit a bid on either brand. Please indicate which brand was proposed. Contractor must complete Attachment A, 6856 OF, BID SHEET. Pay special attention to the unit of measure.



9. Prices for Catalog/Non-Core items shall be determined by applying the quoted discount for the item to the manufacturer's current catalog or price list. The percentage discount for the items shall remain firm for the duration of the contract period. Bidder Contractor must clearly state the date of the catalog or price list used and provide a copy of the catalog to the State Purchasing Bureau upon request.
10. The pricing structure, consisting of all pricing formulas and pertinent information, for all non-core items must be clearly defined and documented for future auditing purposes.
11. The percentage discount rate for Catalog/Non-Core items or categories will not decrease during the life of the contract.
12. A firm percentage rate must be quoted by item or category, but a percentage range will not be considered by item or category.
13. Catalog/Non-Core Categories have been identified as follows on Attachment A Catalog Bid Sheet (and vendor catalog items should include the following categories):
  - a. Food (excluding core items)
  - b. Personal Hygiene (excluding core items)
  - c. Health & Beauty (excluding core items)
  - d. Household (excluding core items)
  - e. School/Legal (excluding core items)
  - f. Clothing (excluding core items)
  - g. Dental (excluding core items)
  - h. Pharmacy (excluding core items)
  - i. Beverage (excluding core items)
  - j. Ice Cream (excluding core items)
  - k. Footwear
  - l. Religious items
  - m. Other/Miscellaneous
14. After award of the contract(s), the contractor shall supply additional copies of the current catalog or price list used for this solicitation for distribution to any requesting state agency at no charge within ten (10) business days of request.
15. Additional catalogs and/or price lists may be required and shall be provided without charge.
16. Any catalog or price list revisions which occur during the duration of the contract shall be provided upon request and without charge.
17. Usage reports may be requested by the State Purchasing Bureau. The reporting period may be determined based on need and may include the following:
  - a. Fill rate information for Core List and Catalog/Non-Core items, statewide and by agency to include the number of orders received, orders processed, back orders, and partially filled orders.
  - b. Usage reports by agency and statewide indicating the numbers of each Core List and Catalog/Non-Core item sold.
18. Any additional report the State Purchasing Bureau may deem necessary

19. Contractor will not substitute any Core List item that has been awarded without prior written approval of State Purchasing Bureau.

**U. ALTERNATE/EQUIVALENT BIDS**

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

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

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

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

**W. ALTERNATIVE SUBMISSION METHODS PROHIBITED**

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

**X. BID TABULATIONS**

Bid tabulations are available on the website at: <https://das.nebraska.gov/materiel/bidopps.html>.

**Y. REJECTION OF BIDS**

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

**Z. RESIDENT BIDDER**

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

## II. TERMS AND CONDITIONS

By signing the solicitation, Contractor agrees to be legally bound by all the accepted terms and conditions as well as 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 Contractor 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 Contractor's commercial contracts and/or documents for this solicitation.

The Contractor should submit with their bid any license, user agreement, service level agreement, or similar documents that the Contractor wants incorporated in the Contract. Upon notice of Intent to Award, the Contractor must submit a copy of these documents in an editable Word format. The State will not consider incorporation of any document not submitted with the Contractor's 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

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

1. Invitation to Bid and Addenda;
2. Amendments to the solicitation;
3. Questions and Answers;
4. Contractor's 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 Contractor'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

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

Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered personally; electronically, return receipt requested; or mailed, return receipt requested. All notices, requests, or communications shall be deemed effective upon receipt. Either Party may change its address for notification purposes by giving notice of the change, and setting forth the new address and an effective date.

### C. NOTICE (POC)

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

### D. GOVERNING LAW (Nonnegotiable)

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

action to enforce the provisions of this contract must be brought in the State of Nebraska per state law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final contract, including but not limited to the clauses concerning third-party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

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

**E. AMENDMENT**

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

**F. CHANGE ORDERS OR SUBSTITUTIONS**

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

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

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

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

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

**G. RECORD OF VENDOR PERFORMANCE**

The State may document the vendor's performance, which may include, but is not limited to, the customer service provided by the vendor, the ability of the vendor, the skill of the vendor, and any instance(s) of products or services delivered or performed which fail to meet the terms of the purchase order, contract, and/or Invitation to Bid specifications. In addition to other remedies and options available to the State, the State may issue one or more notices to the vendor outlining any issues the State has regarding the vendor's performance for a specific contract ("Vendor Performance Notice"). The State may also document the Vendor's performance in a report, which may or may not be provided to the vendor ("Vendor Improvement Request"). The Vendor shall respond to any Vendor Performance Notice or Vendor Improvement Request in accordance with such notice or request. At the sole discretion of the State, such Vendor Performance Notices and Vendor Improvement Requests may be placed in the State's records regarding the vendor and may be considered by the State and held against the vendor in any future contract or award opportunity.

**H. NOTICE OF POTENTIAL CONTRACTOR BREACH**

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

**I. BREACH**

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 email, read-receipt requested; Certified Mail, Return Receipt Requested; or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive

the right to immediately terminate the contract for the same or different contract breach which may occur at a different time.

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

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

**J. NON-WAIVER OF BREACH**

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.

**K. SEVERABILITY**

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

**L. INDEMNIFICATION**

**1. GENERAL**

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

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

The State is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01. If there is a presumed loss under the provisions of this contract, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 through 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (§ 81-8,294), Tort (§ 81-8,209), and Contract Claim Acts (§ 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this contract to the extent provided by law.

