

State of Nebraska - INVITATION TO BID CONTRACT

Date	1/24/24	Page	1 of 1
Solicitation Number	6861 OF		
Opening Date and Time	02/19/24	2:00 pm	
Buyer	MATTHEW CADDY (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 Automated Flagger Assistance Device (AFAD) to the State of Nebraska as per the attached specifications for an initial two (2) year period from date of award. The contract may be renewed for three (3) additional one (1) year periods when mutually agreeable to the vendor and the State of Nebraska.

(BT 01/24/24)

INVITATION

Line	Description	Estimated Quantity	Unit of Measure	Unit Price	Extended Price
1	AFAD SYSTEM PRICE AS SET INITIAL CONTRACT TERM	100.0000	EA		
2	DISCOUNT % OFF CATALOG PRICING FOR TRAFFIC CONTROL DEVICES & PARTS		%		

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**

INVITATION TO BID NUMBER	RELEASE DATE
ITB 6861 OF	January 29, 2024
OPENING DATE AND TIME	PROCUREMENT CONTACT
February 19, 2024 2:00 p.m. Central Time	Matthew Caddy

**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 6861 OF for the purpose of selecting a qualified Contractor to provide **Automated Flagger Assistance Device (AFAD)**. 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)/notice to proceed. The Contract includes the option to renew for Three (3) additional One (1) Year periods upon mutual agreement of the Parties. (The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Parties.

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.

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

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

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 serve 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

COI – Certificate of Insurance

CPU – Central Processing Unit

DAS – Department of Administrative Services

F.O.B. – Free on Board

ICT – Information and Communication Technology

ITB – Invitation to Bid

NIGP – National Institute for Governmental Purchasing

PA – Participating Addendum

SPB – State Purchasing Bureau

I. PROCUREMENT PROCEDURE

A. GENERAL INFORMATION

This Invitation to Bid is designed to solicit bids from qualified Contractors who will be responsible for providing **Automated Flagger Assistance Device (AFAD)** 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: 6861 OF
Name: Matthew Caddy, Procurement Contract Officer
Agency: State Purchasing Bureau
Address: 1526 K Street, Suite 130
Lincoln, NE 68508
Telephone: 402-471-1428
E-Mail: 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 29, 2024
2. Last day to submit written questions. Upload written questions for 6861 OF via ShareFile to: https://nebraska.sharefile.com/r-rbae9d04b763e4c1aa85dfbfde5805674	February 5, 2024
3. State responds to written questions through a solicitation “Addendum” and/or “Amendment” to be posted to the Internet at: https://das.nebraska.gov/materiel/bidopps.html	February 8, 2024
4. Upload electronic Bid submissions for 6861 OF via ShareFile to: https://nebraska.sharefile.com/r-r3feedf83f3614488882f9090dea1cce8 Electronic Bid Opening via Zoom Meeting Join Zoom Meeting https://us02web.zoom.us/j/89202662158?pwd=d3JHbk83ekNBWE5Dc0R2SUFQZ3ZUdz09 Meeting ID: 892 0266 2158 Passcode: 141964 One tap mobile +13462487799,,89202662158#,,,,*141964# US (Houston) +16694449171,,89202662158#,,,,*141964# US Dial by your location • +1 346 248 7799 US (Houston) • +1 669 444 9171 US • +1 669 900 6833 US (San Jose) • +1 719 359 4580 US • +1 253 205 0468 US • +1 253 215 8782 US (Tacoma) • +1 507 473 4847 US • +1 564 217 2000 US • +1 646 931 3860 US • +1 689 278 1000 US • +1 929 205 6099 US (New York) • +1 301 715 8592 US (Washington DC) • +1 305 224 1968 US • +1 309 205 3325 US • +1 312 626 6799 US (Chicago) • +1 360 209 5623 US • +1 386 347 5053 US Meeting ID: 892 0266 2158 Passcode: 141964 Find your local number: https://us02web.zoom.us/j/89202662158?pwd=d3JHbk83ekNBWE5Dc0R2SUFQZ3ZUdz09	February 19, 2024 2:00 PM Central Time
5. Post “Notification of Intent to Award” to Internet at: http://das.nebraska.gov/materiel/purchasing.html	TBD
6. Contract Award	TBD

D. WRITTEN QUESTIONS AND ANSWERS

Questions regarding the meaning or interpretation of any solicitation provision must be submitted in writing to SPB and clearly marked "ITB Number 6861 OF; {NAME OF BIDDER} 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 (ITB)

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. 6861 OF, {NAME OF BIDDER} Bid
 - b. If multiple files are submitted for one bid, add number of files to file names, e.g.,
 - i. 6861 OF, {NAME OF BIDDER} Bid File 1 of 2;
 - ii. 6861 OF, {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 GI.G) 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

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. 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.

