

**State of Nebraska (Nebraska Department of Education)
REQUEST FOR APPLICATIONS**

SOLICITATION NUMBER	RELEASE DATE
NDERFA251008 – Innovation Grant Learning Platform	October 20, 2025
OPENING DATE AND TIME	PROCUREMENT CONTACT
November 3, 2025 at 2:00 p.m. Central Time	Jessica Javorsky

**PLEASE READ CAREFULLY!
SCOPE OF SERVICE**

The State of Nebraska (State), Nebraska Department of Education (NDE), Office of the Commissioner, is issuing this solicitation for a service contract for the purpose of selecting a qualified applicant to provide a three-dimensional game-based learning platform. A more detailed description can be found in Section V. The resulting contract may not be an exclusive contract as NDE reserves the right to contract for the same or similar services from other sources now or in the future.

The term of the contract will be one (1) year commencing upon execution of the contract by NDE and the Vendor (Parties). The Contract may include the option to renew for three (3) additional 1-year periods upon mutual written agreement of the Parties, up to a maximum of four (4) years.

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

ALL INFORMATION PERTINENT TO THIS SOLICITATION CAN BE FOUND ON THE INTERNET AT:
<https://das.nebraska.gov/materiel/bidopps.html> and <https://www.education.ne.gov/nde-contract-opportunities/>.

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.

In addition, and in furtherance of the State's public records Statute (Neb. Rev. Stat. § 84-712 et seq.), all responses received regarding this Solicitation will be posted to the Nebraska Department of Administrative Services' (DAS) public website.

The contents of this solicitation, and all responses, and all documentation provided therein, shall be the property of NDE and the data becomes public information. Per Neb. Rev. Stat. §84-602.04(4)(a), beginning July 1, 2014, a copy of all State contracts active on or after January 1, 2014 that are the basis for an expenditure of state funds will be made publicly available on a web site maintained by the Nebraska Department of Administrative Services. The web site data base will also include any amendments to such contracts and any documents incorporated by reference in Nebraska Department of Administrative Services for such contracts. The web site will also contain a database that includes copies of all expired contracts which were previously included in the database of active contracts. The resulting contract, the Solicitation, and the awarded solicitation response will be posted online, and can be found on the NDE website at <https://www.education.ne.gov/nde-contract-opportunities/> and at <http://statecontracts.nebraska.gov> and https://www.nebraska.gov/das/materiel/purchasing/contract_search/index.php.

If the Contractor wishes to have any information withheld from the public, such information must fall within the definition of proprietary information contained within Nebraska's public record statutes. Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary and commercial information which if released would give advantage to business competitors and serve no public purpose (Neb. Rev. Stat. §84-712.05(3)). In accordance with Attorney General Opinions 92068 and 97033, contractors submitting a written statement that information is proprietary may be required to prove specific,

named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive. Although an effort may be made to withhold information that is properly submitted as proprietary and meets the State's definition of proprietary information, as a state agency NDE is under no obligation to maintain confidentiality of proprietary information and accepts no liability for the release of such information.

All information in any submitted solicitation that the Vendor believes constitutes proprietary information that it wishes to have withhold from the public must be described in writing together with the basis for that belief and submitted to NDE prior to the time this Contract is executed.

CONTRACTORS MAY NOT HAVE THE ENTIRE CONTRACT DEEMED AS PROPRIETARY. Contract amounts are not proprietary information. Failure of the contractor to follow these instructions regarding proprietary information may result in the information being viewed by other businesses and the public. To facilitate such public postings, with the exception of proprietary information, the State of Nebraska reserves a royalty-free, nonexclusive, and irrevocable right to copy, reproduce, publish, post to a website, or otherwise use any contract, or solicitation response for any purpose, and to authorize others to use the documents. Any individual or entity awarded a contract, or who submits a solicitation response, specifically waives any copyright or other protection the contract, or solicitation response may have; and acknowledges that they have the ability and authority to enter into such waiver. This reservation and waiver are a prerequisite for submitting a solicitation response, and award of a contract. Failure to agree to the reservation and waiver will result in the solicitation response being found non-responsive and rejected.

Any entity awarded a contract or submitting a solicitation response agrees not to sue, file a claim, or make a demand of any kind, and will indemnify and hold harmless NDE 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 NDE, arising out of, resulting from, or attributable to the posting of the contract or solicitation response, awards, and other documents.

ALL INFORMATION PERTINENT TO THIS REQUEST FOR APPLICATION CAN BE FOUND ON THE INTERNET AT: <https://das.nebraska.gov/materiel/bidopps.html>.

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GLOSSARY OF TERMS

Addendum: A written correction or alteration to a document during the solicitation process (e.g., Questions and Answers, Revised Schedule of Events, Addendum to Contract Award)

Agency: 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 solicitations will be awarded according to the provisions in the solicitation

Best and Final Offer (BAFO): In a competitive solicitation, the final offer submitted which contains Vendor's most favorable terms for price

Bid: See Solicitation Response

Bid Opening: The process of opening correctly submitted solicitation responses at the time and place specified in the written solicitation and in the presence of any applicant who wishes to attend

Applicant: A Vendor who submits a Solicitation Response

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 solicitation, purchase order, or contract without expectation of conducting or performing at a later time

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

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

Confidential Information: See Proprietary Information

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 Award: Document that officially awards a contract to an applicant(s) as the result of a competitive solicitation or a vendor(s) in a contract that qualifies for an exception or exemption from the competitive bidding requirements

Contract Management: The management of day-to-day activities at the agency which includes but is not limited to ensuring deliverables are received, specifications are met, handling meetings and making payments to the Vendor

Contract Period: The duration of the contract

Contractor: See Vendor

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

Cost Sheet: A required document that is completed by the vendor in the prescribed format to show the vendor's pricing to provide the commodities or perform the services requested.

Customer Service: The process of ensuring customer satisfaction by providing assistance and advice on those commodities or services provided by a Vendor

Default: The omission or failure to perform a contractual duty

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

Evaluation: The process of examining a solicitation response after opening to determine the applicant's responsibility, responsiveness to requirements, and to ascertain other characteristics of the solicitation response that relate to determination of the successful award

Evaluation Committee: Individual(s) identified by the agency that leads the solicitation to evaluate solicitation responses

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

Foreign Adversary: Foreign adversary means a foreign adversary as determined pursuant to 15 C.F.R. 791.4 and Neb. Rev. Stat. § 73-903

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

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

Installation Date: The date when the procedures described in "Installation by Vendor" and "Installation by NDE" 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

Late Solicitation Response: A solicitation response 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 Vendor to the users of the Licensed Software which will provide NDE with sufficient information to operate, diagnose, and maintain the Licensed Software properly, safely, and efficiently

Mandatory: Required, compulsory, or obligatory

May: Discretionary, permitted; used to express possibility

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

Must: See Shall

Non-Responsive Solicitation Response: Any solicitation response that does not comply with the requirements of the solicitation or cannot be evaluated against the other solicitation responses

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

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

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

Personal Property: See Goods

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

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 NDE under the contract for use by NDE.

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

Proposal: See Solicitation Response

Proprietary Information: Trade secrets, academic and scientific research work that is in progress and unpublished, or other information that, if released, would give an 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 the release of the information and the demonstrated advantage the named competitor(s) would gain by the release of such information by the State.

Protest/Grievance: A complaint about a governmental action or decision related to the solicitation or resultant contract under NDE's Appeals Process.