**M. ATTORNEY'S FEES**

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.

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

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

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

**O. CONTRACTING WITH OTHER POLITICAL SUBDIVISIONS OF THE STATE OR ANOTHER STATE**

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

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

**P. FORCE MAJEURE**

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 an unforeseeable 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.

**Q. CONFIDENTIALITY**

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.

**R. EARLY TERMINATION**

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.
2. The State, at its sole discretion, may terminate the contract for any reason upon thirty (30) calendar days' written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract. In the event of termination the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
3. The State may terminate the contract immediately for the following reasons:
  - a. if directed to do so by statute;
  - b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
  - c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
  - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
  - e. an involuntary proceeding has been commenced by any party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
  - f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
  - g. Contractor intentionally discloses confidential information;
  - h. Contractor has or announces it will discontinue support of the deliverable; and,
  - i. In the event funding is no longer available.

**S. CONTRACT CLOSEOUT**

Upon termination of the contract for any reason the Contractor shall within thirty (30) days, unless stated otherwise herein:

1. Transfer all completed or partially completed deliverables to the State;
2. Transfer ownership and title to all completed or partially completed deliverables to the State;
3. Return to the State all information and data, unless the Contractor is permitted to keep the information or data by contract or rule of law. Contractor may retain one copy of any information or data as required to comply with applicable work product documentation standards or as are automatically retained in the course of Contractor's routine back up procedures;
4. Cooperate with any successor contractor, person or entity in the assumption of any or all of the obligations of this contract;
5. Cooperate with any successor contractor, person or entity with the transfer of information or data related to this contract;
6. Return or vacate any state owned real or personal property; and,
7. Return all data in a mutually acceptable format and manner.

Nothing in this section should be construed to require the Contractor to surrender intellectual property, real or person property, or information or data owned by the Contractor for which the State has no legal claim.

### **III. CONTRACTOR DUTIES**

#### **A. INDEPENDENT CONTRACTOR / OBLIGATIONS**

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

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

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

By-name personnel commitments made in the Contractor's 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 Contractor warrants that all persons assigned to the project shall be employees of the Contractor or a subcontractor and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor or a subcontractor to fulfill the terms of the contract shall remain under the sole direction and control of the Contractor or the subcontractor respectively.

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

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

If the Contractor intends to use any subcontractor, the subcontractor's level of effort, tasks, and time allocation must be clearly defined in the Contractor's bid. The Contractor 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. If the Contractor subcontracts any of the work, the Contractor agrees to pay any and all subcontractors in accordance with the Contractor's agreement with the respective subcontractor(s).

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

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

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

#### **B. EMPLOYEE WORK ELIGIBILITY STATUS**

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing work within the State. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.



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

1. The Contractor must complete the United States Citizenship Attestation Form, available on the DAS website at [https://das.nebraska.gov/materiel/purchase\\_bureau/vendor-info.html](https://das.nebraska.gov/materiel/purchase_bureau/vendor-info.html). The completed United States Attestation Form should be submitted with the solicitation response.
2. If the Contractor indicates on the attestation form that he or she is a qualified alien, the Contractor agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

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

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

**D. COOPERATION WITH OTHER CONTRACTORS**

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

**E. DISCOUNTS**

Prices quoted shall be inclusive of ALL trade discounts. Cash discount terms of less than thirty (30) days will not be considered as part of the 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, including transportation and delivery charges fully prepaid by the contractor, F.O.B. destination named in the solicitation. No additional charges will be allowed for packing, packages, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern.

Prices submitted on the cost bid form, once accepted by the State, shall remain fixed for the first one (1) year of the contract. Any request for a price increase subsequent to the first one (1) year of the contract shall not exceed two and one half percent (2.5%) of the price bid for the period. Increases shall not be cumulative and will only apply to that period of the contract. The request for a price increase must be submitted in writing to the State Purchasing Bureau a minimum of 120 days prior to the end of the current contract period. Documentation may be required by the State to support the price increase.

The discount percentage for the Catalog/Non-Core items shall remain firm for the duration of the contract. Contractor's catalog/price list can change but the State's discount shall remain firm. Items shall be represented by a catalog or current supplier/vendor price list(s) for any items that are not called out in the Core List.

The State reserves the right to deny any requested price increase. No price increases are to be effective or 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**

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

**I. NOTICE OF POTENTIAL CONTRACTOR BREACH**

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

**J. ANTITRUST**

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

**K. CONFLICT OF INTEREST**

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 Invitation to 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.

**L. STATE PROPERTY**

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

**M. SITE RULES AND REGULATIONS**

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

**N. NDCS SECURITY**

1. CONTRACTOR'S personnel shall be subject to Nebraska Department of Correctional Services' (NDCS) background security checks prior to their arrival on site and will carry proper identification with them at all times while on facility grounds.