U. LUMP SUM OR "ALL OR NONE" BIDS

The State reserves the right to purchase item-by-item, by groups or as a total when the State may benefit by so doing. 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)

V. 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.

W. BID TABULATIONS

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

X. REJECTION OF BIDS

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

Y. RESIDENT BIDDER

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

II. TERMS AND CONDITIONS

By signing the solicitation, Bidder 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 Bidder fail to agree on the final Terms and Conditions, the State reserves the right to reject the bid. The State is soliciting bids in response to the solicitation. The State reserves the right to reject bids that attempt to substitute the Bidder's commercial contracts and/or documents for this solicitation.

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

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

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

A. GENERAL

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. INTELLECTUAL PROPERTY

The Contractor agrees it will, at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to, the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the Contractor or its employees, subcontractors, consultants, representatives, and agents; provided, however, the State gives the Contractor prompt notice in writing of the claim. The Contractor may not settle any infringement claim that will affect the State's use of the Licensed Software without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the Contractor has indemnified the State, the Contractor shall, at the Contractor's sole cost and expense, promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by the Contractor, and the State may receive the remedies provided under this solicitation.

3. PERSONNEL

The Contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel, including subcontractors and their employees, provided by the Contractor.

4. 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. 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 Hundred Eighty (180) days of the contract. Any request for a price increase subsequent to the first One-hundred Eighty (180) days of the contract shall not exceed Ten percent (10%) 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 30 days prior to the end of the current contract period. Documentation may be required by the State to support the price increase.

The State reserves the right to deny any requested price increase. No price increases are to be 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. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES

The State shall have the unlimited right to publish, duplicate, use, and disclose all information and data developed or obtained by the Contractor on behalf of the State pursuant to this contract.

The State shall own and hold exclusive title to any deliverable developed as a result of this contract. Contractor shall have no ownership interest or title, and shall not patent, license, or copyright, duplicate, transfer, sell, or exchange, the design, specifications, concept, or deliverable.

J. 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.

K. 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.

L. 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.

M. 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.

N. 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.

O. 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.

P. 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.

Q. 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.

R. 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.

S. 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.

T. 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. **Invoices Mailed to: Nebraska Dept. of Transportation - 1500 Nebraska Pkwy Lincoln, NE 68509.** If a Nebraska agency or political subdivision orders other than Nebraska Dept. of Transportation, “invoice to” details will be determined at time of order placement. 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 percent (1%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within ninety (90) days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

V. SCOPE OF WORK

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

A. SCOPE

It is the intent of this bid invitation to establish a contract to supply **Automated Flagger Assistance Device (AFAD)** per the attached specifications from date of award for a period of two (2) years with the option to renew for an additional three (3) one (1) 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.

All items proposed shall be of the latest manufacture in production as of the date of the solicitation and be of proven performance and under standard design complete as regularly advertised and marketed. All necessary materials for satisfactory performance of the supplies shall be incorporated into the **Automated Flagger Assistance Device (AFAD)** whether or not they may be specifically mentioned below.

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

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. as.materielpurchasing@nebraska.gov by the last day to submit written questions per the Schedule of Events. (Inquiries received after the last day to submit written questions may not be addressed).
NOTES/COMMENTS:			

C. TECHNICAL SPECIFICATIONS: AFAD Controller Hardware

YES	NO	NO & PROVIDE ALTERNATIVE	
			Each AFAD controller shall be capable of providing the following feedback information to the user:
			1. Audible feedback when buttons are depressed
			The AFAD controller menu shall display the following data from all units within the network:
			2. Battery voltage
			3. Realtime AFAD lamp status
			4. Radio communication signal strength
			5. System faults
			6. Audible low battery alarm sounds when voltage drops below predetermined level

			Each AFAD controller shall meet the following physical operational requirements:
			7. Compliant with both MUTCD & NEMA TS-5 environmental standards, Rated for temperatures of -40°C to +85°C (-40°F to +185°F)
			8. A min 3.5 inch x 5 inch LCD full color graphical display
			9. Auto display dimming for power conservation purposes
			10. The AFAD controller shall be powered by the AFAD's 12VDC battery system.
			11. Plug and play installation of the signal controller
			12. Hardware housed in a lockable steel cabinet
NOTES/COMMENTS:			

