

**State of Nebraska (Nebraska Department of Education)  
REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES**

<b>SOLICITATION NUMBER</b>	<b>RELEASE DATE</b>
NDERFP2212	December 1, 2022
<b>OPENING DATE AND TIME</b>	<b>PROCUREMENT CONTACT</b>
January 23, 2023 2:00 p.m. Central Time	Kristin Yates, Nebraska Department of Education

**PLEASE READ CAREFULLY!**

**SCOPE OF SERVICE**

The State of Nebraska (State), Department of Education (NDE), is issuing this Request for Proposal (RFP) Number NDERFP2212 for the purpose of selecting a qualified Contractor to assist in conducting an Information Security Assessment and Penetration Testing on existing NDE networks. A more detailed description can be found in Section V. The resulting contract may not be an exclusive contract as the State reserves the right to contract for the same or similar 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 the State and the Contractor. The Contract includes the option to renew for four (4) additional one (1) year period upon mutual agreement of the Parties. The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Parties.

Questions regarding the content of this Request for Proposal are due no later than December 9, 2022 and should be submitted via e-mail to [nde.rfpinquiries@nebraska.gov](mailto:nde.rfpinquiries@nebraska.gov) Email is to be titled: "NDERFP2212 RFP Questions".

Bidder should electronically submit one (1) original of the entire proposal (in PDF format) to [nde.rfpinquiries@nebraska.gov](mailto:nde.rfpinquiries@nebraska.gov). Proposals must be submitted by the proposal due date and time.

ALL INFORMATION PERTINENT TO THIS REQUEST FOR PROPOSAL CAN BE FOUND ON THE INTERNET AT: <http://das.nebraska.gov/materiel/purchasing.html> and at <https://www.education.ne.gov/>.

**IMPORTANT NOTICE: Pursuant to Neb. Rev. Stat. § 84-602.04, State contracts in effect as of January 1, 2014, and contracts entered into thereafter, must be posted to a public website. The resulting contract, the solicitation, and the successful contractor's proposal or response will be posted to a public website managed by DAS, which can be found at <http://statecontracts.nebraska.gov>.**

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

These postings will include the entire proposal or response. Contractor must request that proprietary information be excluded from the posting. The contractor must identify the proprietary information, mark the proprietary information according to state law, and submit the proprietary information in a separate container or envelope marked conspicuously using an indelible method with the words "PROPRIETARY INFORMATION". The contractor must submit a detailed written document showing that the release of the proprietary information would give a business advantage to named business competitor(s) and explain how the named business competitor(s) will gain an actual business advantage by disclosure of information. The mere assertion that information is proprietary or that a speculative business advantage might be gained is not sufficient. (See Attorney General Opinion No. 92068, April 27, 1992) **THE SUPPLIER MAY NOT ASSERT THAT THE ENTIRE PROPOSAL IS PROPRIETARY. COST PROPOSALS WILL NOT BE CONSIDERED PROPRIETARY AND ARE A PUBLIC RECORD IN THE STATE OF NEBRASKA.** The State will then determine, in its discretion, if the interests served by nondisclosure outweighs any public purpose served by disclosure. (See Neb. Rev. Stat. § 84-712.05(3)) The Contractor will be notified of the agency's decision. Absent a State determination that information is proprietary, the State will consider all information a public record subject to release regardless of any assertion that the information is proprietary.

If the agency determines it is required to release proprietary information, the contractor will be informed. It will be the contractor's responsibility to defend the contractor's asserted interest in non-disclosure.

To facilitate such public postings, with the exception of proprietary information, the State of Nebraska reserves a royalty-free, nonexclusive, and irrevocable right to copy, reproduce, publish, post to a website, or otherwise use any contract, proposal, or response to this solicitation for any purpose, and to authorize others to use the documents. Any individual or entity awarded a contract, or who submits a proposal or response to this solicitation, specifically waives any copyright or other protection the contract, proposal, or response to the solicitation may have; and, acknowledges that they have the ability and authority to enter into such waiver. This reservation and waiver is a prerequisite for submitting a proposal or response to this solicitation, and award of a contract. Failure to agree to the reservation and waiver will result in the proposal or response to the solicitation being found non-responsive and rejected.

Any entity awarded a contract or submitting a proposal or response to the solicitation agrees not to sue, file a claim, or make a demand of any kind, and will indemnify and hold harmless the State and its employees, volunteers, agents, and its elected

and appointed officials from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses, sustained or asserted against the State, arising out of, resulting from, or attributable to the posting of the contract or the proposals and responses to the solicitation, awards, and other documents.

# TABLE OF CONTENTS

REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES .....	i
TABLE OF CONTENTS.....	iii
GLOSSARY OF TERMS.....	vi
ACRONYM LIST .....	xi
<b>I. PROCUREMENT PROCEDURE .....</b>	<b>1</b>
A. GENERAL INFORMATION.....	1
B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS .....	1
C. SCHEDULE OF EVENTS .....	2
D. WRITTEN QUESTIONS AND ANSWERS.....	3
E. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS (Statutory).....	3
F. ETHICS IN PUBLIC CONTRACTING .....	3
G. DEVIATIONS FROM THE REQUEST FOR PROPOSAL .....	3
H. SUBMISSION OF PROPOSALS .....	3
I. PROPOSAL PREPARATION COSTS .....	4
J. FAILURE TO COMPLY WITH REQUEST FOR PROPOSAL .....	4
K. PROPOSAL CORRECTIONS.....	4
L. LATE PROPOSALS.....	4
M. PROPOSAL OPENING.....	4
N. REQUEST FOR PROPOSAL/PROPOSAL REQUIREMENTS .....	5
O. EVALUATION COMMITTEE.....	5
P. EVALUATION OF PROPOSALS .....	5
Q. ORAL INTERVIEWS/PRESENTATIONS AND/OR DEMONSTRATIONS .....	6
R. BEST AND FINAL OFFER.....	6
S. REFERENCE AND CREDIT CHECKS .....	6
T. AWARD .....	6
U. ALTERNATE/EQUIVALENT PROPOSALS .....	7
V. LUMP SUM OR "ALL OR NONE" PROPOSALS .....	7
W. REJECTION OF PROPOSALS .....	7
X. RESIDENT BIDDER .....	7
<b>II. TERMS AND CONDITIONS .....</b>	<b>8</b>
A. GENERAL.....	8
B. NOTIFICATION .....	9
C. NOTICE (POC).....	9
D. GOVERNING LAW (Statutory) .....	9
E. BEGINNING OF WORK.....	9
F. AMENDMENT.....	9
G. CHANGE ORDERS OR SUBSTITUTIONS .....	10
b. VENDOR PERFORMANCE REPORT(S).....	10
H. NOTICE OF POTENTIAL CONTRACTOR BREACH .....	10
I. BREACH.....	11
J. NON-WAIVER OF BREACH.....	11
K. SEVERABILITY .....	11
L. INDEMNIFICATION .....	11
M. ATTORNEY'S FEES.....	12
N. ASSIGNMENT, SALE, OR MERGER.....	13
O. CONTRACTING WITH OTHER NEBRASKA POLITICAL SUB-DIVISIONS OF THE STATE OR ANOTHER STATE	13
P. FORCE MAJEURE .....	13
Q. CONFIDENTIALITY .....	14
R. EARLY TERMINATION .....	14
S. CONTRACT CLOSEOUT .....	15

<b>III.</b>	<b>CONTRACTOR DUTIES .....</b>	<b>16</b>
A.	INDEPENDENT CONTRACTOR / OBLIGATIONS.....	16
B.	EMPLOYEE WORK ELIGIBILITY STATUS.....	16
C.	COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Statutory).....	17
D.	COOPERATION WITH OTHER CONTRACTORS .....	17
E.	DISCOUNTS.....	17
F.	PRICES .....	17
G.	COST CLARIFICATION.....	18
H.	PERMITS, REGULATIONS, LAWS .....	18
I.	OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES .....	18
J.	INSURANCE REQUIREMENTS.....	19
K.	NOTICE OF POTENTIAL CONTRACTOR BREACH .....	21
L.	ANTITRUST.....	21
M.	CONFLICT OF INTEREST .....	21
N.	STATE PROPERTY.....	22
O.	SITE RULES AND REGULATIONS.....	22
P.	ADVERTISING .....	22
Q.	NEBRASKA TECHNOLOGY ACCESS STANDARDS (Statutory).....	22
R.	DISASTER RECOVERY/BACK UP PLAN.....	23
S.	DRUG POLICY .....	23
T.	WARRANTY .....	23
<b>IV.</b>	<b>PAYMENT .....</b>	<b>24</b>
A.	PROHIBITION AGAINST ADVANCE PAYMENT (Statutory).....	24
B.	TAXES (Statutory) .....	24
C.	INVOICES.....	24
D.	INSPECTION AND APPROVAL .....	24
E.	PAYMENT (Statutory).....	24
F.	LATE PAYMENT (Statutory).....	25
G.	SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Statutory).....	25
H.	RIGHT TO AUDIT (First Paragraph is Statutory).....	25
<b>V.</b>	<b>PROJECT OVERVIEW AND SCOPE OF WORK .....</b>	<b>26</b>
A.	PROJECT OVERVIEW.....	26
B.	PROJECT ENVIRONMENT .....	26
C.	SCOPE OF WORK .....	26
D.	PROJECT TASKS AND DELIVERABLES .....	29
E.	DELIVERABLE SUBMISSION AND REVIEW .....	30
<b>VI.</b>	<b>PROPOSAL INSTRUCTIONS .....</b>	<b>32</b>
A.	TECHNICAL PROPOSAL.....	32
B.	COST PROPOSAL .....	35
	<b>Form A Contractor Proposal Point of Contact.....</b>	<b>36</b>
	<b>REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES FORM.....</b>	<b>37</b>