2. CONTRACTOR shall make its employees aware of the provisions of Neb. Rev. Stat. § 28-322.01, which state that a person commits the offense of sexual abuse of an inmate or parolee if such person subjects an inmate or parolee to sexual penetration or sexual contact, because an inmate or parolee is not legally capable of giving consent to any such relationship. Neb. Rev. Stat. § 28-322 states that individuals “working under contract with the department” are included in the list of persons prohibited from having sexual relations with one or more of NDCS’ inmates. CONTRACTOR will promptly notify NDCS if allegations of sexual abuse or contact become known.
3. CONTRACTOR shall make his/her employees aware of the Nebraska Department of Correctional Services, Policy 112.31 (Code of Ethics and Conduct). CONTRACTOR may be required to sign and return documentation showing receipt of NDCS Policy 112.31 (Code of Ethics and Conduct).
4. CONTRACTOR shall inform his/her personnel of the Nebraska Department of Correctional Services Tobacco Policy, which states that tobacco and tobacco-related products are contraband and must not be carried into any NDCS-owned or controlled property. Such products must remain in CONTRACTOR’S locked vehicle while on NDCS-owned or controlled property.
5. CONTRACTOR and his/her personnel may be subject to pat searches and tool inventory upon arrival and departure from NDCS facilities.
6. Wireless devices and/or cellular phones are prohibited at NDCS facilities unless prior approval is given. Wireless devices include type smart watches or other electronic devices with internet connection. If wireless devices are necessary for use on site at NDCS, CONTRACTOR will seek prior approval to carry such devices by requesting the Cellular Device Institutional Use Report form. All persons are prohibited from providing a cellphone/electronic communication device to an inmate of any facility, per Policy104.05. Electronic Communication Devices.

**O. DHHS AND DVA Security**

1. Contractors are prohibited from using or distributing tobacco materials anywhere on DHHS and DVA facility campuses/grounds. This No-Tobacco Policy applies seven (7) days a week, twenty four (24) hours a day. Tobacco materials may include, but are not limited to, cigarettes, pipes, pipe tobacco, tobacco substitutes, electronic cigarettes, chewing tobacco, cigars, matches, clove cigarettes, cigarette lighters, and other smoking and tobacco-related paraphernalia.
2. Contractor’s personnel will abide by using agency and facility location requirements, including personnel carrying proper identification upon their person. All personnel shall comply with NDVA policy related to security.
3. Contraband shall not be introduced into any state facility; such items include, but are not limited to firearms, ammunition, drugs, tobacco, alcohol, etc. All personnel may be subject to search upon entering and exiting facility grounds.

**P. ADVERTISING**

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its goods and services are endorsed or preferred by the State. Any publicity releases pertaining to the project shall not be issued without prior written approval from the State.

**Q. NEBRASKA TECHNOLOGY ACCESS STANDARDS (Nonnegotiable)**

The State of Nebraska is committed to ensuring that all information and communication technology (ICT), developed, leased, or owned by the State of Nebraska, affords equivalent access to employees, program participants and members of the public who have disabilities as it affords to employees, program participants and members of the public who do not have disabilities.

ICT means information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Contractor hereby agrees ICT includes computers and peripheral equipment, information kiosks and transaction machines, telecommunications equipment, customer premises equipment, multifunction office machines, software, applications, web sites, videos, and electronic documents. For the purposes of these assurances, ICT does not include ICT that is used exclusively by a contractor.

If the Contractor is providing a product or service that contains ICT and if the provided ICT is public-facing or the user will directly interact with it, the provided ICT must provide equivalent access or be modified during implementation to

afford equivalent access to employees, program participants, and members of the public who have and who do not have disabilities. The Contractor may comply with this section by complying with Section 508 of the Rehabilitation Act of 1973, as amended, and its implementing standards adopted and promulgated by the U.S. Access Board.

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

The Contractor shall have a disaster recovery and back-up plan to allow for continued delivery of goods or services under the specifications of the contract in the event of a disaster. The plan should include disaster contingency details related to equipment, personnel, facilities, and transportation. A copy of the disaster recovery and back-up plan should be provided upon request to the State.

**S. DRUG POLICY**

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

**T. WARRANTY**

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

**U. TIME IS OF THE ESSENCE**

Time is of the essence with respect to Contractor's performance and deliverables pursuant to this contract.

## IV. PAYMENT

### A. PROHIBITION AGAINST ADVANCE PAYMENT (Nonnegotiable)

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 (Nonnegotiable)

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

### C. INVOICES (Nonnegotiable)

Invoices for payments must be submitted by the Contractor to the agency requesting the goods or services with sufficient detail to support payment.

#### NDCS Invoices

Invoices To: NE Department of Correctional Services  
Accounts Payable  
P.O. Box 94661  
Lincoln, NE 68509-4661

Invoices may be emailed to: [DCS.AccountsPayable@nebraska.gov](mailto:DCS.AccountsPayable@nebraska.gov)

Accounts Payable Contact: (402) 479-5715

#### NDVA Invoices:

Invoices for payments must be submitted no later than thirty (30) days after receipt of goods by the Contractor to the agency requesting the services with sufficient detail to support payment. Invoices shall include, at a minimum, name of facility, name and Contractor's number for canteen item, unit price of each, date of purchase, total price. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

#### Invoices shall be sent to the email addresses listed below for the corresponding NDVA location:

|                                 |                                                                                                  |
|---------------------------------|--------------------------------------------------------------------------------------------------|
| Central Nebraska Veterans' Home |                                                                                                  |
| Eastern Nebraska Veterans' Home | <a href="mailto:ndva.envhaccountspayable@nebraska.gov">ndva.envhaccountspayable@nebraska.gov</a> |
| Norfolk Veterans' Home          | <a href="mailto:ndva.nvhaccounting@nebraska.gov">ndva.nvhaccounting@nebraska.gov</a>             |
| Western Nebraska Veterans' Home | <a href="mailto:ndva.wnvhaccountspayable@nebraska.gov">ndva.wnvhaccountspayable@nebraska.gov</a> |