D. TECHNICAL SPECIFICATION: AFAD Controller Software

YES	NO	NO & PROVIDE ALTERNATIVE	
			The AFAD controller shall:
			<p>1. Use an operating system that monitors the individual unit and whole systems health conditions and retain performance logs of all recent faults and warnings. Fault and operating conditions monitored shall include:</p> <ul style="list-style-type: none"> • Loss of communications • Active conflicting signal indications • Loss of all instances of a single lamp color • Improper input voltage levels • Battery voltage
			<p>2. Be capable of scaling redundant conflict monitoring and lamp out detection. If any errors are detected, the AFAD shall default to a fail state until the issue is resolved, and the system is restarted by a user. The system shall not automatically restart on these errors. In the event of temporary unit-to-unit communication loss, the AFAD system shall revert to a fail state and may resume operation automatically if the communication is restored. Safeguards shall be incorporated in the AFAD controller to prevent the flagger(s) from actuating a simultaneous display of a flashing CIRCULAR YELLOW lens at each end of the TTC Zone.</p>
			3. Include user selectable gate arm delay range of 0 to 10 seconds
			4. Include user selectable enable or disable of gate arm function
			5. Be compatible with intrusion alarm system for audible worker notification alert
			6. Include a software lock-out feature to prevent tampering
			7. Enable manual operation by means of wireless or wired hand held remote
NOTES/COMMENTS:			

E. TECHNICAL SPECIFICATION: Radio Communications System

YES	NO	NO & PROVIDE ALTERNATIVE	
			The radio communication system shall be capable of operating in the following manner:
			1. A minimum of ten (10) programmable operating addresses (transmitter frequencies)
			2. Spread spectrum frequency hopping to reduce interference
			3. Signal strength indicator viewable on the controller screen
			4. High gain, 7 dB omni-directional antenna
			5. Radio transceiver rated to operate in environments up to 90% humidity in temperatures ranging from -40°C to +85°C (-40°F to +185°F)
			6. Components certified as compliant with FCC (Part 15, Subpart C, Section 15.247 Frequency Hopping Spread Spectrum Operating in 902-928 MHz Band)
NOTES/COMMENTS:			

F. TECHNICAL SPECIFICATION: Connectivity

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. The AFAD shall be fully autonomous for the intended duration of use and each component shall feature remote communications. The work zone notification system shall be connected to the cloud and provide a data feed based on the U.S. Department of Transportation's Work Zone Data Exchange (WZDx). The WZDx feed shall be compatible with the latest version of WZDx at the time of procurement. The WZDx feed should be available to other third party navigational and mapping applications (via the WZDx format) at no additional cost to the State of Nebraska.
			2. The AFAD and its remote management software shall provide a public GeoJSON/API feed updated at least once a minute with any new information, conforming to the latest version of the FHWA's Work Zone Data Exchange (WZDx) and its associated Smart Work Zone (SWZ) Field Device Feed formats as well as make the feed publicly available to any Agency approved third parties. The SWZ Field Device feed shall include the required Core Details for the SWZ Field Device feed and Device Types. In addition, the feed should provide as many Optional Core Details and Optional SWZ Field Device Type parameters as possible. The data feeds shall be made active before the corresponding SWZ Field Devices are fully deployed and operational. The feed shall also include the <Road_Direction>, <Mile_Marker>, and <Side of the Road> when possible on highway routes.
			3. A Waze compatible data push shall also be provided, to allow the AFAD to be auto-located as an ON_ROAD_CONSTRUCTION (hardhat icon) alert with the following associated description: a. AFAD= "Flagger Ahead- Prepare to Stop"
			4. The AFAD shall have the ability to receive and transmit its GPS coordinates (latitude and longitude) within a 30 foot diameter of its true location.