Quote: See Solicitation Response

Recommended Hardware Configuration: The data processing hardware (including all terminals, auxiliary storage, communication, and other peripheral devices) to the extent used by NDE as recommended by the Vendor

Release Date: The date of public release of the solicitation

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

Request for Applications (RFA): See Solicitation

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

Responsive Bidder: A Vendor who has submitted a solicitation response which conforms to all requirements of the solicitation

Shall: An order/command; mandatory

Should: Expected; suggested, but not necessarily mandatory

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

Solicitation: A formal invitation to receive quotes in the form of a Request for Applications

Solicitation Conference: A meeting scheduled for the purpose of clarifying a written solicitation and related expectations

Solicitation Response: An offer, quote, bid, or proposal submitted by a Vendor in response to a Solicitation

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 Vendor enters a contract to perform a portion of the work awarded to the Vendor

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

Termination: Occurs when either Party, under 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 Vendor 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: An individual or entity lawfully conducting business with NDE. or licensed to do so, who seeks to provide and contract for goods or services under the terms of a Solicitation and/or Contract

Will: See Shall

Work Day: See Business Day

ACRONYM LIST

ACH – Automated Clearing House
ARO – After Receipt of Order
BAFO – Best and Final Offer
COI – Certificate of Insurance
CPU – Central Processing Unit
DAS – Department of Administrative Services
F.O.B. – Free on Board
ICT – Information and Communication Technology
PA – Participating Addendum
RFA – Request for Applications
NDE – Nebraska Department of Education

I. PROCUREMENT PROCEDURE

A. GENERAL INFORMATION

This solicitation is designed to solicit responses from qualified applicants who will be responsible for providing an Innovation Grant Learning Platform at a competitive and reasonable cost.

Solicitation responses shall conform to all instructions, conditions, and requirements included in the solicitation. Prospective applicants are expected to carefully examine all documents, schedules, and requirements in this solicitation, and respond to each requirement in the format prescribed. Solicitation responses 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 NDE Procurement. The point of contact (POC) for the procurement is as follows:

RFA:	NDERFA251008 – Innovation Grant Learning Platform
Name:	Procurement Specialist
Agency:	Nebraska Department of Education
Address:	500 S. 84th St. Lincoln, NE 68510-2611
Telephone:	(531) 207-3096
E-Mail:	nde.procurement@nebraska.gov

From the date the solicitation is issued until the Intent to Award is issued, communication from the applicant is limited to the POC listed above. After the Intent to Award is issued, the applicant may communicate with individuals NDE has designated as responsible for negotiating the contract on behalf of the Agency. 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 NDE can award a contract. Applicants 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 for negotiation and execution of the final contract.

NDE reserves the right to reject an applicant's solicitation response, withdraw an Intent to Award, or terminate a contract if NDE determines there has been a violation of these procurement procedures.

C. SCHEDULE OF EVENTS

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

Schedule of Events		
ACTIVITY		DATE/TIME
1.	Release RFA	October 20, 2025
2.	Last day to submit written questions. Please submit questions to: nde.procurement@nebraska.gov	October 27, 2025
3.	NDE responds to written questions through Request for Application "Addendum" and/or "Amendment" to be posted to the internet at: http://das.nebraska.gov/materiel/purchasing.html	October 30, 2025
4.	RFA Submission Due Date – late proposals will not be accepted and will be returned unopened to Vendor	November 3, 2025 2:00 PM Central Time
5.	Electronic Solicitation Opening – Online Via Zoom IT IS THE APPLICANT'S RESPONSIBILITY TO SEND SOLICITATIONS BY ELECTRONIC MAIL BY THE OPENING DATE AND TIME. EXCEPTIONS TO THE REQUIREMENT FOR ELECTRONIC SUBMISSION OF SOLICITATIONS DUE TO TECHNOLOGY ISSUES MUST BE PRE-APPROVED BY NDE PROCUREMENT AND SHALL BE DETERMINED ON A CASE-BY-CASE BASIS. Submit Applications via email to: NDE.Procurement@Nebraska.gov Join Zoom Meeting: https://educationne.zoom.us/j/97598662981	November 3, 2025 2:00 PM Central Time
6.	Evaluation period	Nov 3 – 14, 2025
7.	Oral Interviews/Presentations and/or Demonstrations	Not Intended
8.	Post "Notification of Intent to Award" to Internet at: https://das.nebraska.gov/materiel/bid-opportunities.html and/or https://www.education.ne.gov/nde-contract-opportunities-2/	December 8 – 9, 2025
9.	Contract finalization period	December 10 – January 15, 2026
10.	Contract award	January 19, 2026
11.	Vendor start date	January 20, 2026

D. WRITTEN QUESTIONS AND ANSWERS

Questions regarding the meaning or interpretation of any solicitation provision must be submitted in writing to NDE and clearly marked "Solicitation Number NDERFA251008; Innovation Grant Learning Platform Questions". The POC is not obligated to respond to questions that are received late per the Schedule of Events.

Applicants should submit questions for any items upon which assumptions may be made when preparing a response to the solicitation. Any solicitation response containing assumptions may be deemed non-responsive and may be rejected by NDE. Solicitation responses will be evaluated without consideration of any known or unknown assumptions of an applicant. The contract will not incorporate any known or unknown assumptions of an applicant.

Questions should be emailed in PDF format to nde.procurement@nebraska.gov. It is required that applicants submit questions using the following format:

RFA Section Reference	RFA 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

All applicants must be authorized to transact business in the State of Nebraska and comply with all Nebraska Secretary of State Registration requirements. The applicant who is the recipient of an Intent to Award may be required to certify that it has complied and produce a true and exact 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 complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at:

<https://das.nebraska.gov/materiel/docs/pdf/Individual%20or%20Sole%20Proprietor%20United%20States%20Attestation%20Form%20English%20and%20Spanish.pdf> This should be accomplished prior to execution of the contract.

F. ETHICS IN PUBLIC CONTRACTING

NDE reserves the right to reject solicitation responses, withdraw an intent to award or award, or terminate a contract if an ethical violation has been committed, which includes, but is 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. Utilizing 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 solicitation response on behalf of another Party or entity; and
5. Colluding with any person or entity to influence the bidding process, submit sham solicitation responses, preclude bidding, fix pricing or costs, create an unfair advantage, subvert the solicitation response, or prejudice NDE or the State.

The applicant shall include this clause in any subcontract entered into for the exclusive purpose of performing this contract. Applicant shall have an affirmative duty to report any violations of this clause by the applicant throughout the bidding process and throughout the term of this contract for the awarded applicant and their subcontractors.

G. DEVIATIONS FROM THE SOLICITATION

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 applicant in its solicitation response and, if accepted by NDE, will become part of the contract. Any specifically defined deviations must not be in conflict with the basic nature of the solicitation, requirements, or applicable state or federal laws or statutes. "Deviation", for the purposes of this solicitation, means any proposed changes or alterations to either the contractual language or deliverables within the scope of this solicitation. NDE discourages deviations and reserves the right to reject proposed deviations.

H. SUBMISSION OF SOLICITATION RESPONSES

NDE is only accepting electronic responses submitted by email in accordance with this solicitation. NDE will not accept solicitation responses by mail or hand delivery unless expressly approved in writing by NDE prior to submission.

Pages may be consecutively numbered for the entire solicitation response 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.

The Technical Responses should not contain any reference to dollar amounts. However, information such as data concerning labor hours and categories, materials, subcontracts and so forth, shall be considered in the Technical Response so that the applicant's understanding of the scope of work may be evaluated. The Technical Response shall disclose the applicant's technical requirements in as much detail as possible, including, but not limited to, the information required by the Technical Response instructions.

It is the applicant's responsibility to ensure the solicitation response is received electronically by the date and time indicated in the Schedule of Events. Solicitation Responses must be submitted via Email in PDF format by the date and time of the opening per the Schedule of Events. NDE reserves the right to reject late solicitation responses as non-conforming.