The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract. **The State shall have forty-five (45) calendar days to pay after a valid and accurate invoice is received by the State.**

### D. INSPECTION AND APPROVAL

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

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

### E. PAYMENT (Nonnegotiable)

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

Contractor prior to the effective date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

**F. LATE PAYMENT (Nonnegotiable)**

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

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

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

**H. RIGHT TO AUDIT (First Paragraph is Nonnegotiable)**

The State shall have the right to audit the Contractor's performance of this contract upon a thirty (30) day written notice. Contractor shall use 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. See Neb. Rev. Stat. § 84-304 et seq. The State may audit and the Contractor shall maintain the information during the term of the contract and for a period of five (5) years after the completion of this contract or until all issues or litigation are resolved, whichever is later. The Contractor shall make the Information available to the State at Contractor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Contractor so elects, the Contractor may provide electronic or paper copies of the Information. The State reserves the right to examine, make copies of, and take notes on any Information relevant to this contract, regardless of the form or the Information, how it is stored, or who possesses the Information. In no circumstances will Contractor be required to create or maintain documents not kept in the ordinary course of Contractor's business operations, nor will Contractor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to Contractor.

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. If a previously undisclosed overpayment exceeds one-half of one percent (.5%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within ninety (90) days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

## V. SCOPE OF WORK

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

### A. SCOPE

It is the intent of this bid invitation to establish a contract to supply canteen product categories: Food, Ice Cream, Personal Hygiene, Health and Beauty, Household, School/Legal, Clothing, Dental, Pharmacy, and Beverages options to the State of Nebraska per the attached specifications from date of award for a period of two (2) years with the option to renew for an additional two (2) two (2) year periods when mutually agreeable to the contractor and the State. The State reserves the right to extend the period of this contract beyond the end date when mutually agreeable to the contractor and the State.

The contract(s) will be for a list of common use items identified as a Core List and additional items identified as a Catalog/Non-Core List. Primary State Agency is the Nebraska Department of Correctional Services (NDCS). Secondary using agencies are the Department of Health and Human Services (DHHS) and Department of Veterans Affairs (DVA).

### B. BIDDER REQUIREMENTS:

- a. All items bid shall be of the latest manufacture in production as of the date of the Invitation to Bid and be of proven performance and under standard design, complete as regularly advertised and marketed.
- b. All necessary materials and supplies shall be incorporated into the following Canteen Product Categories: Food, Ice Cream, Personal Hygiene, Health and Beauty, Household, School/Legal, Clothing, Dental, Pharmacy, and Beverages whether or not they may be specifically mentioned below.
- c. All bid units should match exactly. In those cases where items may have more than one brand name, the vendor may bid on either brand. Please indicate which brand was bid.
- d. Bidder must complete Attachments A. If there are any deviations to the specifications, i.e., size, ounces, weight, case quantity, unit price, case price, etc., the bidder is responsible for stating any such deviations on the bid sheet attachment.
- e. Bidder(s) are not required to bid every canteen product category, but should bid all items for the categories they choose to bid. Please pay special attention to the unit of measure on the attached bid sheets, in addition to reviewing and completing the attached specification sheets for each canteen product category.
- f. In the absence of any stated deviation, or exception, the bid will be accepted in strict compliance and the bidder will be held liable therefore.
- g. References
  - i. The State reserves the right to check any reference(s), regardless of the source of the reference information, including but not limited to, those that may be identified by the company in the bid, those indicated through the explicitly specified contacts, those that are identified during the review of the bid, or those that result from communication with other entities involved with similar projects.
- h. Other or optional services
  - i. Submit with bid response a detailed statement with respect to bidder's Customer Service Philosophy.
  - ii. Submit with bid response a detailed explanation of bidder's Quality Assurance Measures.

### C. CONTRACTOR REQUIREMENTS:

- a. **CUSTOMER SERVICE**
  - i. The contractor shall provide the name and phone number of the customer service representative who will be assigned to service the State of Nebraska's accounts.
  - ii. The State reserves the right to effect/request a change in the account representative assigned to this account if his/her performance is deemed consistently unsatisfactory.
- b. **UPC CODES**
  - i. Contractor will be required to provide NDCS UPC codes for awarding items within ten (10) business days of contract award for all products awarded, if substituting or sending bonus size, vendor must submit a new UPC code.

- c. **KOSHER/HALAL PRODUCTS**
  - i. All Kosher / Halal products that are delivered to the Department of Correctional Services must be labeled with industry standard certified kosher / halal symbol.
- d. **CASE QUANTITY**
  - i. Provide quantity per case. If adjustments on case quantity have to be made, notification to State Purchasing and approval is needed prior to the change.
- e. **WAREHOUSE INSPECTION**
  - i. Contractor's warehouse(s) are subject to inspection as required by federal and/or state regulatory entities. Awarded vendors will maintain documentation of any such inspections, corrective plan of action, if warranted, and shall provide copies of such reports and/or documentation to State Purchasing Bureau upon request.
- f. **INSPECTION OF GOODS**
  - i. If a simple inspection of the goods would reveal nonconformity, notice of nonconformity should be provided to the vendor as soon as reasonably practical, but not to exceed thirty (30) days from receipt of goods. This includes visual inspection of product to ensure packaging is not damaged, dented or compromised.
- g. **PROMOTIONAL ITEMS**
  - i. Promotional items will not be accepted. Ten (10) days written notification of products that will contain promotional items must be submitted to DCS Purchasing – Attention: Canteen Buyer.