			<p>5. Device shall transmit status and location as follows:</p> <ul style="list-style-type: none"> a. Mode change within 2 minutes b. Location (if moved more than 500 ft) within 2 minutes c. Health check every 30 minutes
			<p>6. The AFAD location feeds shall include all active devices. The corresponding events shall be removed when AFAD is deactivated/ Powered OFF.</p>
NOTES/COMMENTS:			

G. TECHNICAL SPECIFICATION: Signal Heads & Display

YES	NO	NO & PROVIDE ALTERNATIVE	
			The signal head displays shall consist of the following:
			1. Signal lamp comprised of Light Emitting Diodes or (LED)
			2. 12 inch diameter
			3. High flux, 'incandescent look' lens
			4. Operating voltage 10 to 28 Vdc
			5. Meet the ITE VTCSH Light Emitting Diode (LED) Vehicle Signal Supplement 2005 standards
			6. Certified as compliant with FCC (47 CFR, Part 15:2006 15.109, Class A)
			7. Life expectancy of 100,000 hours
			<p>8. A rear-facing 4 inch amber LED lamp mounted on the signal. Rear-facing lamp behavior must be displayed as:</p> <ul style="list-style-type: none"> a) Flashing = Flashing AMBER signal lamp is currently active b) Solid = RED signal lamp is currently active
			9. Signal Lamp Housing Two section, consisting of Red and Amber signal lamps
			10. ITE certified polycarbonate housing
			11. Aluminum back plate (back board)
			12. Ball cap visors, extending over each LED lamp by 10 inches
			13. Meet the physical display and operational requirements of the Automated Flagger Assistance Device (AFAD) as outlined in Part VI of the current version of the Manual on Uniform Traffic Control Devices (MUTCD)
			14. Height of signal head measured from bottom of the signal housing to the surface of the roadway shoulder is 7 feet
NOTES/COMMENTS:			

H. TECHNICAL SPECIFICATION: Gate Arm & Signage

YES	NO	NO & PROVIDE ALTERNATIVE	
			The gate arm shall comply with the following specifications:
			1. Descends to the down position, blocking the approaching lane of traffic when the red indication is displayed
			2. Shall not be less than 8 feet long when fully extended.
			3. Minimum 2 inch vertical aspect of the gate arm and sheeting
			4. Made from 6061 grade aluminum
			5. Shall include breakaway, deflecting or slipping features and non-damaging during a vehicle impact, or in the event of the gate being lowered on top of a vehicle.
			6. Alternating 16 inch wide sections of red and white retro-reflective tape
			7. 18 inch x 18 inch orange flag on the roadside end of gate arm
			8. Maintenance-free electric actuator lift system rated for 100,000 revolutions (one revolution = one complete up/down cycle)
			9. The 'Stop Here On Red' sign (R10-6) shall comply with the following specifications: 24 inches x 36 inches
			10. ASTM D4956 Type IV (high intensity prismatic) or greater sign sheeting
			11. Fabricated with rust-free aluminum substrate
NOTES/COMMENTS:			

I. TECHNICAL SPECIFICATION: Power systems

YES	NO	NO & PROVIDE ALTERNATIVE	
			The power supply system shall consist of the following:
			1. Batteries (AGM)
			2. Housed in a lockable, steel box and seated on a rubber mat
			3. Secured with steel hold-downs to eliminate movement during travel
			4. Anticorrosion spray applied to terminal posts
			5. 12 Volt deep cycle batteries with Min. 224 amp hours of storage
			6. Autonomy of sixty (60) hours before recharge required
			7. 120 VAC Battery Charger: Min 10 Amp charger with multi-stage charging
			8. External, corrosion proof plug for connection to a 120 VAC source w/ In-line surge protection
			9. Solar Panel and Charge Controller, 100 Watt solar array Housed in anodized aluminum frame UL1703, IEC 61215, VDE Certification.
			10. Panel mounting bracket is secured to the trailer by way of antitheft mechanism
			11. Manufactured under ISO9001 and ISO14001 standards

			<p>12. Conversion efficiency of +16%</p> <ul style="list-style-type: none"> a. Maximum Power 100 watts b. Maximum Power Voltage 36.0 Volts c. Maximum Power Current 2.78 Amps d. Open Circuit Voltage 44.6 Volts e. Short-Circuit Current 3.03 Amps f. Loss of output is 10% or less within 12 years and less than 25% within 25 years g. 10 Amp multi-stage solar charge controller
			All wiring and connection points on the signal trailer shall meet the following standards and requirements:
			13. Wires meet applicable SAE, UL and ITE standards
			14. Wire protection - Wire Loom 100% of length, Metal conduit 90% • Wire connectors meet applicable UL standards
			15. Terminal blocks coated to prevent corrosion and Installation procedures follow manufacturers quality guidelines
NOTES/COMMENTS:			