It is the responsibility of the applicant to check the website for all information relevant to this solicitation 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>.

Emphasis should be concentrated on conformance to the solicitation instructions, responsiveness to requirements, completeness, and clarity of content. If the solicitation response is presented in such a fashion that makes evaluation difficult or overly time consuming NDE reserves the right to reject the solicitation response as non-conforming.

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

1. Applicants must submit responses via Email in PDF format.

- i. The Solicitation response and Proprietary information should be attached as separate and distinct files.
 - i. If duplicated responses are submitted, NDE will retain only the most recently submitted response.
 - ii. If it is the applicant's intent to submit multiple responses, the applicant must clearly identify the separate submissions.
 - iii. It is the applicant's responsibility to allow time for electronic uploading. All documents must be emailed in PDF format by the Opening date and time per the Schedule of Events. No late responses will be accepted
- ii. **ELECTRONIC SOLICITATION RESPONSE FILE NAMES**

The applicant should clearly identify the emailed solicitation response files. To assist in identification the applicant should use the following naming convention:

 - i. NDERFA251008 Company Name
If multiple files are submitted for one solicitation response, add number of files to file names:
NDERFA251008 Company Name File 1 of 2 NDERFA251008 Company Name File 2 of 2
 - ii. If multiple responses are submitted for the same solicitation, add the response number to the file names:
NDERFA251008 Company Name Response 1 File 1 of 2

The "Contractual Agreement Form" must be signed manually in ink or by electronic signature and returned by the opening date and time along with the applicant's solicitation response and any other requirements as stated in this solicitation in order for the applicant's solicitation response to be evaluated.

By signing this Contractual Agreement Form, the applicant guarantees compliance with the provisions stated in this solicitation and agrees to the terms and conditions unless otherwise indicated in writing.

I. SOLICITATION PREPARATION COSTS

NDE shall not incur any liability for any costs incurred by applicant's in replying to this solicitation, including any activity related to bidding on this solicitation.

J. FAILURE TO COMPLY WITH SOLICITATION

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 NDE which may include, but is not limited to, the following:

1. Rejection of an applicant's solicitation response,
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; and
7. Suspension or Debarment of the applicant 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 NDE.

K. SOLICITATION RESPONSE CORRECTIONS

An applicant may correct a mistake in an electronically submitted solicitation response prior to the time of opening by uploading a revised and completed solicitation response.

1. If a corrected electronic solicitation response is submitted, the file name(s) date/time stamped with latest date/time stamp will be accepted. The corrected solicitation response file name(s) should be identified as:
 - i. Corrected NDERFA251008 Company Name Response #1 File 1 of 2,
 - ii. Corrected NDERFA251008 Company Name Response #2 File 2 of 2, etc.

Changing a solicitation response 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.

L. LATE SOLICITATION RESPONSES

Solicitation Responses received after the time and date of the opening will be considered late responses. NDE reserves the right to reject late solicitation responses as non-conforming. NDE is not responsible for responses that are late or lost regardless of cause or fault.

M. BID OPENING

The opening will consist of opening solicitation responses and announcing the names of applicants. Responses **WILL NOT** be available for viewing by those present at the opening. Once responses are opened, they become the property of NDE and will not be returned.

N. SOLICITATION REQUIREMENTS

The solicitation responses will first be examined to determine if all requirements listed below have been addressed and whether further evaluation is warranted. Solicitation responses not meeting the requirements may be rejected as non-conforming. Consideration will be given to the clarity and responsiveness of the submission. The requirements are as follows:

1. Corporate Overview;
2. Completed Sections II through IV;
3. Technical Response;
4. Cost Sheet. (Attachment A);
5. Completed Contractual Agreement Form (Attachment B); and
6. Questionnaire (Attachment C)

O. EVALUATION COMMITTEE

Solicitation Responses are evaluated by members of an Evaluation Committee(s). The Evaluation Committee(s) will consist of individuals selected at the discretion of NDE.

The Evaluation Committee(s) are required to complete a conflict of interest form. Any contact, attempted contact, or attempt to influence an evaluator that is involved with this Solicitation may result in the rejection of this response and further administrative actions.

P. EVALUATION OF SOLICITATION RESPONSES

All solicitation responses that are deemed responsive to the solicitation will be evaluated. Each evaluation category will have a maximum point potential. NDE will conduct a fair, impartial, and comprehensive evaluation of all responses in accordance with the criteria set forth below. Areas that will be addressed and scored during the evaluation include:

1. Corporate Overview may include, but is not limited to:
 - i. the ability, capacity, and skill of the applicant to deliver and implement the system or project that meets the

- requirements of the Solicitation;
- ii. the character, integrity, reputation, judgment, experience, and efficiency of the applicant;
- iii. whether the applicant can perform the contract within the specified time frame;
- iv. the applicant's historical or current performance; and
- v. such other information that may be secured and that has a bearing on the decision to award the contract.

In evaluating the corporate overview, NDE may consider, past experiences with the vendor, references, the State's record of the vendor which may include, but is not limited to Vendor Compliance Request, Contract Non-Compliance Notice, vendor performance reports, and any information related to the vendor's historical or current character, integrity, reputation, capability, or performance with NDE, the State or a third-party.

2. Technical Responses and

3. Cost Sheet.

Neb. Rev. Stat. § 73-808 allows State agencies 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 competitive solicitations in determining a responsible bidder. Information obtained from any Contract Compliance Request or any Contract Non-Compliance Notice may be used in evaluating responses to solicitations for goods and services to determine the best value for NDE.

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 bidder, 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 bidder, 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 (a) of this paragraph and (ii) the management and daily business operations of the business are controlled by one or more persons described in (a) of this paragraph. 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 solicitation response in accordance with Neb. Rev. Stat. § 73-107 and has so indicated on the Contractual Agreement Form under "Vendor 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 Vendor within ten (10) business days of request:

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

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

Q. BEST AND FINAL OFFER

Each applicant should provide its best offer with their original solicitation response and should not expect NDE to request a best and final offer (BAFO).

NDE reserves the right to conduct more than one BAFO. If requested by NDE, the BAFO must be submitted on the BAFO Cost Sheet and in accordance with NDE's instructions. Failure to submit a requested BAFO or failure to submit a BAFO in accordance with NDE's instructions may result in rejection of the applicant's entire solicitation response. BAFOs may be scored and ranked by the Evaluation Committee.

R. REFERENCE AND CREDIT CHECKS

NDE reserves the right to conduct and consider reference and credit checks. NDE reserves the right to use third parties

to conduct reference and credit checks. By submitting a solicitation response, the applicant grants to NDE the right to contact or arrange a visit in person with any or all of the applicant's clients. Reference and credit checks may be grounds to reject a solicitation response, withdraw an intent to award, or rescind the award of a contract.

S. AWARD

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

1. Amend the solicitation;
2. Extend the date and time of a solicitation;
3. Waive deviations or errors in NDE's solicitation process and in applicant responses that are not material, do not compromise the solicitation process or an applicant's response, and do not improve a Vendor's competitive position;
4. Accept or reject a portion of or all of a solicitation response;
5. Accept or reject all responses;
6. Withdraw the solicitation;
7. Elect to re-release the solicitation;
8. Award single lines or multiple lines to one or more Vendors; or,
9. Award one or more all-inclusive contracts.

The solicitation does not commit NDE to award a contract. Once the intent to award decision has been determined, it will be posted at: <https://das.nebraska.gov/materiel/bidopps.html>

Any protests must be filed by an applicant within ten (10) business days after the intent to award decision is posted to the Internet. Grievance and protest procedure is available on the NDE website or can be requested from NDE.Procurement@nebraska.gov.