**D. GENERAL REQUIREMENTS**

- a. **RESTRICTIONS:**
  - i. No red, blue, or black colors allowed for clothing.
  - ii. Prohibition of glass containers
    - a) No glass containers are allowed in the facilities.
  - iii. Alcohol
    - a) Products containing any alcohol are not allowed in the institutions. Products should not have any Warning Advisory.
- b. **LITERATURE**
  - i. Complete specifications, supplier/manufacturer's descriptive literature, nutritional labels and/or advertising data sheets with cuts or photographs may be required prior to an award and should be included with the bid on the identical items proposed.
  - ii. Literature should be complete and the latest published. Any information necessary to show compliance with these specifications not given on the supplier/manufacturer's descriptive literature and/or advertising data sheets should be supplied in writing on or attached to the bid document.  
If supplier/manufacturer's specifications are not supplied in writing on or attached to the bid document, the bidder will be required to submit requested information within five (5) business days of a written request. Failure to submit requested descriptive literature or advertising data sheets may be grounds to reject the bid.
- c. **OPPORTUNITY BUYS AND RIGHTS**
  - i. The State reserves the right, through the State Purchasing Bureau, to purchase items from other sources as necessary when the vendor cannot perform or for emergency needs.
  - ii. The State also reserves the right to participate in "Opportunity Buys" that become available for otherwise contracted items when it is in the best interest of the State of Nebraska. Contracted vendors may also offer "Opportunity Buys" to the State facilities as such products become available.
  - iii. The State considers an "Opportunity Buy" to be items that may be overruns, close to expiration date, discontinued or other product variances that will offer the State substantial discounts beyond contracted pricing. Each using facility or agency may have specific criteria for their approval of such purchases and evaluates such products on a case by case basis. Such purchases will not be considered part of the contract(s)



established from this solicitation and must be invoiced separately from contract purchases.

## VI. TECHNICAL SPECIFICATIONS

### A. CONTRACTOR INSTRUCTIONS

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

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

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

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

### B. NON-COMPLIANCE STATEMENT

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

### C. CORE CANTEEN

| YES | NO | NO & PROVIDE ALTERNATIVE |                                                                                                                                                                                                                                                                                                                                                      |
|-----|----|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |    |                          | 1. Bidder shall provide a bid for each Canteen Core item listed on Attachment A.                                                                                                                                                                                                                                                                     |
|     |    |                          | 2. If not already specified, Bidder shall provide the supplier/manufacturer and brand.                                                                                                                                                                                                                                                               |
|     |    |                          | 3. Each Canteen Product Category are listed in Attachment A which contain the most commonly purchased items. The Core List(s) represents those items for which the State expects to receive the greatest consideration for pricing valuation by all bidders. The Core List should represent a greater discount than the Catalog/Non-Core item lists. |
|     |    |                          | 4. The Core List is not a complete list of items purchased by the State, nor does it guarantee future purchase of these products. The State reserves the right to add or remove items from the Core Item list based on usage.                                                                                                                        |
|     |    |                          | 5. Fill rate: 95% fill rate for core items.                                                                                                                                                                                                                                                                                                          |

|                        |  |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|------------------------|--|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        |  |  | 6. Back orders will not be accepted.                                                                                                                                                                                                                                                                                                                                                                                                               |
|                        |  |  | 7. Substitutions: The State will not accept substitutions, products need to be bid as listed.<br><br>A supplier/vendor's manufacturer's brand have been provided for some specific items. Where brand names are given, they are listed as guides only, unless otherwise specified. Where listed as "NO SUBSTITUTE" this is the only product that will be accepted. Vendor is required to list brand name bidding and vendor's product code number. |
| <b>NOTES/COMMENTS:</b> |  |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

**D. TECHNICAL SPECIFICATIONS: CATALOG /NON-CORE**

| YES                    | NO | NO & PROVIDE ALTERNATIVE |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|------------------------|----|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        |    |                          | 8. Categories have been identified on Attachment A Catalog Bid Sheet.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|                        |    |                          | 9. Should include the following categories that exclude specific core items <ul style="list-style-type: none"> <li>1. Food</li> <li>2. Personal Hygiene</li> <li>3. Health &amp; Beauty</li> <li>4. Household</li> <li>5. School/Legal</li> <li>6. Clothing</li> <li>7. Dental</li> <li>8. Pharmacy</li> <li>9. Beverage</li> <li>10. Ice Cream</li> <li>11. Other/Miscellaneous/full catalog</li> </ul>                                                                                                                                                                                                                                                                                                                                               |
|                        |    |                          | 12. Catalog/Non-Core items shall be determined by applying the quoted discount for the item(s)/category to the vendor's current catalog or vendor's price list(s).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|                        |    |                          | 13. The percentage discount must be identified, a range of percentages is not acceptable.<br><br>Discount may show both the list price and discounted price for items or upon invoicing, a separate line must be shown on the invoice for all non-core discounts applied.<br><br>If Discount Percentage varies between categories, a separate discount line is to be shown for each category. The Discount structure must be clearly stated on the bid sheets and auditable in practice by the State.<br><br>The State may request minor format changes to either the Contractor's invoices or Catalog/Price List to capture necessary information for contract management and audit purposes regarding discount percentage for CATALOG/NONCORE ITEMS. |
|                        |    |                          | 14. Fill rate: 95% fill rate for core items.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|                        |    |                          | 15. Back orders will not be accepted.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>NOTES/COMMENTS:</b> |    |                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