J. TECHNICAL SPECIFICATION: Handheld Remote control

YES	NO	NO & PROVIDE ALTERNATIVE	
			The wireless handheld radio remote shall have the following physical and operational attributes:
			1. Radio channel set at any time by synchronization with either the Primary or Secondary AFAD controller
			<p>2. Three buttons:</p> <ul style="list-style-type: none"> a. Raise Gate #1 b. Lower Gate c. Raise Gate #2
			3. Minimum Two (2) second button delay preventing accidental activation
			4. An LED indicator light confirms receipt of command
			5. Powered by rechargeable Ni cad or Lithium ion battery that power the unit for a minimum of six (6) months with daily use
			6. A battery pack charger with 110VAC and 12 VDC connections is provided.
			7. Water resistant
			8. Includes a nylon pouch with a belt clip and spare battery
NOTES/COMMENTS:			

K. TECHNICAL SPECIFICATION: Trailer Structure

YES	NO	NO & PROVIDE ALTERNATIVE	
			The trailer frame shall be fabricated using the following parts and processes:
			1. 2 inch x 4 inch, 1/4 inch gauge steel channel; front and rear bumper, 2 inch x 4 inch, 1/8 inch gauge steel tube; side rails
			2. 2 inch x 2 inch, 3/16 gauge steel tube; tongue and connecting bar (locked tandem towing)
			3. A minimum 2 1/2 inch x 2 1/2 inch, 3/16 inch gauge aluminum or steel vertical light post
			4. Welding performed and inspected by certified welders, quality guidelines
			5. Four (4) drop-leg jacks to level and stabilize, with minimum 7,000 lbs. lift capacity
			6. 2 inch class (I) and (II) ball coupler
			7. 1/4 inch, high test grade safety chains
			8. Min. 2,220 lbs. rated leaf spring axle
			9. Min. ST175/80R13 tires
			10. Assembled weight of Minimum 986 lbs.
			11. 2 inch red and white retro-reflective tape around perimeter of the frame
			12. Brake and turn lights conform to US DOT regulations
			13. Removable tongue when in operation onsite
			14. The trailer frame shall have the following towing configuration capabilities: <ul style="list-style-type: none"> a. Single unit in tow b. Two units locked for tandem tow or Nesting
			15. Light Post Winch Lift System. The signal light post lift system shall consist of the following parts and capabilities: <ul style="list-style-type: none"> a. Hand winch with load capacity of 1,200 lbs b. Automatic braking c. Powder coated body and zinc plated drum and hardware d. 3/16 inch galvanized aircraft cable with breaking strength of 4,200 lbs
			16. Paint or powder coat color shall be Safety Yellow
			17. DOT LED type trailer tail/turn signal lights
			18. 7 prong RVT type trailer tail light connector

			<p>19. The trailer frame shall conform to the following dimensions:</p> <ul style="list-style-type: none"> a. Length <ul style="list-style-type: none"> i. Operating: Min. 3.125 feet with tongue removed ii. Transport: Min. 8.5 feet b. Width <ul style="list-style-type: none"> i. Operating (less gate arm): Min. 4 feet ii. Transport: Min. 4 feet c. Height <ul style="list-style-type: none"> i. Operating: Min.10.42 feet ii. Transport: Min. 8 feet
NOTES/COMMENTS:			

L. TRAINING & SERVICE MANUALS

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Minimum of four hours of training shall be provided per AFAD, set at Various locations throughout Nebraska by factory trained representatives in the operation and maintenance of the AFAD units. Fleet Management will contact successful bidder on schedule and locations for this training.
			2. Furnish one Operators Instruction Manual for each AFAD.
			3. Furnish one (1) Parts Book and one (1) Illustrated Repair Manual to each NDOT District or Nebraska political subdivision purchasing an AFAD.
NOTES/COMMENTS:			

M. ACCEPTABLE BRANDS

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Equipment proposed shall be the latest current models in production as of the date of the solicitation and be of proven performance and under standard design, complete as regularly advertised and marketed and shall be delivered complete with all necessary parts, specified accessories, tools, and special features, whether or not they may be specifically mentioned below.
			2. Used, demonstrator, prototype, or discontinued equipment is not acceptable. Complete specifications, manufacturer's descriptive literature and/or advertising data sheets with cuts or photographs may be required prior to an award and should be included with the bid on the IDENTICAL equipment proposed.
			3. Literature should be complete and the latest published. Any information necessary to show compliance with these specifications not given on the manufacturer's descriptive literature and/or advertising data sheets should be supplied in writing on or attached to the bid document. bid must meet or exceed the following requirements.

NOTES/COMMENTS:

N. 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. Estimated Annual Usage will be thirty-six (36) units
NOTES/COMMENTS:			

O. USAGE REPORT

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. The contractor shall, upon request, provide a usage report of this contract, detailing contract usage 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.
NOTES/COMMENTS:			

P. SPECIFICATION FORMS

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. For order(s) placed by Nebraska Department of Transportation, specification form(s) will be supplied by Department of Transportation to the awarded contractor after a purchase order has been issued. The awarded contractor will be required to complete specification form to the fullest extent possible for each unit and must accompany each unit when delivered.
			2. If vendor does not properly complete form for each unit, a sum of \$250.00 per unit will be deducted from purchase order total.
NOTES/COMMENTS:			

Q. DELIVERY ARO

YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. Delivery desired within (120) days after receipt of order(s).</p> <p>At the time of delivery, a designated State employee will sign the "invoice/packing slip." This signature will only indicate that the order has been received and that the items actually delivered agree with the delivery invoice. This signature does not indicate all items were received in good condition and/or that there is not possible hidden damage.</p>
NOTES/COMMENTS:			

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

YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>Nebraska Dept. of Transportation</p> <p>5001 So 14th Street</p> <p>Lincoln, NE 68512</p>
			<p>If ordering agency is not Nebraska Dept. of Transportation, alternative delivery locations within Nebraska may be determined upon order placement. Please indicate in the NOTES/COMMENTS below which locations Bidder will not deliver to within the State of Nebraska, if any.</p>
NOTES/COMMENTS:			

S. PACKAGING

YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. AFAD units must be shipped fully assembled, transported by Flatbed or Cargo style enclosed trailer and easily unloaded by the ordering agency's personnel.</p>
			<p>2. Packaging must be of suitable size and of sufficient strength to protect the contents during shipping, handling and storage.</p>
NOTES/COMMENTS:			

T. ORDERS

YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. Orders will be placed by phone, e-mail or Internet (if available and not to the exclusion of the other methods).</p>
			<p>2. All orders must reference a purchase order number and the purchase order number must be referenced on the packing slip, and invoice. Invoices are to be sent to the "Invoice to" address on the purchase order.</p>
NOTES/COMMENTS:			

U. QUALITY

YES	NO	NO & PROVIDE ALTERNATIVE	
			1. Product quality must meet specifications and be consistent for the term of the contract. All materials must be of first quality, under standard production by the manufacturer and be of standard design, complete as regularly advertised and marketed and be of proven performance.
			2. A guarantee of satisfactory performance by the contractor and meeting delivery dates are considered to be an integral part of the purchase contract resulting from this bid invitation.
			3. Products are to be fully guaranteed and may be returned for full credit or replacement (at the State's option) for any reason during the initial warranty period with no additional charges for shipping or restocking.
NOTES/COMMENTS:			

V. PROHIBITED PRODUCTS

YES	NO		
			1. The State will not accept Gray Market Products for this solicitation. Gray Market is defined as the trade of a commodity through distribution channels which, while legal, are unofficial, unauthorized, or unintended by the original manufacturer. Gray Market items are not designed to be sold in a particular market and cannot be supported by the authorized importer because of various reasons.
			2. The State will not accept any products made by a company owned by the Chinese Communist Party. Furthermore, pursuant to Executive Order No. 23-05, the State will not accept any communications equipment or services developed by organizations on the Federal Communications Commission's Covered List.
			3. The State will not accept goods from countries or persons identified on the Office of Foreign Assets Control Sanctions List.
NOTES/COMMENTS:			

W. AUTHORIZED DEALER & WARRANTY

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

X. WARRANTY

YES	NO	NO & PROVIDE ALTERNATIVE	
			<p>1. The Contractor warrants for a period of one (1) year from the date of Acceptance that: (a) the Products perform according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the State has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the State) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.</p>
<p>NOTES/COMMENTS:</p>			

Form A
Contractor Contact Sheet
Invitation To Bid Number ##### OF

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

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

Each Contractor shall also designate a specific contact person who will be responsible for responding to the State if any clarifications of the Contractor's response should become necessary.

Communication with the State Contact Information	
Contractor Name:	
Contractor Address:	
Contact Person & Title:	
E-mail Address:	
Telephone Number (Office):	
Telephone Number (Cellular):	
Fax Number:	