## GLOSSARY OF TERMS

**Acceptance Test Procedure:** Benchmarks and other performance criteria, developed by the State of Nebraska or other sources of testing standards, for measuring the effectiveness of products or services and the means used for testing such performance.

**Addendum:** Something to be added or deleted to an existing document; a supplement.

**After Receipt of Order (ARO):** After Receipt of Order

**Agency:** Any state agency, board, or commission other than the University of Nebraska, the Nebraska State colleges, the courts, the Legislature, or any other office or agency established by the Constitution of Nebraska.

**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 proposals will be awarded according to the provisions in the solicitation.

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

**Bid Bond:** An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the contractor will not withdraw the bid.

**Bidder:** A contractor who submits a proposal in response to a written solicitation.

**Breach:** Violation of a contractual obligation by failing to perform or repudiation of one's own promise.

**Business:** Any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other private legal entity.

**Business Day:** Any weekday, except State-recognized holidays.

**Calendar Day:** Every day shown on the calendar including Saturdays, Sundays, and State/Federal holidays.

**Cancellation:** To call off or revoke a purchase order without expectation of conducting or performing it at a later time.

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

**Change Order:** Document that provides amendments to an executed purchase order or contract.

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

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

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

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

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

identification of specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive.

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

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

**Contract Award:** Occurs upon execution of the State document titled "Service Contract Award" by the proper authority.

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

**Contract Period:** The duration of the contract.

**Contractor:** An individual or entity lawfully conducting business in the State, or licensed to do so, who seeks to provide goods or services under the terms of a written solicitation.

**Cooperative Purchasing:** The combining of requirements of two or more political entities to obtain advantages of volume purchases, reduction in administrative expenses or other public benefits.

**Copyright:** A property right in an original work of authorship fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt and distribute the work.

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

**Customer Service:** The process of ensuring customer satisfaction by providing assistance and advice on those products or services provided by the Contractor.

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

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

**Evaluation:** The process of examining an offer after opening to determine the contractor's responsibility, responsiveness to requirements, and to ascertain other characteristics of the offer that relate to determination of the successful award.

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

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

**Free on Board (F.O.B.) Destination:** The delivery charges are included in the quoted price and prepaid by the contractor. Contractor is responsible for all claims associated with damages during delivery of product.

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

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

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

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

**Invalid Proposal:** A proposal that does not meet the requirements of the solicitation or cannot be evaluated against the other proposals.

**Late Proposal:** An offer received after the Opening Date and Time.

**Licensed Software Documentation:** The user manuals and any other materials in any form or medium customarily provided by the Contractor to the users of the Licensed Software which will provide the State with sufficient information to operate, diagnose, and maintain the Licensed Software properly, safely, and efficiently.

**Mandatory/Must:** Required, compulsory, or obligatory.

**May:** Discretionary, permitted; used to express possibility.

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

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

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

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

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

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

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

**Payroll & Financial Center (PFC):** Electronic procurement system of record.

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

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

**Point of Contact (POC):** The person designated to receive communications and to communicate.

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

**Product:** Something that is distributed commercially for use or consumption and that is usually (1) tangible personal property, (2) the result of fabrication or processing, and (3) an item that has passed through a chain of commercial distribution before ultimate use or consumption.

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

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

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

**Proposal:** An offer, bid, or quote submitted by a contractor/vendor in a response to a written solicitation

**Proprietary Information:** Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serves no public purpose (see Neb. Rev. Stat. § 84-712.05(3)). In accordance with Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific named competitor(s) advantaged by release of the information and the demonstrated advantage the named competitor(s) would gain by the release of information.

**Protest/Grievance:** A complaint about a governmental action or decision related to a solicitation or resultant contract, brought by a contractor who has timely submitted a proposal response in connection with the award in question, to AS



Matériel Division or another designated agency with the intention of achieving a remedial result.

**Public Proposal Opening:** The process of opening correctly submitted offers at the time and place specified in the written solicitation and in the presence of anyone who wished to attend.

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

**Release Date:** The date of public release of the written solicitation to seek offers.

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

**Request for Information (RFI):** A general invitation to contractor's requesting information for a potential future solicitation. The RFI is typically used as a research and information gathering tool for preparation of a solicitation.

**Request for Proposal (RFP):** A written solicitation utilized for obtaining competitive offers.

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

**Responsive Contractor:** A contractor who has submitted a proposal which conforms to all requirements of the solicitation document.

**Shall/Will/Must:** 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.

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

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

**Specifications:** The detailed statement, especially of the measurements, quality, materials, and functional characteristics, or other items to be provided under a contract.

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

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

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

**Termination:** Occurs when either Party, pursuant to a power created by agreement or law, puts an end to the contract prior to the stated expiration date. All obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

**Third Party:** Any person or entity, including but not limited to fiduciaries, shareholders, owners, officers, managers, employees, legally disinterested persons, and sub-contractors or agents, and their employees. It shall not include any entity or person who is an interested Party to the contract or agreement.

**Trade Secret:** Information, including, but not limited to, a drawing, formula, pattern, compilation, program, device, method, technique, code, or process that (a) derives independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy (see Neb. Rev. Stat. §87-502(4)).

**Trademark:** A word, phrase, logo, or other graphic symbol used by a manufacturer or contractor to distinguish its product from those of others, registered with the U.S. Patent and Trademark Office.

**Upgrade:** Any change that improves or alters the basic function of a product or service.

**Vendor Performance Report:** A report completed by the using agency and submitted to State Purchasing Bureau documenting products or services delivered or performed which exceed or fail to meet the terms of the purchase order, contract, and/or solicitation specifications.

**Vendor:** Inclusive term for any Bidder or Contractor

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

**Work Day:** See Business Day.

## ACRONYM LIST

**ARO** – After Receipt of Order

**ACH** – Automated Clearing House

**BAFO** – Best and Final Offer

**COI** – Certificate of Insurance

**CPU** – Central Processing Unit

**DAS** – Department of Administrative Services

**F.O.B.** – Free on Board

**ITB** – Invitation to Bid

**NIGP** – National Institute for Governmental Purchasing

**PA** – Participating Addendum

**RFI** – Request for Information

**RFP** – Request for Proposal

**SPB** – State Purchasing Bureau

## I. PROCUREMENT PROCEDURE

### A. GENERAL INFORMATION

The solicitation is designed to solicit proposals from qualified Contractor who will be responsible to assist in conducting an Information Security Assessment and Penetration Testing on existing NDE networks at a competitive and reasonable cost. Terms and Conditions, Project Description and Scope of Work, Proposal instructions, and Cost Proposal Requirements may be found in Sections II through VI.

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

Name: Kristin Yates  
Agency: Nebraska Department of Education  
Address: PO Box 94987  
Telephone: (402) 471-2295  
E-Mail: [nde.rfpinquiries@nebraska.gov](mailto:nde.rfpinquiries@nebraska.gov)

From the date the solicitation is issued until the Intent to Award is issued, communication from the Contractor is limited to the POC listed above. After the Intent to Award is issued, the Contractor may communicate with individuals the State has designated as responsible for negotiating the contract on behalf of the State. No member of the State Government, employee of the State, or member of the Evaluation Committee is empowered to make binding statements regarding this solicitation. The POC will issue any answers, clarifications or amendments regarding this solicitation in writing. Only the SPB or awarding agency can award a contract. Contractors shall not have any communication with, or attempt to communicate or influence any evaluator involved in this solicitation.

The following exceptions to these restrictions are permitted:

1. Contact made pursuant to pre-existing contracts or obligations;
2. Contact required by the schedule of events or an event scheduled later by the solicitation POC; and
3. Contact required for negotiation and execution of the final contract.

*The State reserves the right to reject a contractor's proposal, withdraw an Intent to Award, or terminate a contract if the State determines there has been a violation of these procurement procedures.*

**C. SCHEDULE OF EVENTS**

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

<b>ACTIVITY</b>		<b>DATE/TIME</b>
1.	Release Solicitation	12/1/22
2.	Last day to submit written questions	12/9/22
3.	State responds to written questions through Solicitation "Addendum" and/or "Amendment" to be posted to the Internet at: <a href="http://das.nebraska.gov/materiel/purchasing.html">http://das.nebraska.gov/materiel/purchasing.html</a>	12/16/22
4.	PROPOSALS DUE – late proposals will not be accepted and will be returned unopened to Bidder.	1/23/23 1:59 PM Central Time
5.	Proposal opening location: Proposals will be opened virtually via Zoom. Link will be posted on <a href="http://das.nebraska.gov/materiel/purchasing.html">http://das.nebraska.gov/materiel/purchasing.html</a>	1/23/23 2:00 PM Central Time
6.	Evaluation period	1/23/23 - 2/3/23
7.	"Oral Interviews/Presentations and/or Demonstrations" (if required)	2/6/23 - 2/10/23
8.	Post "Notification of Intent to Award" to Internet at: <a href="http://das.nebraska.gov/materiel/purchasing.html">http://das.nebraska.gov/materiel/purchasing.html</a>	3/3/23 or when State Board approves
9.	Contract finalization period	3/3/23 - 3/17/23
10.	Contract award	3/17/23
11.	Contractor start date	3/27/23

**D. WRITTEN QUESTIONS AND ANSWERS**

Questions regarding the meaning or interpretation of any solicitation provision must be submitted in writing to the Nebraska Department of Education and clearly marked "RFP Number NDERFP2212 RFP Questions". The POC is not obligated to respond to questions that are received late per the Schedule of Events.

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

It is preferred that questions be sent via e-mail to [nde.rfpinquiries@nebraska.gov](mailto:nde.rfpinquiries@nebraska.gov). It is recommended that Contractors submit questions using the following format.

Solicitation Section Reference	Solicitation Page Number	Question

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

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

All contractors must be authorized to transact business in the State of Nebraska and comply with all Nebraska Secretary of State Registration requirements. The contractor who is the recipient of an Intent to Award will be required to certify that it has complied and produce a true and 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 <http://das.nebraska.gov/materiel/purchasing.html>. This must be accomplished prior to execution of the contract.

**F. ETHICS IN PUBLIC CONTRACTING**

The State reserves the right to reject proposals, withdraw an intent to award or award, or terminate a contract if a contractor commits or has committed ethical violations, which include, but are not limited to:

1. Offering or giving, directly or indirectly, a bribe, fee, commission, compensation, gift, gratuity, or anything of value to any person or entity in an attempt to influence the bidding process;
2. Utilize the services of lobbyists, attorneys, political activists, or consultants to influence or subvert the bidding process;
3. Being considered for, presently being, or becoming debarred, suspended, ineligible, or excluded from contracting with any state or federal entity;
4. Submitting a proposal on behalf of another Party or entity; and
5. Collude with any person or entity to influence the bidding process, submit sham proposals, preclude bidding, fix pricing or costs, create an unfair advantage, subvert the proposal, or prejudice the State.

The Contractor shall include this clause in any subcontract entered into for the exclusive purpose of performing this contract.

Contractor shall have an affirmative duty to report any violations of this clause by the Contractor throughout the bidding process, and throughout the term of this contract for the successful Contractor and their subcontractors.

**G. DEVIATIONS FROM THE REQUEST FOR PROPOSAL**

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

**H. SUBMISSION OF PROPOSALS**

The following describes the requirements related to proposal submission, proposal handling and review by the State.

To facilitate the proposal evaluation process, one (1) original, submitted in PDF format of the entire proposal should be submitted to [nde.rfpinquiries@nebraska.gov](mailto:nde.rfpinquiries@nebraska.gov) on or before the date listed in the Schedule of Events. If the file exceeds the maximum file size for email correspondence, bidders may contact [nde.rfpinquiries@nebraska.gov](mailto:nde.rfpinquiries@nebraska.gov) for a link to upload the proposal files. Proposal responses should include the completed **Form A, Bidder Contact**

**Sheet.** Proposals must reference the request for proposal number and be sent to the specified email address. The request for proposal number must be included in all correspondence.

Emphasis should be concentrated on conformance to the Request for Proposal instructions, responsiveness to requirements, completeness, and clarity of content. If the bidder's proposal is presented in such a fashion that makes evaluation difficult or overly time consuming, it is likely that points will be lost in the evaluation process. Elaborate and lengthy proposals are neither necessary nor desired.

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

It is the responsibility of the contractor to check the website for all information relevant to this Request for Proposal to include addenda and/or amendments issued prior to the opening date. Website address is as follows: <http://das.nebraska.gov/materiel/purchasing.html>.

By signing the "Request for Proposal for Contractual Services" form, the contractor guarantees compliance with the provisions stated in this solicitation.

The State shall not incur any liability for any costs incurred by contractors in replying to this solicitation, in the demonstrations and/or oral presentations, or in any other activity related to bidding on this solicitation.

The Technical and Cost Proposals Template should be presented in separate sections. Pages may be consecutively numbered for the entire proposal, or may be numbered consecutively within sections. Figures and tables should 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.

**I. PROPOSAL PREPARATION COSTS**

The State shall not incur any liability for any costs incurred by Contractors in replying to this solicitation, including any activity related to bidding on this solicitation.

**J. FAILURE TO COMPLY WITH REQUEST FOR PROPOSAL**

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

1. Rejection of a contractor's proposal;
2. Withdrawal of the Intent to Award;
3. Withdrawal of the Award;
4. Negative Vendor Performance Report(s)
5. Termination of the resulting contract;
6. Legal action; and
7. Suspension of the contractor from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.

**K. PROPOSAL CORRECTIONS**

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

**L. LATE PROPOSALS**

Proposals received after the time and date of the proposal opening will be considered late proposals. Late proposals will be returned unopened, if requested by the contractor and at contractor's expense. The State is not responsible for proposals that are late or lost regardless of cause or fault.

**M. PROPOSAL OPENING**

The opening of proposals will be public and the contractors will be announced. Proposals **WILL NOT** be available for viewing by those present at the proposal opening. Proposals will be posted to the State Purchasing Bureau website once an Intent to Award has been posted to the website. Information identified as proprietary by the submitting contractor, in accordance with the solicitation and state statute, will not be posted. If the state determines submitted information should not be withheld, in accordance with the [Public Records Act](#), or if ordered to release any withheld information, said information may then be released. The submitting contractor will be notified of the release and it shall be the obligation of the submitting contractor to take further action, if it believes the information should not be released. (See RFP signature page for further details) Contractors may contact the State to schedule an appointment for viewing proposals after the Intent to Award has been posted to the website. Once proposals are opened, they become the property of the State of Nebraska and will not be returned.

**N. REQUEST FOR PROPOSAL/PROPOSAL REQUIREMENTS**

The proposals will first be examined to determine if all requirements listed below have been addressed and whether further evaluation is warranted. Proposals not meeting the requirements may be rejected as non-responsive. The requirements are:

A. Completed Technical Proposal

1. SIGNED "State of Nebraska Request For Proposal For Contractual Services" form;
2. Executive Summary;
3. Corporate Overview; and
4. Technical Approach.

B. Completed Cost Proposal

**O. EVALUATION COMMITTEE**

Proposals are evaluated by members of an Evaluation Committee(s). The Evaluation Committee(s) will consist of individuals selected at the discretion of the State. Names of the members of the Evaluation Committee(s) will not be published prior to the intent to award.

Any contact, attempted contact, or attempt to influence an evaluator that is involved with this solicitation may result in the rejection of this proposal and further administrative actions.

**P. EVALUATION OF PROPOSALS**

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

A. Technical Proposal

1. Corporate Overview should include but is not limited to:

- a. the ability, capacity, and skill of the contractor to deliver and implement the system or project that meets the requirements of the solicitation;
- b. the character, integrity, reputation, judgment, experience, and efficiency of the contractor;
- c. whether the contractor can perform the contract within the specified period;
- d. the quality of vendor performance on prior contracts;
- e. such other information that may be secured and that has a bearing on the decision to award the contract;

2. Technical Approach

- a. Sufficient specificity for the Scope of Work to demonstrate understanding of the requirements and tasks involved.
- b. Clear overview of proposed services.
- c. Detailed capacity to reasonably meet all requirements within proposed timelines.

B. Cost Proposal.

- a. Costs are clear and sufficiently detailed.
- b. Costs are reasonable and justified.
- c. Proposal provides maximum value for least cost.
- d. Costs are provided for enhancements or optional activities.

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

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

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



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

1. Documentation from the United States Armed Forces confirming service;
  - i. Documentation of discharge or otherwise separated characterization of honorable or general (under honorable conditions);
  - ii. 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
  - iii. Documentation which shows ownership and control of a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this subsection; and the management and daily business operations of the business are controlled by one or more persons described in subdivision (a) of this subsection.

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

**Q. ORAL INTERVIEWS/PRESENTATIONS AND/OR DEMONSTRATIONS**

The State may determine after the completion of the Technical and Cost Proposal evaluation that oral interviews/presentations and/or demonstrations are required. Every contractor may not be given an opportunity to interview/present and/or give demonstrations; the State reserves the right, in its discretion, to select only the top scoring contractors to present/give oral interviews. The scores from the oral interviews/presentations and/or demonstrations will be added to the scores from the Technical and Cost Proposals. The presentation process will allow the contractors to demonstrate their proposal offering, explaining and/or clarifying any unusual or significant elements related to their proposals. Contractors' key personnel, identified in their proposal, may be requested to participate in a structured interview to determine their understanding of the requirements of this proposal, their authority and reporting relationships within their firm, and their management style and philosophy. Only representatives of the State and the presenting contractor 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, et cetera) may be offered by the contractor, but the State reserves the right to refuse or not consider the offered materials. Contractors shall not be allowed to alter or amend their proposals.

Once the oral interviews/presentations and/or demonstrations have been completed, the State reserves the right to make an award without any further discussion with the contractors regarding the proposals received.

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

**R. BEST AND FINAL OFFER**

If best and final offers (BAFO) are requested by the State and submitted by the contractor, they will be evaluated (using the stated BAFO criteria), scored, and ranked by the Evaluation Committee. The State reserves the right to conduct more than one Best and Final Offer. The award will then be granted to the highest scoring contractor. However, a contractor should provide its best offer in its original proposal. Contractors should not expect that the State will request a best and final offer.

**S. REFERENCE AND CREDIT CHECKS**

The State reserves the right to conduct and consider reference and credit checks. The State reserves the right to use third parties to conduct reference and credit checks. By submitting a proposal in response to this solicitation, the contractor grants to the State the right to contact or arrange a visit in person with any or all of the contractor's clients. Reference and credit checks may be grounds to reject a proposal, withdraw an intent to award, or rescind the award of a contract.

**T. AWARD**

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

- iv. Amend the solicitation;
- v. Extend the time of or establish a new proposal opening time;
- vi. Waive deviations or errors in the State's solicitation process and in contractor proposals that are not material, do not compromise the solicitation process or a contractor's proposal, and do not improve a contractor's competitive position;
- vii. Accept or reject a portion of or all of a proposal;
- viii. Accept or reject all proposals;
- ix. Withdraw the solicitation;

- x. Elect to rebid the solicitation;
- xi. Award single lines or multiple lines to one or more contractors; or,
- xii. Award one or more all-inclusive contracts.

The solicitation does not commit the State to award a contract. Once intent to award decision has been determined, it will be posted to the Internet at:

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

Any protests must be filed by a contractor within ten (10) business days after the intent to award decision is posted to the Internet. Grievance and protest procedure is available on the Internet at:

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

**U. ALTERNATE/EQUIVALENT PROPOSALS**

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

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

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

**W. REJECTION OF PROPOSALS**

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

**X. RESIDENT BIDDER**

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

## II. TERMS AND CONDITIONS

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

The contractors should submit with their proposal any license, user agreement, service level agreement, or similar documents that the contractor wants incorporated in the Contract. The State will not consider incorporation of any document not submitted with the contractor's proposal 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 Addendum to Contract Award have been negotiated and agreed to, the Addendum to Contract Award shall be interpreted as follows:

- xiii. If only one Party has a particular clause then that clause shall control;
- xiv. If both Parties have a similar clause, but the clauses do not conflict, the clauses shall be read together;
- xv. If both Parties have a similar clause, but the clauses conflict, the State's clause shall control.

### A. GENERAL

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

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

- xvi. Request for Proposal and Addenda;
- xvii. Amendments to the solicitation;
- xviii. Questions and Answers;
- xix. Contractor's proposal (Solicitation and properly submitted documents);
- xx. The executed Contract and Addendum One to Contract, if applicable; and,
- xxi. Amendments/Addendums to the Contract.

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a future contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to the executed Contract with the most recent dated amendment having the highest priority, 2) executed Contract and any attached Addenda, 3) Amendments to solicitation and any Questions and Answers, 4) the original solicitation document and any Addenda, and 5) the Contractor's submitted Proposal.

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

**B. NOTIFICATION**

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

During the bid process, all communication between the State and a bidder shall be between the bidder's representative clearly noted in its proposal and the buyer and Contact Person of this RFP. After the award of the contract, all notices under the contract shall be deemed duly given upon delivery to the staff designated as the point of contact for this Request for Proposal, in person, or upon delivery by U.S. Mail, facsimile, or e-mail. Each bidder should provide in its proposal the name, title and complete address of its designee to receive notices.

1. Except as otherwise expressly specified herein, all notices, requests or other communications shall be communicated via email.
2. Whenever the contractor encounters any difficulty which is delaying or threatens to delay its timely performance under the contract, the contractor shall immediately give notice thereof in writing to the State reciting all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the State of any of its rights or remedies to which it is entitled by law or equity or pursuant to the provisions of the contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay.

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.

For the duration of the contract, all communication between contractor and the State regarding the contract shall take place between the contractor and individuals specified by the State in writing. Communication about the contract between contractor and individuals not designated as points of contact by the State is strictly forbidden.

**C. NOTICE (POC)**

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

**D. GOVERNING LAW (Statutory)**

Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this agreement must be brought in the State of Nebraska per state law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final contract, including but not limited to the clauses concerning third party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

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

**E. BEGINNING OF WORK**

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

**F. AMENDMENT**

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

**G. CHANGE ORDERS OR SUBSTITUTIONS**

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

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

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

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

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

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

**b. VENDOR PERFORMANCE REPORT(S)**

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

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

**H. NOTICE OF POTENTIAL CONTRACTOR BREACH**

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

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

**I. BREACH**

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

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby. OR In case of breach by the Contractor, the State may, without unreasonable delay, make a good faith effort to make a reasonable purchase or contract to purchased goods in substitution of those due from the contractor. The State may recover from the Contractor as damages the difference between the costs of covering the breach. Notwithstanding any clause to the contrary, the State may also recover the contract price together with any incidental or consequential damages defined in UCC Section 2-715, but less expenses saved in consequence of Contractor's breach.

The State's failure to make payment shall not be a breach, and the Contractor shall retain all available statutory remedies and protections.

**J. NON-WAIVER OF BREACH**

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

The acceptance of late performance with or without objection or reservation by a Party shall not waive any rights of the Party nor constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.

**K. SEVERABILITY**

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

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

**L. INDEMNIFICATION**

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

--	--	--	--

**i. GENERAL**

The Contractor agrees to defend, indemnify, and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials (“the indemnified parties”) from and against any and all 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 Contractor, its employees, Subcontractors, consultants, representatives, and agents, resulting from this contract, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

**ii. INTELLECTUAL PROPERTY**

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

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

**iii. PERSONNEL**

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

**iv. SELF-INSURANCE**

The State of Nebraska is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this agreement, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 – 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

v. The Parties acknowledge that 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.

**M. ATTORNEY’S FEES**

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

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

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

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

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

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

**O. CONTRACTING WITH OTHER NEBRASKA POLITICAL SUB-DIVISIONS OF THE STATE OR ANOTHER STATE**

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

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

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

**P. FORCE MAJEURE**

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

Neither Party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the contract due to a natural or manufactured event outside the control and not the fault of the affected Party ("Force Majeure Event"). The Party so affected shall immediately make a written request for relief to the other Party, and shall have the burden of proof to justify the request. The other Party may grant the relief requested; relief may not be unreasonably withheld. Labor disputes with the impacted Party's own employees will not be considered a Force Majeure Event.



**Q. CONFIDENTIALITY**

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

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

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

**R. EARLY TERMINATION**

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

The contract may be terminated as follows:

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

**S. CONTRACT CLOSEOUT**

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

Upon contract closeout for any reason the Contractor shall within 30 days, unless stated otherwise herein:

- ix. Transfer all completed or partially completed deliverables to the State;
- x. Transfer ownership and title to all completed or partially completed deliverables to the State;
- xi. Return to the State all information and data, unless the Contractor is permitted to keep the information or data by contract or rule of law. Contractor may retain one copy of any information or data as required to comply with applicable work product documentation standards or as are automatically retained in the course of Contractor’s routine back up procedures;
- xii. Cooperate with any successor Contactor, person or entity in the assumption of any or all of the obligations of this contract;
- xiii. Cooperate with any successor Contactor, person or entity with the transfer of information or data related to this contract;
- xiv. Return or vacate any state owned real or personal property; and,
- xv. Return all data in a mutually acceptable format and manner.

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

**III. CONTRACTOR DUTIES**

**A. INDEPENDENT CONTRACTOR / OBLIGATIONS**

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

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

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

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

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

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

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

- xvi. Any and all pay, benefits, and employment taxes and/or other payroll withholding;
- xvii. Any and all vehicles used by the Contractor's employees, including all insurance required by state law;
- xviii. Damages incurred by Contractor's employees within the scope of their duties under the contract;
- xix. 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;
- xx. Determining the hours to be worked and the duties to be performed by the Contractor's employees; and,
- xxi. All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Contractor, its officers, agents, or subcontractors or subcontractor's employees)

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

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

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

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

**B. EMPLOYEE WORK ELIGIBILITY STATUS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within	NOTES/COMMENTS:
------------------	------------------	-------------------------------------	-----------------

		<b>Solicitation Response (Initial)</b>	

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

- xxii. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <http://das.nebraska.gov/materiel/purchasing.html>
- xxiii. The completed United States Attestation Form should be submitted with the solicitation response.
- xxiv. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
- xxv. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

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

The Contractor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State 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 Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all Subcontracts for goods and services to be covered by any contract resulting from this solicitation.

**D. COOPERATION WITH OTHER CONTRACTORS**

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

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

**E. DISCOUNTS**

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

**F. PRICES**

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

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

All prices, costs, and terms and conditions outlined in the proposal shall remain fixed and valid commencing on the opening date of the proposal until the contract terminates or expires. Contractor represents and warrants that all prices for services, now or subsequently specified are as low as and no higher than prices which the Contractor has charged or intends to charge customers other than the State for the same or similar products and services of the same or equivalent quantity and quality for delivery or performance during the same periods of time. If, during the term of the contract, the Contractor shall reduce any and/or all prices charged to any customers other than the State for the same or similar products or services specified herein, the Contractor shall make an equal or equivalent reduction in corresponding prices for said specified products or services.

All prices set forth in the contract and all prices in addition, which the Contractor may charge under the terms of the contract, do not and will not violate any existing federal, state, or municipal law or regulations concerning price discrimination and/or price fixing. Contractor agrees to hold the State harmless from any such violation. Prices quoted shall not be subject to increase throughout the contract period unless specifically allowed by these specifications.

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

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

**G. COST CLARIFICATION**

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

**H. PERMITS, REGULATIONS, LAWS**

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

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

**I. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES**

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

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

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

**J. INSURANCE REQUIREMENTS**

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

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

- xxvi. Provide equivalent insurance for each subcontractor and provide a COI verifying the coverage for the subcontractor;
- xxvii. Require each subcontractor to have equivalent insurance and provide written notice to the State that the Contractor has verified that each subcontractor has the required coverage; or,
- xxviii. Provide the State with copies of each subcontractor’s Certificate of Insurance evidencing the required coverage.

The Contractor shall not allow any Subcontractor to commence work until the Subcontractor has equivalent insurance. The failure of the State to require a COI, or the failure of the Contractor to provide a COI or require subcontractor insurance shall not limit, relieve, or decrease the liability of the Contractor 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 three (3) years of termination or expiration of the contract, the contractor 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 three (3) years following termination or expiration of the contract.

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

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

**1. WORKERS’ COMPENSATION INSURANCE**

The Contractor shall take out and maintain during the life of this contract the statutory Workers’ Compensation and Employer’s Liability Insurance for all of the contractors’ employees to be engaged in work on the project under this contract and, in case any such work is sublet, the Contractor 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.

**xxix. COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE**

The Contractor shall take out and maintain during the life of this contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Contractor 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 Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an **occurrence basis**, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury, and Contractual Liability coverage. **The policy shall include the State, and others as required by the contract documents, as Additional Insured(s). This policy shall be primary, and any insurance or**

self-insurance carried by the State shall be considered secondary and non-contributory. The COI shall contain the mandatory COI liability waiver language found hereinafter. The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned, and Hired vehicles.

<b>REQUIRED INSURANCE COVERAGE</b>		
<b>COMMERCIAL GENERAL LIABILITY</b>		
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 Contractors		Included
Abuse & Molestation		Included
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>		
<b>WORKER'S COMPENSATION</b>		
Employers Liability Limits		\$500K/\$500K/\$500K
Statutory Limits- All States		Statutory - State of Nebraska
USL&H Endorsement		Statutory
Voluntary Compensation		Statutory
<b>COMMERCIAL AUTOMOBILE LIABILITY</b>		
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
<b>UMBRELLA/EXCESS LIABILITY</b>		
Over Primary Insurance		\$5,000,000 per occurrence
<b>PROFESSIONAL LIABILITY</b>		
Professional liability (Medical Malpractice) Qualification Under Nebraska Excess Fund		Limits consistent with Nebraska Medical Malpractice Cap
All Other Professional Liability (Errors & Omissions)		\$1,000,000 Per Claim / Aggregate
<b>COMMERCIAL CRIME</b>		
Crime/Employee Dishonesty Including 3rd Party Fidelity		\$1,000,000
<b>CYBER LIABILITY</b>		
Breach of Privacy, Security Breach, Denial of Service, Remediation, Fines and Penalties		\$10,000,000
<b>CONTRACTOR'S POLLUTION LIABILITY</b>		
Each Occurrence/Aggregate Limit		\$2,000,000
Includes Non-Owned Disposal Sites		
<b>MANDATORY COI SUBROGATION WAIVER LANGUAGE</b>		
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."		
<b>MANDATORY COI LIABILITY WAIVER LANGUAGE</b>		
"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."		

**xxx. EVIDENCE OF COVERAGE**

The Contractor shall furnish the Contract Manager, with a certificate of insurance coverage complying with the above requirements prior to beginning work at:

Agency  
Attn: Contract Manager  
Address  
City, State, Zip

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

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

**xxxi. DEVIATIONS**

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

**K. NOTICE OF POTENTIAL CONTRACTOR BREACH**

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

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

**L. ANTITRUST**

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

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

**M. CONFLICT OF INTEREST**

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



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

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

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

**N. STATE PROPERTY**

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

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

**O. SITE RULES AND REGULATIONS**

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

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

**P. ADVERTISING**

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

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

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

Contractor shall review the Nebraska Technology Access Standards, found at <https://das.nebraska.gov/materiel/docs/pdf/Technology%20Access%20Clause%2020210608%20FINAL.pdf> and ensure that products and/or services provided under the contract are in compliance or will comply with the applicable standards to the greatest degree possible. In the event such standards change during the Contractor's performance, the State may create an amendment to the contract to request the contract comply with the changed standard at a cost mutually acceptable to the parties.

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

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

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

**S. DRUG POLICY**

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

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

**T. WARRANTY**

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

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

**IV. PAYMENT**

**A. PROHIBITION AGAINST ADVANCE PAYMENT (Statutory)**

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

**B. TAXES (Statutory)**

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

**C. INVOICES**

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

Invoices for payments must be submitted by the Contractor to the agency requesting the services with sufficient detail to support payment. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

**D. INSPECTION AND APPROVAL**

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

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

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

**E. PAYMENT (Statutory)**

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

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

**F. LATE PAYMENT (Statutory)**

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

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

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

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

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

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

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. If a previously undisclosed overpayment exceeds one-half of one percent to three (3) percent of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within ninety (90) days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

## V. PROJECT OVERVIEW AND SCOPE OF WORK

### A. PROJECT OVERVIEW

The Nebraska Department of Education (NDE) is seeking a qualified vendor to provide an Information Security Assessment and Penetration Testing on existing NDE networks. All requirements are according to specifications enclosed herein. This assessment will allow NDE to gain a better understanding of potential network vulnerabilities that may be visible from both outside and inside NDE's resources. The Scope of Work consists of the two sections outlined below. Bidders may bid on any or all of these sections and are requested to provide cost estimates for each section separately as NDE may not select all activities to be conducted and/or may select one or more bidders for separate activities.

- 1) Penetration Testing
  - a. External Network Vulnerability Assessment and Penetration Testing
  - b. Internal Network Vulnerability Assessment and Penetration Testing
  - c. Wireless Network Assessment and Penetration Testing
  - d. Application Penetration Testing
  - e. Client-Side Penetration Testing
  - f. Physical Penetration Testing
- 2) Policy Planning and Development
  - a. Business Impact Analysis
  - b. Disaster Recovery Planning
  - c. Policy Development

### B. PROJECT ENVIRONMENT

The Nebraska Department of Education (NDE) is a constitutional agency comprised of services, programs, Vocational Rehabilitation (Nebraska VR), and Disabilities Determination Section (DDS). The NDE operates under the authority of an elected State Board of Education (Board) and the Commissioner of Education (Commissioner). The NDE is organized into divisions and offices that carry out the duties assigned by state and federal statutes and the policy directions of the Board. Divisions and offices are organized around distinct functions and responsibilities that encompass leadership and support for Nebraska's system of: early childhood, primary, secondary, and postsecondary education; direct services to clients; and internal support to the agency.

The NDE network is a private network inaccessible from public internet. It is a collection of VLANs separated from the public internet by a NAT gateway. Publicly available resources are available through DMZ segments, accessible from the public internet. A wireless network is also available to NDE employees at physical office locations.

The NDE carries out its duties on behalf of Nebraska students and parents involved in public and nonpublic school systems. The NDE staff interacts with schools, parents, businesses, community partners, and institutions of higher education to develop, coordinate, and improve educational programs and services.

### C. SCOPE OF WORK

The Penetration testing shall provide a practical approximation of the weak points in NDE's network infrastructure and selected applications, describing the risks of such vulnerabilities, and facilitating the design of a plan for implementing remediation. The vendor must ensure the penetration testing activities will not impact the availability of the wireless system or email services for NDE and the broader state environment. Vendors must also adhere to the Microsoft Rules of Engagement for penetration testing Microsoft services.

<https://www.microsoft.com/en-us/msrc/pentest-rules-of-engagement>

In addition to the Penetration Testing described in Section 1., NDE is soliciting proposals from vendors to assist with Business Impact Analysis, Disaster Recovery Planning and Policy Development, as outlined in Section 2. of the Scope of Work.

#### SECTION 1. PENETRATION TESTING

##### Subsection 1.a. - External Network Vulnerability Assessment and Penetration Testing

Conduct an External Network Penetration Test on all external IP's. This test should be comprised assessments that should include the following tasks (at a minimum):

- Information gathering: Identify live hosts, operating systems, services provided, access control mechanisms, access servers and any exposed interactions between systems.

- Generic vulnerability testing: Determine the presence of known vulnerabilities and document how they could be exploited. This includes vulnerabilities related to legitimately provided services such as HTTP, HTTPS, DNS, SMTP mail exchangers, Remote Access, and etc.
- Network characteristics and topology tests: Determine the presence and exploit vulnerabilities related to network topology, network components configuration and design principles and protocol specific characteristics. These include tests that consider spoofing techniques, protocol specific tests such as usage of IP options, fragmentation, exploit of trust relationships, protocol encapsulation, routing tricks, design and implementation flaws in several network protocols and related services, etc.
- Miss-configuration tests: Identify and exploit typical miss-configuration problems.
- Authentication and access control schemes tests: Attempt to subvert authentication and access control mechanisms based on common attacks that exploit the lack of a strict security policy or enforcement.

#### Subsection 1.b. - Internal Network Vulnerability Assessment and Penetration Testing

Conduct an Internal Network Penetration test on internal Servers and services provided. This test should be comprised of a series of assessments that should include the following tasks (at a minimum):

- Acquire network access: locate and connect to network connections to access local networks.
- Information gathering tests: Identify live hosts, map network topology, identify operating system, services provided, access control mechanisms, and perform port scans on local networks.
- Generic vulnerability tests: Determine the presence of known vulnerabilities and how to exploit them. This includes vulnerabilities related to legitimately provided services such as HTTP, HTTPS, SMB, ARP, FTP, SMTP mail exchangers and gateways, DNS, and print sharing services, etc.
- Network characteristics and topology tests: Determine the presence and exploitable vulnerabilities relate to network topology, network components configuration and design principles and protocol specific characteristics.
- Miss-configuration tests: Identify and how to exploit typical misconfiguration problems. Authentication and access control schemes tests: Attempt to subvert authentication and access control mechanisms based on common attacks that exploit the lack of a strict security policy or the enforcement of such. This includes dictionary and brute force attacks on reusable passwords, exploit of weak authentication schemes, social engineering, exploit of contingency plan procedures, etc.
- Data Security: Evaluate and assess current enterprise database security controls for mission critical applications. Assessment should focus on controls for both regulatory and legal compliance (HIPAA, FERPA) as well as controls protecting Personally Identifiable Information (PII).
- Security Operations: Evaluate NDE Security Operations Security Information and Event Management (SIEM) controls with regard to active monitoring, event correlation, threat response, resource capacity, and staff support.
- Review Security related emergency response documents.
- Review current security related policies and procedures.

#### Subsection 1.c. - Wireless Network Assessment and Penetration Testing

Conduct a Wireless Network Penetration test on available internal Wireless Networks and services provided. This test should be comprised of a series of assessments that should include the following tasks (at a minimum).

- Information gathering: Identify all wireless networks that are available, map out public and private networks.
- Access Control tests: Determine if it is possible for a public user to connect to private network, identification bypass.
- Vulnerability and packet capturing: Determine the presence of known vulnerabilities and their exploitation as well as packet captures.
- Miss-Configuration tests: Identify and how to exploit typical misconfiguration problems with controllers and vlans issues.

#### Subsection 1.d. - Application Penetration Testing

Conduct Penetration testing on selected applications to test the effectiveness of the built-in security controls by exposing and exploiting weaknesses. The following systems are to be tested.

- Microsoft SharePoint
- Microsoft Azure
- Email and Archiving
- Custom Applications

Testing will be conducted with and without an ID. This usually includes a login page for users to authenticate against the application and, upon successful authentication, users gain access to more application functionality. Testing will be focused on the application in general. Tests will look for the following issues, among others:

- Information leakage intended at determining if confidential information or information that might otherwise aid an attacker is disclosed by the application or its environment.
- Input validation, verifies that all user input is correctly validated, and sanitized if necessary, to ensure that the application behaves as expected independently of the submitted input.
- Filtering layers, focused on verifying that the necessary filtering mechanisms are in place to proactively defend against common web application attacks.
- Parameter passing, testing that all parameter handling is performed in a secure manner. For example, looking for authorization information mishandled by the application, which instead of being stored server-side is sent by the user.
- Cross-site scripting, aimed at identifying cross-site scripting vulnerabilities through the application due to improper encoding of user supplied input.
- SQL injections, focused on determining when user input is used to construct database queries and testing the possibility of specially crafting input to control the queries, beyond the programmer's intention.
- Identify weaknesses in web applications, web servers and associated databases.
- Dynamically generate exploits that can compromise security weaknesses.
- Demonstrate the potential consequences of a successful attack.
- Get information necessary for addressing security issues and preventing data incidents.
- Others that could be present on the application reviewed.

#### Subsection 1.e. - Client-Side Penetration Testing

Perform a Client-Side Penetration Test to determine the susceptibility of users to social engineering attacks. These tests should assess the overall security of end-user systems and depicts how individual client-side exposures can be linked to data an information leakage.

The methodology used for the client-side attacks should involve the following:

- Information gathering
  - Gather information from public sources (website, Google, newsgroups, mailing lists, etc.) for e-mail addresses of the customer and employee.
  - Use phone and e-mail (spear phishing) tactics targeting select users to gather additional information about the user or Government Center.
- Attack and gain access
  - Attempt to gain access to an employee's machine via e-mail, phone, or other means.
  - Install a remote agent on the comprised machine and be able to interact with the computer and then point out attack vectors a would-be attacker could achieve including;
    - View the local file system and mapped drives.
    - Upload and download files to and from the end-user system.
    - Open and interact with files on the compromised system.
    - Gather usernames and passwords from endpoint applications.
    - Take a screenshot of current activity on end-user's desktop.
    - Harvest email addresses from client's email.
    - Deploy a key logger that tracks the user's keystrokes.
    - Perform a password dump from the user's web browser.
    - Harvest addresses from public resources, while limiting the testing pool to 50 email addresses.

#### Subsection 1.f. - Physical Penetration Testing

Conduct a Physical Penetration test on the local NDE offices located in Lincoln, NE. This test should be comprised of a series of assessments that should include the following tasks (at a minimum).

- Assesses all physical security controls, including locks, fences, security guards, cameras, and other security measures.
- Attempt to thwart these controls to gain physical access to restricted areas, identify sensitive data, and gain entry to a network.

The In addition to the primary scope of work outlined above, NDE is soliciting proposals from vendors to assist with Business Impact Analysis, Disaster Recovery Planning and Policy Development.

## **SECTION 2. Policy Planning and Development**

### Subsection 2a. – Business Impact Analysis

As defined by ready.gov, "A business impact analysis (BIA) predicts the consequences of disruption of a business function and process and gathers information needed to develop recovery strategies. Potential loss scenarios should be identified during a risk assessment. Operations may also be interrupted by the failure of a supplier of goods or services or delayed deliveries." (<https://www.ready.gov/business-impact-analysis>).

Vendors are expected to develop or recommend an appropriate BIA questionnaire and conduct a survey of managers and directors from NDE with detailed knowledge of services provided and data collected in order to identify potential impacts if the function or process they are responsible for is interrupted.

Vendors should deliver a comprehensive BIA report detailing the potential impacts resulting from disruption of NDE functions and processes. The BIA report should prioritize the order of events for restoration of the business functions and processes, with emphasis on planning for prioritized restoration in areas of greatest operational impacts.

### Subsection 2b. – Disaster Recovery Planning

Review and evaluate the current disaster recovery plan and make recommendations for revisions based on business impact analysis and other relevant considerations.

### Subsection 2c. – Policy Development

Review and evaluate the current security playbooks, policies (including NIST 800-53), and procedures in place at NDE, identify gaps in documentation, and assist NDE staff in developing comprehensive network security documentation and policies.

## **D. PROJECT TASKS AND DELIVERABLES**

For each subsection of the sections contained in RFP Section V.C. Penetration testing, deliverables should include at a minimum:

- Executive summary report - A summary report of all completed penetration test activities and their results. Reported data includes:
  1. Summary of exploited vulnerabilities
  2. Summary of discovered hosts
  3. Most exploited vulnerabilities (overall and by operating system)
- Host report - A detailed report about the hosts tested grouped by host IP address. Reported data should include:
  1. Number of compromised hosts
  2. Services and applications found on each host
  3. Average number of exploited vulnerabilities on those hosts
  4. The CVE numbers and names of the vulnerabilities found on each compromised host
  5. How to uninstall the agent from comprised systems
- Vulnerability report - Provides a detailed report about the vulnerabilities that were successfully exploited on each host (versus potential vulnerabilities). The report should provide details for each of the exploited vulnerabilities listed for the compromised hosts in the Host Report. For each of the vulnerabilities found, a vulnerability record will be presented using the following format:
  - Category of vulnerability
  - Information disclosure Configuration
  - Remote Code Execution Industry standard vulnerability identifier
  - CVE
  - BugTrackID Microsoft MS advisory
  - Vulnerable system identification IP address
  - Hostname (if available) Operating system
- General conclusions and recommendations – interpret the results and provide information-based vendor security expertise as to what these results mean in an easy to understand format. Recommendations will include remediation and configuration suggestions. After evaluating the current structure and complexity of the network systems, make recommendations based on industry best practices for the ideal architectures, addressing the complexities between NDE and VR.



Within the proposal, vendors must provide information regarding their approach to meeting the requirements described within Sections V.C-D. If subcontractors will be used for any of the tasks, vendors must indicate what tasks and the percentage of time subcontractor(s) will spend on those tasks.

## **E. DELIVERABLE SUBMISSION AND REVIEW**

Once a vendor is selected and the detailed project plan is approved by the State, the following sections detail the process for submission and review of deliverables during the life of the project/contract:

1. GENERAL
  - a. The contractor must provide one draft electronic copy of each deliverable to the appropriate State Project Manager as identified in the contract.
  - b. Once a deliverable is approved and accepted by the State, the contractor must provide an electronic copy.
  - c. The electronic copy must be provided in software currently utilized by the agency or provided by the contractor.
  - d. Deliverables will be evaluated by the State utilizing mutually agreed to acceptance/rejections criteria.
  
2. DELIVERABLE SUBMISSION
  - a. Prior to development and submission of each contract deliverable, a summary document containing a description of the format and content of each deliverable will be delivered to the State Project Manager for review and approval. The summary document must contain, at a minimum, a cover letter, a table of contents with a brief description of the content of each section. The anticipated number of pages, and identification of appendices/exhibits.
  - b. The summary document must contain an approval/rejection section that can be completed by the State. The summary document will be returned to the contractor within a mutually agreed upon time frame.
  - c. Deliverables must be developed by the contractor according to the approved format and content of the summary document for each specific deliverable.
  - d. At a mutually agreed meeting, on or before the time of delivery to the State, the contractor must provide a walkthrough of each deliverable.
  - e. Deliverables must be submitted no later than 5:00 PM, per the approved contract deliverable schedule and must be accompanied by a deliverable sign-off form with the appropriate sections completed by the contractor.
  
3. DELIVERABLE REVIEW
  - a. General
    - i. The State's review time begins on the next working day following receipt of the deliverable.
    - ii. The State's review time will be determined by the approved and accepted detailed project plan and the approved contract.
    - iii. The State has up to ten (10) working days to determine if a deliverable is complete and ready for review. Unless otherwise negotiated, this is part of the State's review time.
    - iv. Any subsequent deliverable dependent upon the State's acceptance of a prior deliverable will not be accepted for review until all issues related to the previous deliverable have been resolved.
    - v. Deliverables determined to be incomplete and/or unacceptable for review will be rejected, not considered delivered and returned to the contractor.
    - vi. After review of a deliverable, the State will return to the contractor the project deliverable sign-off form with the deliverable submission and review history section completed.
  - b. Accepted
    - i. If the deliverable is accepted, the original deliverable sign-off form signed by the appropriate State representatives will be returned to the contractor.
    - ii. Once the contractor receives the original deliverable sign-off form, the State can then be invoiced for the deliverable.
  - c. Comments/Revisions Requested by the State

If the State has comments and/or revisions to the deliverable, the following will be provided to the contractor:

    - i. The original deliverable sign-off form with an updated entry to the deliverable submission and review history section.

- ii. Attached to the deliverable sign-off form will be a detailed explanation of the revisions to be made and/or a marked-up copy of the deliverable.
  - iii. The State's first review and return with comments will be completed within the times specified in the contract.
  - iv. The contractor will have five (5) working days, unless otherwise mutually agreed to, for review, acceptance and/or rejection of the State's comments.
  - v. A meeting to resolve outstanding issues must be completed within three (3) working days after completion of the contractor's review or a mutually agreed upon time frame.
  - vi. Agreements made during meetings to resolve issues must be documented separately.
  - vii. Once an agreement is reached regarding changes, the contractor must incorporate them into the deliverable for resubmission to the State.
  - viii. All changes must be easily identifiable by the State.
  - ix. Resubmission of the deliverable must occur within five (5) working days or a mutually agreed upon time frame of the resolution of any outstanding issues.
  - x. The resubmitted deliverable must be accompanied by the original deliverable sign-off form.
  - xi. This review process continues until all issues have been resolved within a mutually agreed upon time frame.
  - xii. During the re-review process, the State may only comment on the original exceptions noted.
  - xiii. All other items not originally commented on are considered to be accepted by the State.
  - xiv. Once all revisions have been accepted, the original deliverable sign-off form signed by the appropriate State representatives will be returned to the contractor.
  - xv. The contractor must provide one (1) updated and complete master electronic copy of each deliverable after approval and acceptance by the State.
  - xvi. Once the contractor receives the original deliverable sign-off form, the State can then be invoiced for the deliverable.
- d. Rejected, Not Considered Delivered
- If the State considers a deliverable not ready for review, the following will be returned to the contractor:
- i. The original deliverable sign-off form with an updated entry to the deliverable submission and review history section.
  - ii. The original deliverable and all copies with a written explanation as to why the deliverable is being rejected, not considered delivered.
  - iii. The contractor will have five (5) working days, unless otherwise mutually agreed to, for review, acceptance and/or rejection of the State's comments.
  - iv. A meeting to discuss the State's position regarding the rejection of the deliverable must be completed within three (3) working days after completion of the contractor's review or a mutually agreed upon time frame.
  - v. Resubmission of the deliverable must occur within a mutually agreed upon time frame.
  - vi. The resubmitted deliverable must be accompanied by the original deliverable sign-off form.
  - vii. Upon resubmission of the completed deliverable, the State will follow the steps outlined above.

## VI. PROPOSAL INSTRUCTIONS

This section documents the requirements that should be met by contractors in preparing the Technical and Cost Proposals. Contractors should identify the subdivisions of "Project Description and Scope of Work" clearly in their proposals; failure to do so may result in disqualification. Failure to respond to a specific requirement may be the basis for elimination from consideration during the State's comparative evaluation.

Proposals are due by the date and time shown in the Schedule of Events. Content requirements for the Technical and Cost Proposal are presented separately in the following subdivisions; format and order:

### A. TECHNICAL PROPOSAL

The Technical Proposal shall consist of the following four (4) sections:

1. SIGNED "State of Nebraska Request For Proposal For Contractual Services" form;
2. Executive Summary;
3. Corporate Overview; and
4. Technical Approach.

#### 1. Request for Proposal For Contractual Services Form

By signing the "Request For Proposal For Contractual Services" form (front cover of this document), the bidder guarantees compliance with the provisions stated in this Request for Proposal, agrees to the Terms and Conditions stated in this Request for Proposal and certifies bidder maintains a drug free workplace environment. The Request For Proposal For Contractual Services form must be signed in ink and returned by the stated date and time in order to be considered for an award.

#### 2. Executive Summary

The Executive Summary shall condense and highlight the contents of the solution being proposed by the bidder in such a way as to provide the Evaluation Committee with a broad understanding of the Contractor's Technical Proposal. Bidders must present their understanding of the problems being addressed by implementing a new system, the objectives and intended results of the project, and the scope of work. Bidders shall summarize how their Technical Proposal meets the requirements of the Request for Proposal, and why they are the best qualified to perform the work required herein.

#### 3. Corporate Overview

The Corporate Overview section of the Technical Proposal should consist of the following subdivisions:

##### a. Contractor Identification And Information

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

##### b. Financial Statements

The contractor should provide financial statements applicable to the firm. If publicly held, the contractor 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 contractor's financial or banking organization.

If the contractor 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 proposal 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 contractor 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.

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

##### c. Change Of Ownership

If any change in ownership or control of the company is anticipated during the twelve (12) months following the proposal due date, the contractor should describe the circumstances of such change

and indicate when the change will likely occur. Any change of ownership to an awarded contractor(s) will require notification to the State.

**d. Office Location**

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

**e. Relationships With The State**

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

**f. Contractor's Employee Relations To State**

If any Party named in the contractor's proposal response is or was an employee of the State within the past twelve (12) months, identify the individual(s) by name, State agency with whom employed, job title or position held with the State, and separation date. If no such relationship exists or has existed, so declare.

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

**g. Contract Performance**

If the contractor or any proposed Subcontractor has had a contract terminated for default during the past five (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 contractor's non-performance or poor performance, and the issue was either not litigated due to inaction on the part of the contractor or litigated and such litigation determined the contractor to be in default.

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

If at any time during the past five (5) years, the contractor 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.

**h. Summary Of Contractor's Corporate Experience**

The contractor should provide a summary matrix listing the contractor's previous projects similar to this solicitation in size, scope, and complexity. The State will use no more than three (3) narrative project descriptions submitted by the contractor during its evaluation of the proposal.

The contractor should address the following:

i. Provide narrative descriptions to highlight the similarities between the contractor'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 Contractor's responsibilities;
- d) For reference purposes, a customer name (including the name of a contact person, a current telephone number, a facsimile number, and e-mail address); and
- e) Each project description should identify whether the work was performed as the prime Contractor or as a Subcontractor. If a contractor performed as the prime Contractor, 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. Contractor 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 Contractors above. In addition, Subcontractors should identify what share of contract costs, project responsibilities, and time period were performed as a Subcontractor.

**i. Summary Of Contractor's Proposed Personnel/Management Approach**

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

The contractor should identify the specific professionals who will work on the State'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 State 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 contractor should provide resumes for all personnel proposed by the contractor to work on the project. The State will consider the resumes as a key indicator of the contractor'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 not be longer than three (3) pages. 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 the State.

**j. Subcontractors**

NDE will allow subcontracting only under the following circumstances:

- NDE reserves the right to not accept any subcontractors identified in the submitted proposal if it so chooses.
- Bidder maintains ultimate responsibility for all deliverables and services provided under any contract resulting from this RFP.
- The subcontractor is subject to Nebraska data privacy and security requirements. NDE will have the ability to review contracts and agreements with subcontractors to ensure these requirements are met.
- At NDE's discretion, NDE will be able to participate in all meetings between the bidder and its subcontractors related to work conducted under any contract resulting from this RFP. NDE will also have access to all communications between the bidder and its subcontractors related to the work conducted under any contract resulting from this RFP

If the contractor intends to Subcontract any part of its performance hereunder, the contractor 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.

At NDE's discretion, NDE will be able to participate in all meetings between the bidder and its subcontractors related to work conducted under any contract resulting from this RFP. NDE will also have access to all communications between the bidder and its subcontractors related to the work conducted under any contract resulting from this RFP.

**4. TECHNICAL APPROACH**

The technical approach section of the Technical Proposal must consist of the following subsections:

**a. Bidders Understanding of the Project Requirements**

In this section of the bidder's response to this request for proposal, bidder shall provide an overview of their proposed solution and a discussion of how this proposal meets the project requirements and constraints described in Sections V.A. through V.C. of this RFP.

b. Detailed Description of Proposed Solution

In this section of the bidder's response to this request for proposal, bidder shall describe their proposed solution in detail, including a complete list of proposed functionality, including how the solution addresses the Scope of Work and deliverables outlined in Sections V.C-D. of this RFP.

c. Project Tasks and Deliverables

In this section of the bidder's response to this request for proposal, vendors must provide information regarding their approach to meeting the requirements, activities and deliverables described within Section V.C-D. If subcontractors will be used for any of the tasks, vendors must indicate what tasks and the percentage of time subcontractor(s) will spend on those tasks. Vendor's response must be limited to no more than two (2) pages per Task, not including appendices, samples and/or exhibits.

d. Optional Features, Functionality and Services

In this section of the bidder's response to this request for proposal, bidder shall describe any optional features, functionality or services which may be outside the scope of this request, but that the bidder would like to include in their proposal. PLEASE NOTE: any optional functionality will not be included for evaluation purposes. All costs associated with optional functionality must be included on a separate cost proposal schedule and not included as part of the base cost proposal.

## B. COST PROPOSAL

This section describes the requirements to be addressed by bidders in preparing the Cost Proposal. The bidder must submit Attachment A, Project Costs in a section of the proposal that is a separate section or is packaged separately as specified in this RFP from the Technical Proposal section.

The cost for each task/deliverable must be complete and include all expenses, including travel, per diem and out-of-pocket expenses as well as administrative and/or overhead expenses. Detailed backup must be provided for all cost schedules completed.

### 1. PRICING SUMMARY AND ITEMIZED DETAILS

This pricing summary shall present the total fixed price to perform all of the requirements and deliverables of the Request for Proposal. The bidder must include details in the Cost Proposal supporting any and all costs using the tabs included in Attachment A – Project Costs. These details must include, at a minimum, detailed descriptions and/or specifications of the goods and/or services to be provided, quantities, and timing and unit costs, if applicable.

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

\*For performing necessary job duties in the hybrid work environment, contractor should possess their own computer (Microsoft office installed), stable internet connection, email address, phone, headset, and driver's license. All necessary network, system and application permissions will be provided. No expense reimbursements are planned by the state agency for this position.

**Form A**  
**Contractor Proposal Point of Contact**  
**Request for Proposal Number 2207**

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

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

Each contractor should also designate a specific contact person who will be responsible for responding to the State if any clarifications of the contractor's response should become necessary. This will also be the person who the State contacts to set up a presentation/demonstration, if required.

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

## REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES FORM

### CONTRACTOR MUST COMPLETE THE FOLLOWING

By signing this Request for Proposal for Contractual Services form, the contractor guarantees compliance with the procedures stated in this Solicitation, and agrees to the terms and conditions unless otherwise indicated in writing and certifies that contractor maintains a drug free work place.

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 Contractors. This information is for statistical purposes only and will not be considered for contract award purposes.

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

\_\_\_\_\_ 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.

### FORM MUST BE SIGNED USING AN INDELIBLE METHOD (NOT ELECTRONICALLY)

FIRM:	
COMPLETE ADDRESS:	
TELEPHONE NUMBER:	
FAX NUMBER:	
DATE:	
SIGNATURE:	
TYPED NAME & TITLE OF SIGNER:	