**E. TECHNICAL SPECIFICATION: DEPARTMENT OF CORRECTIONAL SERVICES**

| YES                    | NO | NO & PROVIDE ALTERNATIVE |                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|------------------------|----|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        |    |                          | 1. A firm order for Department of Correctional Services will be provided to the Contractor by the ordering state facility a minimum of seventy two (72) hours before delivery is required.                                                                                                                                                                                                                                                 |
|                        |    |                          | 2. Line detail order confirmation will be sent via e-mail to the user placing the order within twenty four (24) hours of order being placed and if needed, any additional e-mail addresses linked to the user account.                                                                                                                                                                                                                     |
|                        |    |                          | 3. Contractor's Order Confirmation will confirm stock availability. Order Confirmation will identify those items that cannot be filled and offer a one-time alternative equivalent substitute at no additional charge.                                                                                                                                                                                                                     |
|                        |    |                          | 4. Ordering state facility will accept or reject alternative equivalent substitute items via e-mail to the Contractor within twenty four (24) hours of receiving notice.                                                                                                                                                                                                                                                                   |
|                        |    |                          | 5. All Catalog/non-core list items ordered or shipped will be invoiced separately.                                                                                                                                                                                                                                                                                                                                                         |
|                        |    |                          | 6. The Contractor(s) shall supply the current catalog or price list used for this Invitation to Bid for distribution to any requesting state agency at no charge, within ten (10) days of request.<br><br>Additional catalogs and/or price lists may be requested and shall be provided without charge. Any catalog or price list revisions which occur during the duration of the contract shall be provided upon request without charge. |
|                        |    |                          | 7. No backorders are allowed, contractor shall cancel any item that is on backorder and notify ordering agency.                                                                                                                                                                                                                                                                                                                            |
| <b>NOTES/COMMENTS:</b> |    |                          |                                                                                                                                                                                                                                                                                                                                                                                                                                            |

**F. TECHNICAL SPECIFICATION: DEPARTMENT OF HEALTH AND HUMAN SERVICES AND DEPARTMENT OF VETERANS AFFAIRS**

| YES | NO | NO & PROVIDE ALTERNATIVE | ORDER CONFIRMATION PROCEDURES<br>CANTEEN PRODUCTS                                                                                                                                                                      |
|-----|----|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |    |                          | 1. A firm order for Department of Health and Human Services will be provided to the Contractor by the ordering state facility a minimum of forty eight (48) hours before delivery is required.                         |
|     |    |                          | 2. Line detail order confirmation will be sent via e-mail to the user placing the order within twenty four (24) hours of order being placed and if needed, any additional e-mail addresses linked to the user account. |
|     |    |                          | 3. Contractor's Order Confirmation will confirm stock availability. Order Confirmation will identify those items that cannot be filled and offer a one-time alternative equivalent substitute at no additional charge. |
|     |    |                          | 4. Ordering state facility will accept or reject alternative equivalent substitute items via e-mail to the Contractor within twenty four (24) hours of receiving notice.                                               |

NOTES/COMMENTS:

**G. CANTEEN PRODUCTS**

| YES | NO | NO & PROVIDE ALTERNATIVE | GENERAL DELIVERY INSTRUCTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----|----|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |    |                          | 1. Estimated delivery service to each State facility can be found on <b>Attachment B</b> . Facility address and delivery contacts are on attached sheets.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|     |    |                          | 2. Contractor must segregate orders by each ordering facility on separate pallets and follow USDA/HACCP guidelines for each product category. This includes dry goods, refrigerated goods and frozen items. The intent is that each ordering facility's products are properly handled and segregated from every other ordering facility and/or customer.                                                                                                                                                                                                                                                                                         |
|     |    |                          | 3. Contractor must ensure when loading the trucks that all appropriate temperatures and guidelines are adhered to and there is a barrier between frozen and dry goods to ensure the integrity of the frozen products. All USDA and HACCP guidelines will be adhered to. <a href="https://www.usda.gov/food-safety-and-inspection-service/food-safety-and-inspection-service-requirements/food-safety-and-inspection-service-requirements-for-the-transportation-and-distribution-of-meat-poultry-and-egg-products">FSIS Safety and Security Guidelines for the Transportation and Distribution of Meat, Poultry, and Egg Products (usda.gov)</a> |

NOTES/COMMENTS:

**H. CATALOG CANTEEN PRODUCTS AND PRICING**

| YES | NO | NO & PROVIDE ALTERNATIVE |                                                                                                                                                                                                                                                                                                                                                              |
|-----|----|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |    |                          | 1. The Bidder shall provide a catalog list of items or a link to their website showing a comprehensive list of all additional items available from the vendor, but not listed as part of the Core List.                                                                                                                                                      |
|     |    |                          | 2. Prices for Catalog items shall be determined by applying the quoted discount for the item to the supplier/vendor's current catalog or price list. The percentage discount for the items shall remain firm for the duration of the contract period.<br><br>The Bidder shall provide percent discount on Non-Core Catalog List: <b><u>Attachment A.</u></b> |

NOTES/COMMENTS:

**I. ANNUAL USAGE, ESTIMATED**

| YES                    | NO | NO & PROVIDE ALTERNATIVE |                                                                                                                                                                                                                                                                                                               |
|------------------------|----|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        |    |                          | 1. Annual usage figures provided are estimates and are not to be construed as either a minimum or maximum purchase quantity. The orders shall be for the actual quantities of each item ordered by or for any agency during the life of the contract. Contractor shall not impose minimum order requirements. |
|                        |    |                          | 2. Insert annual estimated usage here (may use Table Tools/Draw Table function to add more lines or may enlarge the size of the table to accommodate specifications)                                                                                                                                          |
| <b>NOTES/COMMENTS:</b> |    |                          |                                                                                                                                                                                                                                                                                                               |

**J. USAGE REPORT**

| YES                    | NO | NO & PROVIDE ALTERNATIVE |                                                                                                                                                                                                                                                                                                                    |
|------------------------|----|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        |    |                          | 1. The contractor shall, upon request, provide a usage report of this contract by state agencies and political subdivisions. Information will include agency name, item(s), and dollar amount and shall include the information of the time period requested. Information may be requested at any time by the SPB. |
| <b>NOTES/COMMENTS:</b> |    |                          |                                                                                                                                                                                                                                                                                                                    |

**K. DELIVERY ARO**

| YES                    | NO | NO & PROVIDE ALTERNATIVE |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------|----|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        |    |                          | 1. A successful Contractor will maintain sufficient inventory to process and deliver within five (5) business days ARO. There will be no minimum order requirements. Deliveries must be clearly marked with the purchase order number. If delays in delivery are anticipated, the Contractor will immediately notify the NDCS facility of the expected delivery date. The order may be canceled if the delivery time is unsatisfactory, and the State may procure item(s) from other sources and the Contractor will be held responsible for any/all excess cost.<br><br>At the time of delivery, a designated State employee will sign the "invoice/packing slip." This signature will only indicate that the order has been received and that the items actually delivered agree with the delivery invoice. This signature does not indicate all items were received in good condition and/or that there is not possible hidden damage. |
| <b>NOTES/COMMENTS:</b> |    |                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

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

NDCS has consolidated facility canteens into a central canteen located at Tecumseh State Correctional Institution (TSCI) in Tecumseh, Nebraska. Canteen deliveries for stock orders will be delivered to Central Canteen at TSCI.

Direct Orders are items that are non-stock/core items and are unavailable for purchase through Central Canteen. Incarcerated Individuals have the opportunity to purchase Direct Orders provided on a pre-approved list by the NDCS Administration. The incarcerated individual will place an order through the facility canteen. These orders shall be delivered directly to the individual facility on the order form and not Central Canteen at TSCI.

| YES | NO | NO & PROVIDE ALTERNATIVE |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----|----|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |    |                          | <p><b>1.</b> NDCS Central Canteen:<br/>Tecumseh State Correctional Institution<br/>2725 N Hwy 50<br/>Tecumseh, NE 68450<br/>Phone: 402-335-5998 ext. 5446 or 5447</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|     |    |                          | <p><b>2.</b> Attachment B, Delivery Locations for address, hours and contact information for Direct Order deliveries to specific NDCS facilities.<br/><br/>Note: NDCS Central Warehouse receives orders placed for the Nebraska State Penitentiary (NSP)</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|     |    |                          | <p><b>3.</b> Refer to Attachment B, Delivery Locations for address, hours and contact information for Department of Health and Human Ser. and Department of Veterans' Affairs</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|     |    |                          | <p><b>4.</b> Additional State locations may be added upon mutual agreement.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|     |    |                          | <p><b>5.</b> Delivery personnel will be required to deliver and off load all products to a specified area on the inside of the designated facility or dock.<br/><br/>It will be the Contractor's responsibility to provide any equipment needed to complete the delivery process.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|     |    |                          | <p><b>6.</b> At the time of delivery, a designated State of Nebraska employee will sign the "invoice/packing slip." This signature will only indicate that the order has been received and that the items actually delivered agree with the delivery invoice. This signature does not indicate all items were received in good condition and/or that there is not possible hidden damage.<br/><br/>Each state facility has its own internal processes for receiving and handling product deliveries. Contractor(s) should expect slight variances in procedures between facilities within agencies and between agencies.</p>                                                                                                                                                  |
|     |    |                          | <p><b>7.</b> DHHS and NDVA Facility Delivery Instructions: Contractor's delivery personnel must wait for the order to be received, invoice(s) / packing slip(s) verified and signed with discrepancies (shortages, longs, damage, etc.) documented on the delivery invoice. This signature will only indicate that the order has been received and that the items actually delivered agree with the delivery invoice. This signature does not indicate all items were received in good condition and/or that there is not possible hidden damage.<br/><br/>NDVA Facility Delivery Instructions: All Deliveries should be sent to the attention of the Ordering Department or Supply Services if a department is not specified.<br/>No Deliveries on Weekends and Holidays</p> |