T. LUMP SUM OR "ALL OR NONE" SOLICITATION RESPONSES

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

"LUMP SUM" OR "ALL OR NONE" RESPONSES SHOULD BE CLEARLY IDENTIFIED ON THE FIRST PAGE OF THE SOLICITATION AND COST SHEET (IF APPLICABLE)

U. REJECTION OF SOLICITATION RESPONSES

NDE reserves the right to reject any or all responses, wholly or in part, in the best interest of NDE.

V. PRICES & COST CLARIFICATION

Discount and Price provisions are discussed in Sections III.F. and III.G. NDE reserves the right to review all aspects of cost for reasonableness and realism as those terms are defined in (Neb. Rev. Stat. § 73-810 (1) (a) and (b) NDE may request clarification of any solicitation where the cost component indicates a significant and unsupported deviation from industry standards or in areas where detailed pricing is required. Under Neb. Rev. Stat. § 73-810 (2), NDE may reject a bid if the price is not reasonable or realistic.

W. VENDOR DEMONSTRATIONS

NDE may determine that oral interviews/presentations and/or demonstrations are required. Every applicant may not be given an opportunity to interview/present and/or give demonstrations; NDE reserves the right, in its discretion, to select only the top scoring applicants to present/give oral interviews. The scores from the oral interviews/presentations and/or demonstrations will be added to the scores from the Corporate Overview, Technical Response, and Cost Sheets. The presentation process will allow the applicants to demonstrate their solicitation response offering, explaining and/or clarifying any unusual or significant elements related to their solicitation responses. Applicants' key personnel, identified in their solicitation response, may be requested to participate in a structured interview to determine their understanding of the requirements of this solicitation response, their authority and reporting relationships within their firm, and their management style and philosophy. Only representatives of the State and the presenting applicant will be permitted to attend the oral interviews/presentations and/or demonstrations. A written copy or summary of the presentation, and demonstrative information (such as briefing charts, etc.) may be offered by the applicant, but NDE reserves the right to refuse or not consider the offered materials. Applicants shall not be allowed to alter or amend their solicitation responses.

Once the oral interviews/presentations and/or demonstrations have been completed, NDE reserves the right to make an award without any further discussion with the applicants regarding the solicitation responses received.

Any cost incidental to the oral interviews/presentations and/or demonstrations shall be borne entirely by the applicant and will not be compensated by NDE.

II. TERMS AND CONDITIONS

Applicant should read the Terms and Conditions within this section and must initial either "Accept All Terms and Conditions Within Section as Written" or "Exceptions Taken to Terms and Conditions Within Section as Written" in the table below. If exception is not taken to a provision, it is deemed accepted as stated. If the applicant takes any exceptions, they must provide the following within the "Exceptions" field of the table below (Applicant may provide responses in separate attachment if multiple exceptions are taken):

1. The specific clause, including section reference, to which an exception has been taken;
2. An explanation of why the applicant took exception to the clause; and
3. Provide alternative language to the specific clause within the solicitation response.

By signing the solicitation, applicant agrees to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the solicitation response. NDE reserves the right to negotiate rejected or proposed alternative language. If NDE and applicant fail to agree on the final Terms and Conditions, NDE reserves the right to reject the solicitation response. NDE reserves the right to reject solicitation responses that attempt to substitute the applicant's commercial contracts and/or documents for this solicitation.

Accept All Terms and Conditions Within Section as Written (Initial)	Exceptions Taken to Terms and Conditions Within Section as Written (Initial)	Exceptions: (Applicant must note the specific clause, including section reference, to which an exception has been taken, an explanation of why the applicant took exception to the clause, and provide alternative language to the specific clause within the solicitation response.)

The applicants should submit with their solicitation response any license, user agreement, service level agreement, or similar documents that the applicant wants incorporated in the Contract. NDE will not consider incorporation of any document not submitted with the solicitation response as the document will not have been included in the evaluation process. 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 Contract documents have been negotiated and agreed to, the Contract documents shall be interpreted as follows:

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

A. GENERAL

The final Contract resulting from this Solicitation shall comprise the following documents:

- i. NDE Appendix B – Contract for Services; and
- ii. Any applicable attachments, including but not confined to:
 - a. Solicitation, including any attachments and addenda to that solicitation;
 - b. Questions and Answers;
 - c. Applicant's properly submitted solicitation response, including any terms and conditions or agreements submitted by the applicant that are accepted by NDE;
- iii. Amendments to the Contract. (if applicable)

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) Amendments to the executed Contract with the most recent dated amendment having the highest priority,
- 2) Executed NDE Appendix B – Contract for Services and any attachments,
- 3) Addendums to the solicitation and any Questions and Answers,
- 4) The original solicitation document and any Addenda or attachments, and
- 5) The Vendor's submitted solicitation response, including any terms and conditions or agreements that are accepted by NDE.

Unless otherwise specifically agreed to in writing by NDE, NDE's standard terms and conditions, as executed by NDE, shall always control over any terms and conditions or agreements submitted or included by the Vendor.

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 of Nebraska.

B. NOTIFICATION

Applicant and NDE shall identify the individual(s) 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. GOVERNING LAW

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 agreement must be brought in the State of Nebraska per state law; (4) the person signing this contract on behalf of NDE 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.

D. BEGINNING OF WORK & SUSPENSION OF SERVICES

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

NDE may, at any time and without advance notice, require the Vendor to suspend any or all performance or deliverables provided under this Contract. In the event of such suspension, the Contract Manager or POC, or their designee, will issue a written order to stop work. The written order will specify which activities are to be immediately suspended and the reason(s) for the suspension. Upon receipt of such order, the Vendor shall immediately comply with its terms and take all necessary steps to mitigate and eliminate the incurrence of costs allocable to the work affected by the order during the period of suspension. The suspended performance or deliverables may only resume when NDE provides the Vendor with written notice that such performance or deliverables may resume, in whole or in part.

E. AMENDMENT

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

Amendments may involve specifications, the quantity of work, or such other items as NDE may find necessary or desirable.

The Vendor shall prepare a written description and an itemized cost sheet of the work required due to the amendment. Changes in work and the amount to be paid to the Vendor shall be determined in accordance with a pro-rated value, or through negotiations. NDE shall not incur a price increase for changes that should have been included in the Vendor's solicitation response, were foreseeable, or result from difficulties with or failure of the Vendor's solicitation

response or performance.

No change shall be implemented by the Vendor until approved in writing by NDE, and the Contract is amended to reflect the change of scope and associated costs, if any.

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

*****Vendor will not substitute any item that has been contracted for without prior written approval of NDE*****

F. RECORD OF VENDOR PERFORMANCE

NDE 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 specifications. In addition to other remedies and options available to NDE, NDE may issue one or more notices to the vendor outlining any issues NDE has regarding the vendor's performance for a specific contract. The Vendor shall respond to any such notice or request. At the sole discretion of NDE, such notices or request may be placed in NDE's records regarding the vendor and may be considered by NDE and held against the vendor in any future contract or award opportunity. The record of vendor performance will be considered in any suspension or debarment action.

G. NOTICE OF POTENTIAL VENDOR BREACH

If Vendor breaches the contract or anticipates breaching the contract, the Vendor shall immediately give written notice to NDE. 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. NDE may, in its discretion, temporarily or permanently waive the breach. By granting a waiver, NDE does not forfeit any rights or remedies to which NDE is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

H. BREACH

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 cure period. Said notice shall be delivered by email, delivery 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.

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

I. 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.

J. 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.

K. INDEMNIFICATION

1. GENERAL

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

The Parties acknowledge that the Attorney General for the State of Nebraska is required by statute to represent the legal interests of the State, and that any provision of this indemnity clause is subject to the

statutory authority of the Attorney General.

2. INTELLECTUAL PROPERTY

The Vendor 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 Vendor or its employees, Subcontractors, consultants, representatives, and agents; provided, however, NDE gives the Vendor prompt notice in writing of the claim. The Vendor may not settle any infringement claim that will affect NDE's use of the Licensed Software without NDE'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 Vendor has indemnified NDE, the Vendor shall, at the Vendor's sole cost and expense, promptly modify the item or items which were determined to be infringing, acquire a license or licenses on NDE's behalf to provide the necessary rights to NDE to eliminate the infringement, or provide NDE with a non-infringing substitute that provides NDE the same functionality. At NDE's election, the actual or anticipated judgment may be treated as a breach of warranty by the Vendor, and NDE may receive the remedies provided under this Solicitation.

3. PERSONNEL

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

4. SELF-INSURANCE

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

L. 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 Vendor retains the right to enter into a sale, merger, acquisition, internal reorganization, or similar transaction involving Vendor's business. Vendor agrees to cooperate with NDE in executing amendments to the contract to allow for the transaction. If a third party or entity is involved in the transaction, the Vendor 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.

M. FORCE MAJEURE

If the performance of either party of any obligation is prevented, restricted or interfered with by causes outside such party's reasonable control, and the party is unable to carry out its obligation(s) and provides the other party prompt written notice thereof, the obligation(s) of such party may be suspended or cancelled effective immediately, to the extent necessary, as a result of such event. Events shall include acts of God, fire, explosion, health epidemic or pandemic, storms, national emergencies, riots, civil unrest and the outbreak of war. The Parties may negotiate a resolution due to cancellation of any contract arising out of this RFA due to force majeure, based upon specified deliverables completed by the Contractor and accepted and usable by NDE.

N. 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.

O. EARLY TERMINATION

The contract may be terminated as follows:

1. NDE and the Vendor, by mutual written agreement, may terminate the contract, in whole or in part, at any time.
2. NDE, in its sole discretion, may terminate the contract, in whole or in part, for any reason upon thirty (30) calendar day's written notice shall be delivered by email, delivery receipt requested; certified mail, return receipt requested; or in person with proof of delivery to the Vendor. Such termination shall not relieve the Vendor of warranty or other service obligations incurred under the terms of the contract. In the event of termination, the Vendor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
3. NDE may terminate the contract, in whole or in part, immediately for the following reasons:
 - i. if directed to do so by statute,
 - ii. Vendor 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,
 - iii. a trustee or receiver of the Vendor or of any substantial part of the Vendor's assets has been appointed by a court,
 - iv. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Vendor, its employees, officers, directors, or shareholders,
 - v. an involuntary proceeding has been commenced by any Party against the Vendor 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 Vendor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Vendor has been decreed or adjudged a debtor, a voluntary petition has been filed by the Vendor under any of the chapters of Title 11 of the United States Code,
 - vii. Vendor intentionally discloses confidential information,
 - viii. Vendor has or announces it will discontinue support of the deliverable; and,
 - ix. In the event funding is no longer available.

P. CONTRACT CLOSEOUT

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

1. Transfer all completed or partially completed deliverables to NDE,
2. Transfer ownership and title to all completed or partially completed deliverables to NDE,
3. Return to NDE all information and data unless the Vendor is permitted to keep the information or data by contract or rule of law. Vendor 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 Vendor's routine back up procedures,
4. Cooperate with any successor Contactor, person, or entity in the assumption of any or all of the obligations of this contract,
5. Cooperate with any successor Contactor, person, or entity with the transfer of information or data related to this contract,
6. Return or vacate any state owned real or personal property; and,
7. Return all data in a mutually acceptable format and manner.

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

Q. AMERICANS WITH DISABILITIES ACT

Vendor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131–12134), as amended by the ADA Amendments Act of 2008 (ADA Amendments Act) (Pub.L. 110–325, 122 Stat. 3553 (2008)), which prohibits discrimination on the basis of disability by public entities.

R. LOBBYING

1. No federal or state funds paid under this RFA shall be paid for any lobbying costs as set forth herein.

2. Lobbying Prohibited by 31 U.S.C. § 1352 and 45 CFR §§ 93 et seq, and Required Disclosures.
 - a. Contractor certifies that no federal or state appropriated funds shall be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this award for: (a) the awarding of any federal agreement; (b) the making of any federal grant; (c) the entering into of any cooperative agreement; and (d) the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.
 - b. If any funds, other than federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence: an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with Contractor, Contractor shall complete and submit Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. Lobbying Activities Prohibited under Federal Appropriations Bills.
 - a. No funds paid under this RFA shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation of the Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any state or local government itself.
 - b. No funds paid under this RFA shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than normal and recognized executive legislative relationships or participation by an agency or officer of an State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
 - c. The prohibitions in the two sections immediately above shall include any activity to advocate or promote any proposed, pending, or future federal, state or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
4. Lobbying Costs Unallowable Under the Cost Principles. In addition to the above, no funds shall be paid for executive lobbying costs as set forth in 45 CFR § 75.450(b). If Contractor is a nonprofit organization or an Institute of Higher Education, other costs of lobbying are also unallowable as set forth in 45 CFR § 75.450(c).

III. VENDOR DUTIES

Applicant should read the Vendor Duties within this section and must initial either "Accept All Terms and Conditions Within Section as Written" or "Exceptions Taken to Vendor Duties Within Section as Written" in the table below. If exception is not taken to a provision, it is deemed accepted as stated. If the applicant takes any exceptions, they must provide the following within the "Exceptions" field of the table below (Applicant may provide responses in separate attachment if multiple exceptions are taken):

1. The specific clause, including section reference, to which an exception has been taken;
2. An explanation of why the applicant took exception to the clause; and
3. Provide alternative language to the specific clause within the solicitation response.

By signing the solicitation, applicant agrees to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the solicitation response. NDE reserves the right to negotiate rejected or proposed alternative language. If NDE and applicant fail to agree on the final Terms and Conditions, NDE reserves the right to reject the solicitation response. NDE reserves the right to reject solicitation responses that attempt to substitute the applicant's commercial contracts and/or documents for this solicitation.

Accept All Vendor Duties Within Section as Written (Initial)	Exceptions Taken to Vendor Duties Within Section as Written (Initial)	Exceptions: (Applicant must note the specific clause, including section reference, to which an exception has been taken, an explanation of why the applicant took exception to the clause, and provide alternative language to the specific clause within the solicitation response.)

A. INDEPENDENT VENDOR / OBLIGATIONS

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

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

The Vendor shall secure, at its own expense, all personnel required to perform the services under the contract. The personnel the Vendor uses to fulfill the contract shall have no contractual or other legal relationship with NDE or 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 applicant's solicitation response shall not be changed without the prior written approval of NDE. Replacement of these personnel, if approved by NDE, shall be with personnel of equal or greater ability and qualifications.

All personnel assigned by the Vendor to the contract shall be employees of the Vendor and shall be fully qualified to perform the work required herein. Personnel employed by the Vendor to fulfill the terms of the contract shall remain under the sole direction and control of the Vendor.

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

If the Vendor intends to utilize any subcontractor, the subcontractor's level of effort, tasks, and time allocation should be clearly defined in the solicitation response. The Vendor shall agree that it will not utilize any subcontractors not specifically included in its solicitation response in the performance of the contract without the prior written authorization of NDE. If the Vendor subcontracts any of the work, the Vendor agrees to pay any and all subcontractors in accordance with the Vendor's agreement with the respective subcontractor(s).

NDE reserves the right to require the Vendor to reassign or remove from the project any Vendor or subcontractor employee.

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

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

B. FOREIGN ADVERSARY CONTRACTING PROHIBITION ACT CERTIFICATION

The Vendor certifies that it is not a scrutinized company as defined under the Foreign Adversary Contracting Prohibition Act, Neb. Rev. Stat. § 73-903 (5); that it will not subcontract with any scrutinized company for any aspect of performance of the contemplated contract; and that any products or services to be provided do not originate with a scrutinized company.

C. EMPLOYEE WORK ELIGIBILITY STATUS

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

1. The Vendor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website.
2. The completed United States Attestation Form should be submitted with the Solicitation response.
3. If the Vendor indicates on such attestation form that he or she is a qualified alien, the Vendor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Vendor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
4. The Vendor understands and agrees that lawful presence in the United States is required, and the Vendor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

D. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION

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

E. COOPERATION WITH OTHER VENDORS

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

F. 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 solicitation response. 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.

G. PRICES

Fixed Price Contract: All prices, costs, and terms and conditions submitted in the solicitation response shall remain fixed and valid commencing on the opening date of the solicitation until the contract terminates or expires.

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 Vendor shall obtain and pay for all royalties, licenses, and permits, and approvals necessary for the execution of the contract. The Vendor 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

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

NDE shall own and hold exclusive title to any deliverable developed as a result of this contract. Vendor 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. INSURANCE REQUIREMENTS

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

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

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

In the event that any policy written on a claims-made basis terminates or is canceled during the term of the contract or within two (2) years of termination or expiration of the contract, the Vendor shall obtain an extended discovery or reporting period, or a new insurance policy, providing coverage required by this contract for the term of the contract and two (2) years following termination or expiration of the contract.

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

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

1. WORKERS' COMPENSATION INSURANCE

The Vendor shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contactors' employees to be engaged in work on the project under this contract and, in case any such work is sublet, the Vendor shall require the Subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. **The policy shall include a waiver of subrogation in favor of the State. The COI shall contain the mandatory COI subrogation waiver language found hereinafter.** The amounts of such insurance shall not be less than the limits stated hereinafter. For employees working in the State of Nebraska, the policy must be written by an entity authorized by the State of Nebraska Department of Insurance to write Workers' Compensation and Employer's Liability Insurance for Nebraska employees.

2. COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE

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

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

REQUIRED INSURANCE COVERAGE	
COMMERCIAL GENERAL LIABILITY	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Medical Payments	\$10,000 any one person
Damage to Rented Premises (Fire)	\$300,000 each occurrence
Contractual	Included
XCU Liability (Explosion, Collapse, and Underground Damage)	Included
Independent Vendors	Included
Abuse & Molestation	Included
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>	
WORKER'S COMPENSATION	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
Voluntary Compensation	Statutory
COMMERCIAL AUTOMOBILE LIABILITY	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
Motor Carrier Act Endorsement	Where Applicable
UMBRELLA/EXCESS LIABILITY	
Over Primary Insurance	\$5,000,000 per occurrence
PROFESSIONAL LIABILITY	
All Other Professional Liability (Errors & Omissions)	\$1,000,000 Per Claim / Aggregate
COMMERCIAL CRIME	
Crime/Employee Dishonesty Including 3rd Party Fidelity	\$1,000,000
CYBER LIABILITY	
Breach of Privacy, Security Breach, Denial of Service, Remediation, Fines and Penalties	\$5,000,000
VENDOR'S POLLUTION LIABILITY	
Each Occurrence/Aggregate Limit	\$2,000,000
Includes Non-Owned Disposal Sites	
MANDATORY COI SUBROGATION WAIVER LANGUAGE	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
MANDATORY COI LIABILITY WAIVER LANGUAGE	
"Commercial General Liability & Commercial Automobile Liability policies shall name the State of Nebraska as an Additional Insured and the policies shall be primary and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory as additionally insured."	

3. EVIDENCE OF COVERAGE

The vendor shall email NDE.Procurement@nebraska.gov with a certificate of insurance coverage complying with the above requirements prior to beginning work, including the RFA Identification.

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

K. ANTITRUST

The Vendor hereby assigns to NDE 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 NDE.

L. CONFLICT OF INTEREST

By submitting a solicitation response, vendor certifies that no relationship exists between the vendor and any person or entity which either is, or gives the appearance of, a conflict of interest related to this solicitation or project.

Vendor further certifies that vendor will not employ any individual known by vendor to have a conflict of interest nor shall vendor 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, vendor shall provide with its solicitation response a full disclosure of the facts describing such actual or perceived conflict of interest and a proposed mitigation plan for consideration. NDE will then consider such disclosure and proposed mitigation plan and either approve or reject as part of the overall solicitation response evaluation.

M. ADVERTISING

The Vendor 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 or services are endorsed or preferred by NDE. Any publicity releases pertaining to the project shall not be issued without prior written approval from NDE.

N. NEBRASKA TECHNOLOGY ACCESS STANDARDS

1. 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 with disabilities, as it affords to employees, program participants and members of the public who are not persons with disabilities.
2. By entering into this Contract, Vendor understands and agrees that if the Vendor is providing a product or service that contains ICT, as defined in subsection 3 below and such ICT is intended to be directly interacted with by the user or is public facing, such 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 Vendor 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.
3. 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. Vendor 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 Vendor.

O. DISASTER RECOVERY/BACK UP PLAN

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

P. DRUG POLICY

Vendor certifies it maintains a drug free workplace environment to ensure worker safety and workplace integrity.

Vendor agrees to provide a copy of its drug free workplace policy at any time upon request by NDE.

Q. WARRANTY

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

R. TIME IS OF THE ESSENCE

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

IV. PAYMENT

Applicant should read the Payment clauses within this section and must initial either "Accept All Terms and Conditions Within Section as Written" or "Exceptions Taken to Payment clauses Within Section as Written" in the table below. If exception is not taken to a provision, it is deemed accepted as stated. If the applicant takes any exceptions, they must provide the following within the "Exceptions" field of the table below (Applicant may provide responses in separate attachment if multiple exceptions are taken):

1. The specific clause, including section reference, to which an exception has been taken;
2. An explanation of why the applicant took exception to the clause; and
3. Provide alternative language to the specific clause within the solicitation response.

By signing the solicitation, applicant agrees to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the solicitation response. NDE reserves the right to negotiate rejected or proposed alternative language. If NDE and applicant fail to agree on the final Terms and Conditions, NDE reserves the right to reject the solicitation response. NDE reserves the right to reject solicitation responses that attempt to substitute the applicant's commercial contracts and/or documents for this solicitation.

Accept All Payment Clauses Within Section as Written (Initial)	Exceptions Taken to Payment Clauses Within Section as Written (Initial)	Exceptions: (Applicant must note the specific clause, including section reference, to which an exception has been taken, an explanation of why the applicant took exception to the clause, and provide alternative language to the specific clause within the solicitation response.)

A. PROHIBITION AGAINST ADVANCE PAYMENT

Pursuant to Neb. Rev. Stat. § 81-2403, "[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

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

C. INVOICES

Invoices for payments must be submitted by the Vendor to the agency requesting the services with sufficient detail to support payment, including student user data. **Invoice submissions must be based on verified student usage.** The terms and conditions included in the Vendor'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 NDE, and no action by NDE, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping NDE with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by NDE as an amendment to the contract. **NDE shall have forty-five (45) calendar days to pay after a valid and accurate invoice is received by NDE.**

D. PAYMENT

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

E. LATE PAYMENT

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

F. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS

NDE's obligation to pay amounts due on the awarded contract for fiscal years following the current fiscal year is contingent upon legislative appropriation of funds. Due to possible future reductions in State and/or Federal funds, NDE cannot guarantee the continued availability of funding of the awarded contract notwithstanding the consideration stated above. In the event funds to finance this Contract become unavailable, either in full or in part, due to such reductions, NDE may terminate the contract or reduce the consideration upon notice in writing to the Contractor. Said notice shall be delivered by certified mail (return receipt requested), by electronic mail to the representative nominated by the Vendor, or in person (with proof of delivery).

NDE shall be the final authority as to determining the availability of funds. The effective date of such contract termination or reduction in consideration shall be the actual effective date of the elimination or reduction of funding. In the event of a reduction in consideration, the Vendor may cancel the contract effective the date of the proposed reduction upon provision of advance written notice to NDE.

In the event of unavailability of funding as determined by NDE, NDE shall have the right to issue a 'stop work' order to Vendor in writing. Vendor agrees that if a stop work order is issued to Vendor by NDE in relation to this contract, Vendor shall immediately cease all work described in the scope of services and shall not resume work of any kind in relation to said deliverables under the contract unless expressly directed to by NDE. Said notice shall be delivered by certified mail (return receipt requested), by electronic mail to the representative nominated by the Vendor, or in person (with proof of delivery). Upon receipt of such notice by the Vendor, the stop work order shall be deemed to be in effect, and NDE shall not be liable for payment for any work carried out by Vendor under said contract during any time period when the stop work order is in effect.

Should said funds not be appropriated, NDE may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. NDE will give the Vendor written notice thirty (30) calendar days prior to the effective date of termination. All obligations of NDE to make payments after the termination date will cease. The Vendor 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 Vendor be paid for a loss of anticipated profit.

G. RIGHT TO AUDIT

NDE shall have the right to audit the Vendor's performance of this contract upon a thirty (30) days' written notice. Vendor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable NDE to audit the contract. (Neb. Rev. Stat. § 84-304 et seq.) NDE may audit, and the Vendor 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 Vendor shall make the Information available to NDE at Vendor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Vendor so elects, the Vendor may provide electronic or paper copies of the Information. NDE 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. Under no circumstance will the Vendor be required to create or maintain documents not kept in the ordinary course of Vendor's business operations, nor will Vendor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to Vendor.

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by NDE. If a previously undisclosed overpayment exceeds .5% of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Vendor, the Vendor shall reimburse NDE for

the total costs of the audit. Overpayments and audit costs owed to NDE shall be paid within ninety (90) days of written notice of the claim. The Vendor agrees to correct any material weaknesses, quality defects, errors and omissions, or condition found as a result of the audit.

V. PROJECT DESCRIPTION AND SCOPE OF WORK

The applicant should provide the following information in response to this Solicitation.

A. PROJECT OVERVIEW

The Nebraska Department of Education (NDE) is issuing this Request for Applications (RFA) for the purpose of procuring a learning platform(s) that can be used in schools to engage students in coursework and careers in science, technology, engineering, and mathematics. Learning platform is defined in Neb. Rev. Stat. § 79-1054 as a three-dimensional (3-D), game-based learning platform for use by middle school and high school students.

The learning platform must:

- a. Be designed to teach information related to chemistry and physical science, business, or mathematics;
- b. Align with the College and Career Readiness Content Standards and Career and Technical Education Content Standards established by the State Board of Education relating to chemistry and physical science, business, or mathematics;
- c. Connect content area standards with real-world technologies and applications;
- d. Highlight science, technology, engineering, and mathematics career pathways in Nebraska; and
- e. Meet any additional requirements set out by the State Board of Education, including unlimited 24/7 access to and use of the learning platform to all Nebraska school districts.

B. SCOPE OF WORK

Vendor must provide three-dimensional game-based learning platform that meets the criteria established by the Nebraska State Legislature through Neb. Rev. Stat. § 79-1054 and the Nebraska State Board of Education.

The platform shall have a variety of interactive 3-D simulations and games that allow students to explore science, technology, engineering, or mathematics and careers in these content areas in a hands-on way targeted for use by middle school and high school students.

C. DELIVERABLES

Per Neb. Rev. Stat. § 79-1054, the NDE shall procure or purchase a three-dimensional learning platform for use in schools to engage students in coursework and careers in science, technology, engineering, and mathematics. Per statute, the NDE will prioritize the grant applications based on the criteria provided by the Nebraska State Board of Education to include the cost per student user. As such, the grant will be paid based on the deliverable of student usage over the project's performance period.

VI. SOLICITATION RESPONSE INSTRUCTIONS

This section documents the requirements that should be met by applicants in preparing the Corporate Overview, Technical Response, and Cost Sheet. Applicants should identify the subdivisions of "Project Description and Scope of Work" clearly in their solicitation response; failure to do so may result in disqualification. Failure to respond to a specific requirement may be the basis for elimination from consideration during NDE's comparative evaluation.

Solicitation responses are due by the date and time shown in the Schedule of Events. Content requirements for the Corporate Overview, Technical Response, and Cost Sheet are presented separately in the following subdivisions: format and order:

A. SOLICITATION RESPONSE SUBMISSION

1. CORPORATE OVERVIEW

The Corporate Overview section of the solicitation response should consist of the following subdivisions:

i. APPLICANT IDENTIFICATION AND INFORMATION

The applicant should provide the full company or corporate name, address of the company's headquarters, entity organization (corporation, partnership, proprietorship), state in which the applicant is incorporated or otherwise organized to do business, year in which the applicant first organized to do business and whether the name and form of organization has changed since first organized.

ii. FINANCIAL STATEMENTS

The applicant should provide financial statements applicable to the firm. If publicly held, the applicant should provide a copy of the corporation's most recent audited financial reports and statements, and the name, address, and telephone number of the fiscally responsible representative of the applicant's financial or banking organization.

If the applicant is not a publicly held corporation, either the reports and statements required of a publicly held corporation, or a description of the organization, including size, longevity, client base, areas of specialization and expertise, and any other pertinent information, should be submitted in such a manner that solicitation evaluators may reasonably formulate a determination about the stability and financial strength of the organization. Additionally, a non-publicly held firm should provide a banking reference.

The applicant must disclose any and all judgments, pending or expected litigation, or other real or potential financial reversals, which might materially affect the viability or stability of the organization, or state that no such condition is known to exist.

NDE may elect to use a third party to conduct credit checks as part of the corporate overview evaluation.

iii. CHANGE OF OWNERSHIP

If any change in ownership or control of the company is anticipated during the twelve (12) months following the solicitation response due date, the applicant should describe the circumstances of such change and indicate when the change will likely occur. Any change of ownership to an awarded applicant(s) will require notification to NDE.

iv. OFFICE LOCATION

The applicant's office location responsible for performance pursuant to an award of a contract with the NDE should be identified.

v. RELATIONSHIPS WITH NDE AND THE STATE OF NEBRASKA

The applicant should describe any dealings with NDE and the State of Nebraska over the previous five (5) years. If the organization, its predecessor, or any Party named in the applicant's solicitation response has contracted with NDE or with the State of Nebraska, the applicant should identify the contract number(s) and/or any other information available to identify such contract(s). If no such contracts exist, so declare.

vi. APPLICANT'S EMPLOYEE RELATIONS TO STATE

If any Party named in the applicant's solicitation response is or was an employee of NDE or of the State of Nebraska within the past five (5) years, identify the individual(s) by name, State agency with whom employed, job title or position held with NDE or with the State of Nebraska (as applicable), and separation date. If no such relationship exists or has existed, so declare.

If any employee of NDE or any agency of the State of Nebraska is employed by the applicant or is a subcontractor to the applicant, as of the due date for solicitation response submission, identify all such persons by name, position held with the applicant, and position held with NDE or the State (including job title and agency). Describe the responsibilities of such persons within the proposing organization. If, after review of this information by NDE, it is determined that a conflict of interest exists or may exist, the applicant may be disqualified from further consideration in this solicitation. If no such relationship exists, so declare.

vii. CONTRACT PERFORMANCE

If the applicant or any proposed subcontractor has had a contract terminated for default during the past 5 years, all such instances must be described as required below. Termination for default is defined as a notice to stop performance delivery due to the applicant's non-performance or poor performance, and the issue was either not litigated due to inaction on the part of the applicant or litigated and such litigation determined the applicant to be in default.

It is mandatory that the applicant submit full details of all termination for default experienced during the past 5 years, including the other Party's name, address, and telephone number. The response to this section must present the applicant's position on the matter. NDE will evaluate the facts and will score the applicant's solicitation response accordingly. If no such termination for default has been experienced by the applicant in the past 5 years, so declare.

If at any time during the past 5 years, the applicant has had a contract terminated for convenience, non-performance, non-allocation of funds, or any other reason, describe fully all circumstances surrounding such termination, including the name and address of the other contracting Party.

viii. SUMMARY OF APPLICANT'S CORPORATE EXPERIENCE

The applicant should provide a summary matrix listing the applicant's previous projects similar to

this Solicitation in size, scope, and complexity. NDE will use no more than three (3) narrative project descriptions submitted by the applicant during its evaluation of the solicitation response.

The applicant should address the following:

- i. Provide narrative descriptions to highlight the similarities between the applicant's experience and this Solicitation. These descriptions should include:
 - a) The time period of the project,
 - b) The scheduled and actual completion dates,
 - c) The applicant's responsibilities,
 - d) For reference purposes, a customer name (including the name of a contact person, a current telephone number, and e-mail address); and
 - e) Each project description should identify whether the work was performed as the prime Vendor or as a subcontractor. If an applicant performed as the prime Vendor, the description should provide the originally scheduled completion date and budget, as well as the actual (or currently planned) completion date and actual (or currently planned) budget.
- ii. Applicant and Subcontractor(s) experience should be listed separately. Narrative descriptions submitted for Subcontractors should be specifically identified as subcontractor projects.
- iii. If the work was performed as a subcontractor, the narrative description should identify the same information as requested for the applicants above. In addition, subcontractors should identify what share of contract costs, project responsibilities, and time period were performed as a subcontractor.

i. SUMMARY OF APPLICANT'S PROPOSED PERSONNEL/MANAGEMENT APPROACH

The applicant should present a detailed description of its proposed approach to the management of the project.

The applicant should identify the specific professionals who will work on NDE's project if their company is awarded the contract resulting from this Solicitation. The names and titles of the team proposed for assignment to the NDE project should be identified in full, with a description of the team leadership, interface, and support functions, and reporting relationships. The primary work assigned to each person should also be identified.

The applicant should provide resumes for all personnel proposed by the applicant to work on the project. NDE will consider the resumes as a key indicator of the applicant's understanding of the skill mixes required to carry out the requirements of the Solicitation in addition to assessing the experience of specific individuals.

Resumes should be submitted as a separate attachment and no longer than three (3) pages per person. Resumes should include, at a minimum, academic background and degrees, professional certifications, understanding of the process, and at least three (3) references (name, address, and telephone number) who can attest to the competence and skill level of the individual. Any changes in proposed personnel shall only be implemented after written approval from NDE.

j. SUBCONTRACTORS

If the applicant intends to subcontract any part of its performance hereunder, the applicant should provide:

- i. name, address, and telephone number of the subcontractor(s),
- ii. specific tasks for each subcontractor(s),
- iii. percentage of performance hours intended for each subcontract; and
- iv. total percentage of subcontractor(s) performance hours.

2. TECHNICAL RESPONSE

The Technical Response section of the solicitation response should consist of the following subsections:

- a. Understanding of the project requirements;

- b. Proposed development approach, fulfilling project requirements;
- c. Technical requirements;
- d. Detailed project work plan; and
- e. Deliverables and due dates.

Additionally, applicants must complete:

- a. ATTACHMENT A: NDE VENDOR COST SHEET,
- b. ATTACHMENT B: CONTRACTUAL AGREEMENT FORM,
- c. ATTACHMENT C: QUESTIONNAIRE
- d. and respond to the following questions:
 - 1) Describe how the learning platform provided by your organization connects standards in chemistry, physical science, and mathematics with real-world technologies and applications.
 - 2) Describe how the learning platform provided by your organization engages students in careers in science, technology, engineering, and mathematics as aligned to Nebraska's Career Exploration and Career and Technical Education Content Standards.
 - 3) Describe the data your organization would make available to the Nebraska Department of Education, including, but not limited to, the recipients of the program, usage statistics, and evaluations of the effectiveness of the program.
 - 4) Describe how the learning platform provided by your organization ensures access for Spanish-speaking learners.
 - 5) Describe how the learning platform provided by your organization is operable with current school-district equipment and is consistently accessible.
 - 6) Describe how your organization would recruit school districts and enroll users to use the learning platform.
 - 7) Describe the ability of your organization to provide a three-dimensional, game-based learning platform for use by middle school and high school students and evidence that the learning platform is successful.
 - 8) Describe how your organization manages data security, including any relevant FERPA compliance, data storage and ownership, and data use.

ATTACHMENT B: CONTRACTUAL AGREEMENT FORM

(Submit as a separate attachment along with the proposal)

APPLICANT MUST COMPLETE THE FOLLOWING

By signing this Contractual Agreement Form, the applicant guarantees compliance with the provisions stated in this solicitation and agrees to the terms and conditions unless otherwise indicated in writing and certifies that applicant is not owned by the Chinese Communist Party or other foreign adversary as defined in Neb. Rev Stat § 73-903.

Per Nebraska's Transparency in Government Procurement Act, Neb. Rev Stat § 73-603, DAS is required to collect statistical information regarding the number of contracts awarded to Nebraska Vendors. This information is for statistical purposes only and will not be considered for contract award purposes.

____ NEBRASKA VENDOR AFFIDAVIT: Applicant hereby attests that applicant is a Nebraska Vendor. "Nebraska Vendor" shall mean any applicant 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 Solicitation. All vendors who are not a Nebraska Vendor are considered Foreign Vendors under Neb. Rev Stat § 73-603 (c).

____ 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.

____ I hereby certify that I am a blind person licensed by the Commission for the Blind & Visually Impaired in accordance with Neb. Rev. Stat. § 71-8611 and wish to have preference considered in the award of this contract.

THIS FORM MUST BE SIGNED MANUALLY IN INK OR ELECTRONICALLY

COMPANY:	
ADDRESS:	
PHONE:	
EMAIL:	
APPLICANT NAME & TITLE:	
SIGNATURE:	
DATE:	

VENDOR COMMUNICATION WITH NDE CONTACT INFORMATION (IF DIFFERENT FROM ABOVE)	
NAME:	
TITLE:	
PHONE:	
EMAIL:	

ATTACHMENT A: NDE VENDOR COST SHEET

The NDE Vendor Cost Sheet for this RFA will be made available on the DAS website for the applicant to submit as a separate attachment along with the proposal. Use of the NDE cost sheet is mandatory. Do not use the standard DAS cost sheet template or any other cost sheet.

NDE Vendor Cost Sheet: NDERFA251008 - Innovation Grant Learning Platform

Vendor Name: **NAME**

List of Deliverables	Cost (Req)
Cost per Student User <i>(Required)</i>	\$0.00
<i>Total Project Costs</i>	<i>\$0.00</i>

ATTACHMENT C: QUESTIONNAIRE

The Questionnaire for this RFA will be made available on the DAS website for the applicant to submit as a separate attachment along with the proposal. Use of the Questionnaire is mandatory.