|                        |  |  |     |                                                                                                                                                                                                                                                                                                                                                  |
|------------------------|--|--|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        |  |  | 8.  | If damage is detected prior to delivery being complete, the product will be returned and a credit memo will be issued by the delivery personnel or acknowledged in writing on the delivery ticket/invoice for credit issuance.                                                                                                                   |
|                        |  |  | 9.  | If damage is detected after delivery is complete, the facility will contact the vendor with a list of the damaged items/circumstances of damage as soon as detected.                                                                                                                                                                             |
|                        |  |  | 10. | Deliveries must be clearly marked with the invoice/purchase order number.                                                                                                                                                                                                                                                                        |
|                        |  |  | 11. | Delivery personnel may be required to deliver and off load all products to a specified area on the inside of the designated facility or dock.<br><br>It is the Contractor's responsibility to provide equipment/personnel to complete the delivery process as needed. Note: Some state facilities may be able to assist in the off load process. |
|                        |  |  | 12. | Contractor is able to provide alternate delivery methods for facilities that cannot accommodate full size trucks.<br><br>If "YES", please list size(s) of alternate truck(s) and/or alternate delivery method: _____                                                                                                                             |
| <b>NOTES/COMMENTS:</b> |  |  |     |                                                                                                                                                                                                                                                                                                                                                  |

**M. PACKAGING**

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

**N. ORDERS**

| YES | NO | NO & PROVIDE ALTERNATIVE |                                                                                                                                                                                                                                                                  |
|-----|----|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |    |                          | 1. Orders will be placed either by, phone, e-mail or Internet (if available and not to the exclusion of the other methods).                                                                                                                                      |
|     |    |                          | 2. Vendor shall not impose minimum order requirements.                                                                                                                                                                                                           |
|     |    |                          | 3. Products may be ordered in less than full case quantities.                                                                                                                                                                                                    |
|     |    |                          | 4. 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.                                               |
|     |    |                          | 5. Line detail order confirmation will be sent via e-mail to the user placing the order and if needed, any additional e-mail addresses linked to the user account. It will also confirm stock of items ordered, and note those items that will not be fulfilled. |



|                        |  |  |                                                                                                                                                                                                                                                                                                                                                   |
|------------------------|--|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        |  |  | 6. In the event items need to be returned due to damage, mis-pick, etc., a credit memo will be given to the State of Nebraska. The credit memo will be applied to the referenced original billing invoice stated on the credit memo. The State of Nebraska shall not be assessed restocking charges, freight or any other form of return charges. |
|                        |  |  | 7. Emergency Orders: The State reserves the right, through the State Purchasing Bureau, to purchase items from other sources as necessary when the vendor cannot perform or for emergency needs.                                                                                                                                                  |
| <b>NOTES/COMMENTS:</b> |  |  |                                                                                                                                                                                                                                                                                                                                                   |

**O. RESALE**

| YES                    | NO | NO & PROVIDE ALTERNATIVE |                                                                                                                        |
|------------------------|----|--------------------------|------------------------------------------------------------------------------------------------------------------------|
|                        |    |                          | 1. Products are for resale in canteens. All product bids must follow the rules and regulations governing retail sales. |
| <b>NOTES/COMMENTS:</b> |    |                          |                                                                                                                        |

**P. SUBSTITUTION OF PRODUCTS AFTER AWARD**

| YES                    | NO | NO & PROVIDE ALTERNATIVE |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|------------------------|----|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        |    |                          | 1. Contractor will not permanently substitute any Core List item that has been awarded without prior approval of State Purchasing Bureau.                                                                                                                                                                                                                                                                                                                                                                                                          |
|                        |    |                          | 2. A one-time approved substitute item does not automatically become identified as an acceptable substitution for future out of stock situations. (This applies to Core and Catalog items alike.)                                                                                                                                                                                                                                                                                                                                                  |
|                        |    |                          | 3. Each time a substitute item needs to replace an out of stock item, the Contractor's customer service representative will be required to get authorization from the ordering agency prior to making the substitution. The substitute item "shall" be equivalent in quality and the State's opinion on what is determined equivalent shall prevail and the substitute will be billed at the contracted price. In the event the one-time substituted item costs less than the original ordered item, the State will be charged at the lower price. |
|                        |    |                          | 4. Any one-time approved substitute item must be identified on the corresponding invoice as "substitute." This is necessary in order to track the frequency of occurrence, in relation to fill rates.                                                                                                                                                                                                                                                                                                                                              |
|                        |    |                          | 5. If a suitable substitute cannot be provided by the contractor, the using agency may source the product off-contract. The State reserves the right to procure the articles from other sources and hold the contractor responsible for any excess cost occasioned thereby.                                                                                                                                                                                                                                                                        |
| <b>NOTES/COMMENTS:</b> |    |                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

**Q. QUALITY**

| YES                           | NO | NO & PROVIDE ALTERNATIVE |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-------------------------------|----|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                               |    |                          | <p>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.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|                               |    |                          | <p>2. A guarantee of satisfactory performance by the contractor and meeting delivery dates are considered to be an integral part of the purchase contract resulting from this bid invitation.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|                               |    |                          | <p>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.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|                               |    |                          | <p>4. 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. Products are to be fully guaranteed and may be returned for full credit or replacement (at the State's option) for any reason during (i.e., product expiration date) with no additional charges for shipping or restocking.</p> <p>Products delivered shall not be past expiration date, at a minimum, and in wholesome condition. Below are links to the USDA requirements for food, beverage and ice cream.</p> <p><a href="#">Food Product Dating   Food Safety and Inspection Service (usda.gov)</a></p> <p><a href="#">Food Product Dating   Food Safety and Inspection Service (usda.gov)</a></p> <p><a href="#">Guidance for Industry: Sanitary Transportation of Food   FDA</a></p> |
| <p><b>NOTES/COMMENTS:</b></p> |    |                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |