

**State of Nebraska Department of Transportation
REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES**

RETURN TO:
NE Department of Transportation
Operations Division
PO Box 94759
Lincoln, NE 68509-4759
(402) 479-4328

SOLICITATION NUMBER	RELEASE DATE
RFP R208-20	April 28, 2020
OPENING DATE AND TIME	PROCUREMENT CONTACT
May 28, 2020 3:00 p.m. Central Time	Brandy Henke

**PLEASE READ CAREFULLY!
SCOPE OF SERVICE**

The State of Nebraska (State), Department of Transportation (NDOT) is issuing this Request for Proposal (RFP) Number R208-20 for the purpose of selecting a qualified Bidder to provide a certified Disadvantaged Business Enterprise Support Services Program (DBE/SSP) for Disadvantaged Business Enterprises in a heavy highway construction or related industry and domiciled in the State of Nebraska. A more detailed description can be found in Section V. The resulting contract may not be an exclusive contract as the State reserves the right to contract for the same or similar 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 (Parties). The contract includes the option to renew for four (4) additional one (1) year periods upon mutual agreement of the Parties. The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Parties.

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

IMPORTANT NOTICE: Pursuant to Neb. Rev. Stat. § 84-602.04, State contracts in effect as of January 1, 2014, and contracts entered into thereafter, must be posted to a public website. The resulting contract, the solicitation, and the awarded bidder'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. Bidder must request that proprietary information be excluded from the posting. The Bidder must identify the proprietary information, mark the proprietary information according to state law, and submit the proprietary information in a separate container or envelope marked conspicuously using an indelible method with the words "PROPRIETARY INFORMATION". The Bidder must submit a detailed written document showing that the release of the proprietary information would give a business advantage to named business competitor(s) and explain how the named business competitor(s) will gain an actual business advantage by disclosure of information. The mere assertion that information is proprietary or that a speculative business advantage might be gained is not sufficient. (See Attorney General Opinion No. 92068, April 27, 1992) THE BIDDER MAY NOT ASSERT THAT THE ENTIRE PROPOSAL IS PROPRIETARY. COST PROPOSALS WILL NOT BE CONSIDERED PROPRIETARY AND ARE A PUBLIC RECORD IN THE STATE OF NEBRASKA. The State will determine, in its sole discretion, if the disclosure of the information designated by the Bidder as proprietary would 1) give advantage to business competitors and 2) serve no public purpose. The Bidder will be notified of the State's decision. Absent a determination by the State that the information may be withheld pursuant to Neb. Rev. Stat. § 84-712.05, the State will consider all information a public record subject to disclosure.

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

To facilitate such public postings, with the exception of proprietary information, the State of Nebraska reserves a royalty-free, nonexclusive, and irrevocable right to copy, reproduce, publish, post to a website, or otherwise use any contract, 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.....	ii
GLOSSARY OF TERMS.....	iv
ACRONYM LIST	viii
I. PROCUREMENT PROCEDURE	1
A. GENERAL INFORMATION.....	1
B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS	1
C. SCHEDULE OF EVENTS	1
D. WRITTEN QUESTIONS AND ANSWERS.....	2
E. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS (Statutory)	2
F. ETHICS IN PUBLIC CONTRACTING	2
G. DEVIATIONS FROM THE REQUEST FOR PROPOSAL	2
H. SUBMISSION OF PROPOSALS	2
I. PROPOSAL PREPARATION COSTS	3
J. FAILURE TO COMPLY WITH REQUEST FOR PROPOSAL	3
K. PROPOSAL CORRECTIONS.....	3
L. LATE PROPOSALS.....	3
M. PROPOSAL OPENING.....	3
N. REQUEST FOR PROPOSAL/PROPOSAL REQUIREMENTS.....	3
O. EVALUATION COMMITTEE.....	4
P. EVALUATION OF PROPOSALS	4
Q. ORAL INTERVIEWS/PRESENTATIONS AND/OR DEMONSTRATIONS	4
R. BEST AND FINAL OFFER.....	5
S. REFERENCE AND CREDIT CHECKS	5
T. AWARD	5
U. ALTERNATE/EQUIVALENT PROPOSALS	5
V. LUMP SUM OR "ALL OR NONE" PROPOSALS	5
W. EMAIL SUBMISSIONS	5
X. REJECTION OF PROPOSALS	5
Y. RESIDENT BIDDER	6
II. TERMS AND CONDITIONS	7
A. GENERAL.....	7
B. NOTIFICATION	7
C. BUYER'S REPRESENTATIVE	8
D. GOVERNING LAW (Statutory)	8
E. BEGINNING OF WORK.....	8
F. AMENDMENT.....	8
G. CHANGE ORDERS OR SUBSTITUTIONS	8
H. CONTRACTOR PERFORMANCE REPORT(S)	9
I. NOTICE OF POTENTIAL CONTRACTOR BREACH	9
J. BREACH.....	9
K. NON-WAIVER OF BREACH.....	9
L. SEVERABILITY	10
M. INDEMNIFICATION	10
N. ATTORNEY'S FEES	11
O. ASSIGNMENT, SALE, OR MERGER	11
P. CONTRACTING WITH OTHER NEBRASKA POLITICAL SUB-DIVISIONS OF THE STATE OR ANOTHER STATE	11
Q. FORCE MAJEURE	11
R. CONFIDENTIALITY	12
S. EARLY TERMINATION	12
T. CONTRACT CLOSEOUT	12

III.	CONTRACTOR DUTIES	14
A.	INDEPENDENT CONTRACTOR / OBLIGATIONS.....	14
B.	EMPLOYEE WORK ELIGIBILITY STATUS.....	14
C.	COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Statutory).....	15
D.	COOPERATION WITH OTHER CONTRACTORS	15
E.	PRICES	15
F.	COST CLARIFICATION.....	15
G.	PERMITS, REGULATIONS, LAWS	15
H.	OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES	16
I.	INSURANCE REQUIREMENTS.....	16
J.	ANTITRUST.....	18
K.	CONFLICT OF INTEREST	18
L.	STATE PROPERTY.....	18
M.	SITE RULES AND REGULATIONS.....	18
N.	ADVERTISING	19
O.	NEBRASKA TECHNOLOGY ACCESS STANDARDS (Statutory).....	19
P.	DISASTER RECOVERY/BACK UP PLAN.....	19
Q.	DRUG POLICY	19
R.	WARRANTY	19
IV.	PAYMENT	20
A.	PROHIBITION AGAINST ADVANCE PAYMENT (Statutory).....	20
B.	TAXES (Statutory)	20
C.	INVOICES.....	20
D.	INSPECTION AND APPROVAL	20
E.	PAYMENT (Statutory).....	20
F.	LATE PAYMENT (Statutory).....	21
G.	SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Statutory).....	21
H.	RIGHT TO AUDIT (First Paragraph is Statutory)	21
V.	PROJECT DESCRIPTION AND SCOPE OF WORK	22
A.	PROJECT OVERVIEW.....	22
B.	PROJECT BACKGROUND	22
C.	FEDERAL COST PRINCIPLES	22
D.	COST RECORD RETENTION.....	22
E.	SCOPE OF WORK	22
F.	PROGRAM PLANNING (DUE WITH RFP RESPONSE - ATTACHMENT A) (1.0).....	22
G.	DETAILED PROGRAM MANAGEMENT PLAN (2.0)	23
H.	DBE SUPPORT SERVICES PROGRAM (SSP) PHASES (3.0)	23
I.	DISCONTINUATION.....	26
J.	REPORTS (4.0)	26
K.	DELIVERABLES.....	27
L.	ALLOWABLE COSTS.....	27
M.	DIRECT NON-LABOR COSTS FOR REIMBURSEMENT	27
N.	REIMBURSEMENT SUBMISSION REQUIREMENTS	28
O.	INVOICE REQUIREMENTS	28
VI.	PROPOSAL INSTRUCTIONS	29
A.	PROPOSAL SUBMISSION.....	29
	Form A Contractor Proposal Point of Contact.....	31
	REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES FORM	32

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 Bidder's most favorable terms for price.

Bidder: A vendor 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.

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.

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 administration 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.

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 Bidder's responsibility, responsiveness to requirements, and to ascertain other characteristics of the offer that relate to determination of the successful award.

Evaluation Committee: Committee(s) appointed by the requesting agency that advises and assists the procuring office in the evaluation of 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.

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): 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.

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): The State of Nebraska's 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.

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.

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 Bidder who has submitted a proposal response in connection with the award in question, to AS Materiel Division or another designated agency with the intention of achieving a remedial result.

Public 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.

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

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

Responsive Bidder: A Bidder who has submitted a 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.

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 subcontractors or agents, and their employees. It shall not include any entity or person who is an interested Party to the contract or agreement.

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

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

Upgrade: Any change that improves or alters the basic function of a product 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: An individual or entity lawfully conducting business in the State

Will: See Mandatory/Shall/Will/Must.

Work Day: See Business Day.

ACRONYM LIST

- ACH** – Automated Clearing House
- BAFO** – Best and Final Offer
- BDP** – Business Development Program
- COI** – Certificate of Insurance
- DAS** – Department of Administrative Services
- DBE** – Disadvantaged Business Enterprise
- DBE/SSP** - Disadvantaged Business Enterprise Support Services Program
- FHWA** – Federal Highway Administration
- F.O.B.** – Free on Board
- HCRO** – Highway Civil Rights Office
- NDOT** – Nebraska Department of Transportation
- RFP** – Request for Proposal
- SPB** – State Purchasing Bureau
- SWOT Analysis** – Strengths, Weaknesses, Opportunities and Threats Analysis
- USDOT** – United States Department of Transportation

I. PROCUREMENT PROCEDURE

A. GENERAL INFORMATION

The solicitation is designed to solicit proposals from a qualified Bidder who will be responsible for providing a certified Disadvantaged Business Enterprise Support Services Program (DBE/SSP) for Disadvantaged Business Enterprise in a heavy highway construction or related industry and domiciled in the State of Nebraska, at a competitive and reasonable cost. Terms and Conditions, Project Description and Scope of Work, and Proposal instructions may be found in Sections II through VI.

Proposals shall conform to all instructions, conditions, and requirements included in the solicitation. Prospective Bidders should 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 Transportation (NDOT). The point of contact (POC) for the procurement is as follows:

Name: Brandy Henke
RFP # R208-20
Agency: Nebraska Department of Transportation
Operations Division
Address: PO Box 94759
Lincoln, NE 68509-4759
Physical Address: 5001 S. 14th Street
Lincoln, NE 68512
Telephone: (402) 479-4328
E-Mail: NDOT.OperationsProcurement@nebraska.gov

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

The following exceptions to these restrictions are permitted:

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

The State reserves the right to reject a Bidder'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.

ACTIVITY	DATE/TIME
1. Release Solicitation	April 28, 2020
2. Last day to submit written questions	May 8, 2020
3. State responds to written questions through Solicitation "Addendum" and/or "Amendment" to be posted to the Internet at: http://das.nebraska.gov/materiel/purchasing.html	May 12, 2020
4. Proposal Opening Location: NE Department of Transportation 5001 S. 14 th Street Lincoln, NE 68512	May 28, 2020 3:00 PM Central Time
5. Review for conformance to solicitation requirements	May 28, 2020
6. Evaluation period	May 29 – June 5, 2020
7. "Oral Interviews/Presentations and/or Demonstrations" (if required)	TBD
8. Post "Notification of Intent to Award" to Internet at: http://das.nebraska.gov/materiel/purchasing.html	TBD
9. Contract finalization period	TBD
10. Contract award	TBD
11. Contractor start date	TBD

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 Transportation and clearly marked "RFP Number R208-20; DBE/SSP Questions". The POC is not obligated to respond to questions that are received late per the Schedule of Events.

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

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

Solicitation Section Reference	Solicitation Page Number	Question

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

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

All bidders must be authorized to transact business in the State of Nebraska and comply with all Nebraska Secretary of State Registration requirements. The Bidder who is the recipient of an Intent to Award may be required to certify that it has complied and produce a true and exact copy of its current (within ninety (90) calendar days of the intent to award) Certificate or Letter of Good Standing, or in the case of a sole proprietorship, provide written documentation of sole proprietorship and complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <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 Bidder commits or has committed ethical violations, which include, but are not limited to:

1. Offering or giving, directly or indirectly, a bribe, fee, commission, compensation, gift, gratuity, or anything of value to any person or entity in an attempt to influence the bidding process;
2. Utilize the services of lobbyists, attorneys, political activists, or consultants to influence or subvert the bidding process;
3. Being considered for, presently being, or becoming debarred, suspended, ineligible, or excluded from contracting with any state or federal entity;
4. Submitting a 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 Bidder shall include this clause in any subcontract entered into for the exclusive purpose of performing this contract.

Bidder shall have an affirmative duty to report any violations of this clause by the Bidder throughout the bidding process, and throughout the term of this contract for the awarded bidder 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 bidder 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

Bidder should submit one (1) proposal marked on the first page: "ORIGINAL". If multiple proposals are submitted, the State will retain one (1) copy marked "ORIGINAL" and destroy the other copies. The Bidder is solely responsible for any variance between the copies submitted. Proposal responses should include the completed Form A, "Bidder Proposal Point of Contact". Proposals must reference the RFP number and be sent to the specified address. Please note that the address label, including the RFP number should on the face of each container or Bidder's proposal response packet. If a recipient phone number is required for delivery purposes, (402) 479-4328 should be used. The RFP number should be included in all correspondence. The State will not furnish packaging and sealing materials. It is the Bidder's responsibility to ensure the solicitation is received in a sealed envelope or container and submitted by the date and time indicated in the Schedule of Events. Sealed proposals must be received in the NDOT by the date and time of the proposal opening per the Schedule of Events. No late proposals will be accepted.

The Request for Proposal form must be manually signed in an indelible manner and returned by the proposal opening date and time along with the Bidder's Request for Proposal along with any other requirements as stated in the Request for Proposal document in order for the Bidder's Request for Proposal response to be evaluated.

It is the responsibility of the Bidder 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>.

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

By signing the "Request for Proposal for Contractual Services" form, the Bidder 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 should be packaged separately (loose-leaf binders are preferred) on standard 8 ½" by 11" paper, except that charts, diagrams and the like may be on fold-outs which, when folded, fit into the 8 ½" by 11" format. Pages may be consecutively numbered for the entire proposal, or may be numbered consecutively within sections. Figures and tables should be numbered and referenced in the text by that number. They should be placed as close as possible to the referencing text. The Technical Proposal should not contain any reference to dollar amounts. However, information such as data concerning labor hours and categories, materials, subcontracts and so forth, shall be considered in the Technical Proposal so that the Bidder's understanding of the scope of work may be evaluated. The Technical Proposal shall disclose the Bidders technical approach in as much detail as possible, including, but not limited to, the information required by the Technical Proposal instructions.

I. PROPOSAL PREPARATION COSTS

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

J. FAILURE TO COMPLY WITH 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 Bidder'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 Bidder from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.

K. PROPOSAL CORRECTIONS

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

1. Original Request for Proposal for Contractual Services form signed using an indelible method;
2. Clarity and responsiveness of the proposal;
3. Completed Sections II through VI;
4. Completed Attachment A Bidder Requirements Matrix; and
5. Completed Attachment B 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:

1. Corporate Overview should include but is not limited to:
 - a. the ability, capacity, and skill of the Bidder 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 Bidder;
 - c. whether the Bidder can perform the contract within the specified time frame;
 - 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;
3. Attachment A Bidder Requirements Matrix; and,
4. Attachment B Cost Proposal.

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 Contractor Performance Report (See Terms & Conditions, Section II.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 bidder, a resident disabled veteran or a business located in a designated enterprise zone under the Enterprise Zone Act shall be allowed a preference over any other resident or nonresident Bidder, if all other factors are equal.

Resident disabled veterans means any person (a) who resides in the State of Nebraska, who served in the United States Armed Forces, including any reserve component or the National Guard, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), and who possesses a disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense and (b)(i) who owns and controls a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in 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 "Bidder 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 Bidder within ten (10) business days of request:

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

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

Evaluation criteria will be released with the solicitation.

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. Not every Bidder may 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 Bidders 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 Bidders to demonstrate their proposal offering, explaining and/or clarifying any unusual or significant elements related to their proposals. Bidders' 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 Bidder 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 Bidder, but the State reserves the right to refuse or not consider the offered materials. Bidders 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 Bidders regarding the proposals received.

Any cost incidental to the oral interviews/presentations and/or demonstrations shall be borne entirely by the Bidder 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 Bidder, 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 Bidder. However, a Bidder should provide its best offer in its original proposal. Bidder 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 Bidder grants to the State the right to contact or arrange a visit in person with any or all of the Bidder's clients. Reference and credit checks may be grounds to reject a 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:

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

The 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 Bidder 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

Bidder 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. Bidder 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 Bidder 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. Bidders 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 Bidder declines to accept award on individual items; a "lump sum" proposal is one in which the Bidder 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. EMAIL SUBMISSIONS

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

X. 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.

Y. RESIDENT BIDDER

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

II. TERMS AND CONDITIONS

Bidders should complete Sections II through VI as part of the proposal. Bidder should read the Terms and Conditions and should initial either accept, reject, or reject and provide alternative language for each clause. The bidder should also provide an explanation of why the Bidder rejected the clause or rejected the clause and provided alternate language. By signing the solicitation, Bidder is agreeing to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the proposal. The State reserves the right to negotiate rejected or proposed alternative language. If the State and Bidder fail to agree on the final Terms and Conditions, the State reserves the right to reject the 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 Bidder's commercial contracts and/or documents for this solicitation.

The Bidder should submit with their proposal any license, user agreement, service level agreement, or similar documents that the Bidder wants incorporated in the Contract. The State will not consider incorporation of any document not submitted with the Bidder'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:

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

1. Request for Proposal and Addenda;
2. Amendments to the solicitation;
3. Questions and Answers;
4. Bidder's proposal (Solicitation and properly submitted documents);
5. The executed Contract and Addendum One to Contract, if applicable; and,
6. 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 Bidder'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:

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

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

Either party may change its address for notification purposes by giving notice of the change, and setting forth the new address and an effective date.

C. BUYER’S REPRESENTATIVE

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 required 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.

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

H. CONTRACTOR 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 may contact the Contractor regarding any such report. Contractor performance report(s) will become a part of the permanent record of the Contractor.

I. 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.

J. 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.

K. 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.

L. 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.

M. INDEMNIFICATION

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

1. GENERAL

The Contractor agrees to defend, indemnify, and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials (“the indemnified parties”) from and against any and all 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.

2. INTELLECTUAL PROPERTY

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

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

3. PERSONNEL

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

4. 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 (§ 81-8,294), Tort (§ 81-8,209), and Contract Claim Acts (§ 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

5. 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.

N. 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.

O. 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.

P. 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.

Q. 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 manmade 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.

R. 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.

S. EARLY TERMINATION

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

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.
2. The State, 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.
3. The State may terminate the contract immediately for the following reasons:
 - a. if directed to do so by statute;
 - b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
 - c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
 - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
 - e. an involuntary proceeding has been commenced by any Party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
 - f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
 - g. Contractor intentionally discloses confidential information;
 - h. Contractor has or announces it will discontinue support of the deliverable; and,
 - i. In the event funding is no longer available.

T. 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:

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

Nothing in this Section should be construed to require the Contractor to surrender intellectual property, real or 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:

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

If the Contractor intends to 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 Solicitation Response (Initial)	NOTES/COMMENTS:

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:

1. 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>
2. The completed United States Attestation Form should be submitted with the solicitation response.
3. 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.
4. 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. PRICES

Prices submitted on the cost proposal form shall remain fixed for the first (1) year of the contract. Any request for a price increase subsequent to the first (1) year of the contract shall not exceed five percent (5%) of the previous contract period. Increases will be cumulative across the remaining periods of the contract. Requests for an increase must be submitted in writing to the Nebraska Department of Transportation a minimum of 60 days prior to the end of the current contract period. Documentation may be required by the State to support the price increase.

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

F. 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.

G. 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.

H. 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.

I. 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:

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

The 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 one (1) year 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 one (1) year 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.

2. 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.

REQUIRED INSURANCE COVERAGE	
COMMERCIAL GENERAL LIABILITY	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Medical Payments	\$10,000 any one person
Contractual	Included
Independent Contractors	Included
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>	
WORKER'S COMPENSATION	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
Voluntary Compensation	Statutory
COMMERCIAL AUTOMOBILE LIABILITY	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
UMBRELLA/EXCESS LIABILITY	
Over Primary Insurance	\$5,000,000 per occurrence
PROFESSIONAL LIABILITY	
All Other Professional Liability (Errors & Omissions)	\$1,000,000 Per Claim / Aggregate
MANDATORY COI SUBROGATION WAIVER LANGUAGE	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
MANDATORY COI LIABILITY WAIVER LANGUAGE	
"Commercial General Liability & Commercial Automobile Liability policies shall name the State of Nebraska as an Additional Insured and the policies shall be primary and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory as additionally insured."	

3. EVIDENCE OF COVERAGE

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

Nebraska Department of Transportation
 Attn: Brandy Henke
 5001 S. 14th Street
 Lincoln, NE 68512
Brandy.henke@nebraska.gov

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.

4. DEVIATIONS

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

J. 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.

K. 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.

L. 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.

M. 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.

N. 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.

O. NEBRASKA TECHNOLOGY ACCESS STANDARDS (Statutory)

Contractor shall review the Nebraska Technology Access Standards, found at <http://nitc.nebraska.gov/standards/2-201.html> 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.

P. 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.

Q. 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.

R. 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. Contract number, hourly rate, hours worked, sufficient detail for NDOT to evaluate work has been completed to include Attachment B Cost Breakdown DR Form 162a and Attachment C Invoice Travel Log DR Form 163 which are further described in Section V under letters N. Reimbursement Submission Requirements and O. Invoice Requirements.

Invoices shall be sent to: NE Department of Transportation
 Highway Civil Rights Office
 1500 Hwy 2
 PO Box 94759
 Lincoln, NE 68509-4759

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 (0.5%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within ninety (90) days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

V. PROJECT DESCRIPTION AND SCOPE OF WORK

The Bidder should provide the following information in response to this solicitation.

A. PROJECT OVERVIEW

The State of Nebraska, Department of Transportation (NDOT) is issuing this Request for Proposal, RFP Number R208-20 for the purpose of selecting a qualified Contractor to provide a certified Disadvantaged Business Enterprise Support Services Program (DBE/SSP) for small businesses that are certified as Disadvantaged Business Enterprises (DBEs) in Nebraska, perform work in a heavy highway construction or related industry, and are domiciled in the State of Nebraska.

B. PROJECT BACKGROUND

The NDOT Highway Civil Rights Office (HCRO) is located within the Program Management Division. The responsibility of the HCRO is to oversee several regulatory civil rights programs, including Title VI, Americans with Disabilities Act, Environmental Justice, Contractor EEO/OJT Compliance, and the Disadvantaged Business Enterprise Program.

The overall mission of the HCRO is to ensure no person, on the basis of their membership in a protected class, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

C. FEDERAL COST PRINCIPLES

For performance of services as specified herein, the State will pay the Contractor subject to the terms of this RFP and all requirements and limitations of the federal cost principles contained in the Federal Acquisition Regulations [48 CFR 31 \(Contract Cost Principles and Procedures\)](#).

D. COST RECORD RETENTION

Contractor shall maintain, and also require any subcontractors maintain all books, documents, papers, detailed receipts, accounting records, and other evidence pertaining to costs incurred, and shall make such material available for examination at its office at all reasonable times during the contract period and the three (3) years from the date of the final cost settlement by FHWA and contract closeout by the State. Such materials must be available for inspection by the State, FHWA, or any authorized representative of the federal government, and when requested, Contractor shall furnish copies.

E. SCOPE OF WORK

The purpose of the Disadvantaged Business Enterprise Support Services Program (DBE/SSP) is to aid in the development of Disadvantaged Business Enterprises (DBEs) through the provision of business management training/instruction, counseling and assistance. Topics for training should include each of the following: **general business management; estimating/bidding; planning/forecasting; finance/accounting; marketing; and human resources. The aspiration of the program is that participating DBEs will become more competitive in their industry and capable of competing in the marketplace both within and outside of the program.**

Contractor shall be trained and experienced in this type of service. The Contractor shall manage the creation and maintenance of all program-related materials; as well as all program documents (DBE business reviews, annual performance reviews, sales/revenue forecasts, transition plans, etc.) developed for DBE participants. The Contractor shall prepare and maintain sufficient communications tools and processes to keep DBEs and the NDOT HCRO informed at all times.

The Contractor shall provide an hourly rate for services on Attachment B Cost Proposal Bid Sheet.

F. PROGRAM PLANNING (DUE WITH RFP RESPONSE - ATTACHMENT A) (1.0)

1. INITIAL PROGRAM MANAGEMENT PLAN (1.1)

Essential to the success of the project is a solid program plan and the management of that plan. The bidder shall prepare an Initial Program Management Plan to be submitted with the RFP Response. The bidder shall develop a viable Initial Program Management Plan according to industry standards and best practices that meet contractual requirements for successful implementation activities.

The Initial Program Management Plan shall address the same activities as the Program Management Plan, including the approach and methodology for each phase of the DBE/SSP as shown below under V.F. DBE Support Services Program Phases (3.0), but with less detail. Bidder shall respond to the following requirements in Attachment A – Bidder Response Matrix providing a summary of approach and methodology for each:

- a. Program Management Plan addressing all elements;
- b. DBE Support Services Program (DBE/SSP);
 - 1) Phase 1 – Recruitment and Enrollment of DBEs
 - 2) Phase 2 – Creation of Business Plans for DBEs
 - 3) Phase 3 – Developmental Stage
 - 4) Phase 4 – Transitional Stage
 - 5) Phase 5 – Graduation
- c. Business Reviews;
- d. Discontinuation; and
- e. Reports.

2. TRAINING METHODOLOGY (1.2)

The bidder shall provide a stated training plan detailing the strategy and methodology for providing training and support for up to ten (10) concurrently enrolled DBE firms. The plan shall include the Bidder's approach for providing training sessions, training materials, and on-going support relative to each participating DBE firm's capability and capacity to achieve the objectives and goals of the firm's business plan and thereby affect the intended outcome of the program.

- a. The training plan shall detail the types and estimated number of training sessions that will comprise the program curriculum.
- b. The training plan shall address the need for training and supporting enrollees located in rural or remote areas of Nebraska, and those that may not have ready access to broadband internet service.
- c. The training plan shall address the bidder's approach for providing training and support to enrollees in their efforts to create and modify/update as required a comprehensive and customized 3-year business plan using accepted best practices.
- d. The training plan shall address the bidder's approach for conducting quarterly and annual business reviews as required for each enrolled DBE.

G. DETAILED PROGRAM MANAGEMENT PLAN (2.0)

Contractor shall submit a finalized Program Management Plan fifteen (15) business days after contract award. Program Management Plan shall include, without limitation, a detailed description as described in this RFP of the phases, training, and deliverables. It will be a living document and updates will be made as needed with a formal review quarterly. The plan will be comprehensive, covering all aspects of the SSP for DBEs.

A minimum of once a month, the Contractor shall update the Program Management Plan to accurately reflect the status of the Program phases, deliverables, and critical events. Any updates to the Program Management Plan shall require the prior approval of the HCRO. Unless otherwise agreed in writing by the HCRO, changes to the Program Management Plan shall not relieve the Contractor from liability to the NDOT for any damages resulting from the Contractor's failure to perform its obligations under the contract.

In the event the Contractor requires additional time to correct deficiencies, the Program phases shall not change unless previously agreed in writing by the HCRO. In the event of a delay, the Contractor must immediately notify the HCRO in writing. The written notification will identify the nature of the delay, i.e., specific actions or inactions of the Contractor or NDOT causing the problem; its estimated duration period to reconciliation; specific actions that need to be taken to correct the problem; and the expected impact on the program.

Notwithstanding anything to the contrary, the NDOT shall have the option to terminate the contract for default, at its discretion, if it is dissatisfied with the Contractor's Program Management Plan or elements within the Program Management Plan.

The Program Management Plan shall, at a minimum, include the following elements:

1. A description of the management and organization of the program, an organization chart, identification of key staff and their responsibilities and identification of the resources to be used in fulfilling the requirements of the contract.
2. A description of the planning and reporting methods to be utilized, both for use within the Contractor's staff and externally to the State.
3. A description of the Contractor's approach and methodology.
4. Anticipated start dates for phases and activities.
5. How operations, general issues, and problems are communicated to the State.
6. How the Program Phases and performance are reported and tracked for development activities and transition activities.
7. Document the Program Management Plan submittal and approval process.
8. Document the invoice submission, verification, and approval process.
9. A section on communications that addresses:
 - a. Correspondence – Correspondence shall be identified as to originator and designated receiver.
 - b. Contract number and name - All items of correspondence, submittals, and documentation shall contain the contract number and the designated program name.
 - c. Information - No party shall be entitled to rely on any information unless it is in writing and received from the other party's designated representative.
 - d. Access to Contractor's key staff – The State or the State's designated representative who is knowledgeable in the field of work, shall have unlimited access to the Contractor's key staff during the Contractor's performance of the contract.
10. As part of this Program Management Plan, Contractor shall also provide agendas and meeting minutes.

It is expected that the Contractor will collaborate with the HCRO to maintain an integrated Detailed Program Management Plan for all program related activities on an ongoing basis and identify issues that affect deadlines.

H. DBE SUPPORT SERVICES PROGRAM (SSP) PHASES (3.0)

1. PHASE 1 - Recruitment and Enrollment of DBEs (3.1)

Within thirty (30) days after being awarded the contract, the Contractor shall send, in writing, a notice about the SSP to all DBEs that are certified with the State of Nebraska. The notice to solicit DBE's to apply for participation shall summarize the SSP, including, but not be limited to:

- a. Highlight Program services, events, and benefits;
- b. Outline and explain the eligibility criteria for DBE participation;
- c. Include instructions on how to apply for participation in the SSP;
- d. Provide a hard copy of an application form, along with a URL link to an online form (as applicable); and
- e. Provide full contact information where DBEs may turn for additional information and assistance regarding the SSP.

The SSP shall have no more than ten (10) DBEs enrolled at one time; Contractor shall address what criteria will be used to prioritize which DBEs will be enrolled if more than ten (10) are interested at one time.

2. PHASE 2 - Creation of BUSINESS PLANS for DBEs (3.2)

Within six (6) months of enrolling in the DBE/SSP, a participating DBE, with assistance from the Contractor, shall create or update a comprehensive and customized three (3) year business plan setting forth the DBE's targets, objectives and goals. The Contractor shall provide training and support as necessary and reasonable, and provide such consultation as needed and appropriate, to efficiently instruct and guide participating DBEs that are unfamiliar with developing business plans, or who indicate a choice for such instruction and assistance.

Each participating DBE's business plan will constitute the participating DBE's short and long-term goals and the strategy for developmental growth and sustained economic viability both within and outside of the DBE Program. The business plan must, at a minimum, include and address the following topics:

- a. **Market analysis:** An analysis of market potential, competitive environment and other business analyses estimating the DBE's prospects for profitable operation during the term of program participation and after graduation from the program.
- b. **SWOT analysis results:** An analysis of the DBE's business strengths, weaknesses, opportunities and threats. Particular attention should be paid to the means of correcting any financial, managerial, technical, or labor conditions that could impede the DBE from receiving contracts other than those in traditional areas of DBE participation.
- c. **Objectives and goals:** Specific targets, objectives, and goals for the business development of the DBE during the next three (3) years, utilizing the results of the initial or annual business review.
- d. **Annual sales forecast:** A projection, broken down by month, of the number and amount of DBE and non-DBE contract awards which the participating DBE needs in order to achieve the objectives and goals for each year covered by their business plan. The forecast should include:
 - 1) The aggregate dollar value of contracts to be sought under the DBE program, reflecting compliance with the business plan;
 - 2) The aggregate dollar value of contracts to be sought in areas other than traditional areas of DBE participation;
 - 3) The types of contract opportunities being sought, based on the participating DBE's primary line of business; and
 - 4) Such other information as may be requested by the Contractor to aid in providing effective business development assistance to the participating DBE.

The Contractor shall provide the HCRO a copy of each participating DBE's completed business plan for approval. A DBE will not be eligible for further participation in this DBE/SSP until a viable business plan has been approved, in writing, by the HCRO.

Contractor shall review a DBE's business plan in full with the participant annually within thirty (30) days following the anniversary date of the HCRO's approval of the DBE's initial business plan, and will assist the DBE in updating the business plan as needed to account for changes in the DBE's needs, objectives, circumstances or goals. The Contractor shall provide to the HCRO, a copy of a DBE's updated business plan for approval. The currently approved business plan will serve as a benchmark for assessing the performance of the participating DBE at the time of the annual business review.

3. PHASE 3 - DEVELOPMENTAL STAGE (3.3)

Once the initial business plan has been approved, each participating DBE will enter the Developmental Stage of the program. The Developmental Stage is designed to assist the DBE in overcoming their social and economic disadvantage by providing such training and assistance as may be necessary and appropriate to develop the essential business knowledge, skills and abilities, and to enable them to access relevant markets and strengthen their financial and managerial skills. The activities of the Developmental Stage shall include the following:

- a. Contractor shall submit to the HCRO for approval a proposed curriculum of business management training intended to address areas of need relative to each participating DBE's capability and capacity to achieve the objectives and goals of its business plan. Upon approval by the HCRO, the Contractor will assign the curriculum to the DBE.
- b. Contractor shall develop and deliver, or otherwise arrange to provide, all training and associated material included in the Developmental Stage curriculum. The Contractor shall submit to the HCRO and receive approval for any new or revised training and training material, including delivery method and venue, prior to providing the training to participating DBEs.

The Contractor shall deliver training in-person, whenever appropriate and feasible, in a classroom setting or, if warranted by circumstance or need, onsite at the DBE location. Other training delivery methods may include, but not necessarily be limited to, webinars, video conferencing, or interactive media, or combinations thereof.

The curriculum of training provided by the Contractor shall encompass a range of business management topics that should include, but are not limited to:

- 1) *Business Operations*: general operations, sales & marketing strategies, risk management, human resources, safety, and contracts.
- 2) *Finance*: Accounting/bookkeeping, banking and cash flow, purchasing, invoicing, bonding, insurance, workers' compensation, taxes, benefits, loans and credit, financial statements, and payroll.
- 3) *Bidding & Estimating*: finding and reviewing bidding opportunities, prequalification, low bid environment, reading and understanding plans/specs.
- 4) *Construction/Project Management*: reviewing bid results, assembling contracts and purchase orders, project submittals, project scheduling, prime/sub relations, dispute and problem resolution, claims management, and project closeout.

- c. Contractor shall provide a quarterly calendar report to the HCRO informing on the progress each participating DBE has made in completing its assigned curriculum of Developmental Stage training. Further, when a DBE has successfully completed its curriculum, the Contractor shall promptly notify the HCRO.

4. PHASE 4 - TRANSITIONAL STAGE (3.4)

The Transitional Stage follows the Developmental Stage and is designed to assist participating DBEs in overcoming, insofar as practical, their social and economic disadvantage and to prepare for sustained success upon graduating from the program. The activities of the Transitional Stage will include the following:

- a. When a DBE enters the Transitional Stage, the Contractor shall work with and assist the DBE to incorporate into its business plan a transition management plan that outlines specific steps the DBE will take to promote profitable business operations in areas other than its traditional areas of DBE work for after graduation from the SSP. The plan will establish long-range business goals, such as non-DBE sales and revenue targets; knowledge, skill and ability improvement in senior management; and capacity improvements. Each year thereafter, within 30 days following the anniversary date of the DBE's entrance into the Transitional Stage, the Contractor shall work with the DBE to review and update its transition management plan, and business plan as a whole.

Contractor shall submit to the HCRO for approval a copy of the new or revised business plan containing the transition management plan. The currently approved business plan shall be considered the applicable plan for all program purposes until a revised plan is approved in writing. The currently approved business plan will serve as a benchmark for assessing the performance of the participating DBE at the time of the annual business review.

5. PHASE 5 – GRADUATION (3.5)

The HCRO, upon receiving the regular reports from the Contractor, will review them and make a determination as to whether the DBE has successfully completed the Transition Stage by having substantially achieved the targets, objectives and goals set forth in its business plan and transition management plan, and in so doing has demonstrated its ability to compete in the marketplace.

The following factors, among others as applicable, should be considered by the HCRO in finding whether a DBE has substantially achieved the goals and objectives of its business plan and transition management plan and should be graduated from the SSP:

- a. Project execution;
- b. Sales, including improved ratio of non-traditional contracts to traditional-type contracts;
- c. Award-to-bid ratio (hit rate);
- d. Profitability;
- e. Net worth, financial ratios, working capital, capitalization, access to credit and capital;
- f. Ability to obtain bonding;
- g. Growth in the business, i.e. increase in employees, expansion of facilities, etc.;
- h. A positive comparison of the DBE's business and financial profile with profiles of non-DBEs in the same area or similar business category; and
- i. Good management capacity and capability.

Upon determination by the HCRO that the DBE should be graduated from the SSP, the NDOT will notify the DBE in writing of its intent to graduate the DBE from the program. This letter of notification will set forth findings, based on the information provided by the Contractor, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The DBE will have 45 days from the date of receipt of the notification to submit, in writing, information that would explain why the proposed basis of graduation is not warranted.

6. BUSINESS REVIEWS (3.6)

Contractor shall conduct both quarterly and annual reviews of DBEs participating in the SSP. The intent of these reviews will be to provide a level of proactive engagement and support that is conducive to the success of the DBEs and to the SSP achieving its goals.

- a. Contractor shall conduct an annual business review of a participating DBE within 30 days following the anniversary date of the DBE's entrance into the Developmental Stage or Transitional Stage, whichever the DBE is in currently. The purpose of the review will be to assess the performance of the DBE over the course of the preceding year as measured by achievement of the objectives and goals in its current business plan, along with its transition management plan if one is in place. The review will consider the DBE's performance within the context of the results from the previous annual

business review, as well as any other issues raised by the DBE in that time.

In evaluating a DBE's performance and determining whether it has substantially achieved the goals and objectives of its current business plan, the following factors, among others, should be considered by the Contractor:

- 1) Project execution;
- 2) Sales, including improved ratio of non-traditional contracts to traditional-type contracts;
- 3) Award-to-bid ratio (hit rate);
- 4) Profitability;
- 5) Net worth, financial ratios, working capital, capitalization, access to credit and capital;
- 6) Ability to obtain bonding;
- 7) Growth in the business, i.e. increase in employees, expansion of facilities, etc.;
- 8) A positive comparison of the DBE's business and financial profile with profiles of non-DBEs in the same area or similar business category; and
- 9) Growth in management capacity and capability.

As part of the annual business review, the market analysis, SWOT analysis, goals and objectives, and annual sales forecast will be reviewed and updated as appropriate.

The results of the annual business review will be used to revise the DBE's business plan. This revised business plan, once approved, will then become the benchmark of performance for the next annual business review.

Upon completion of the annual business review, the Contractor will submit to the participating DBE a written report of the results of their review. The Contractor will also submit to the NDOT HCRO a copy of the report, along with a copy of the DBE's revised business plan.

- b. The Contractor will, within 30 days following the end of each quarter, starting from the date of the participating DBE's entrance into the Developmental Stage or thereafter the Transitional Stage, conduct a quarterly business review of the DBE. This review will be an informal evaluation done as part of a regular check-in between the Contractor and the DBE, and will be centered on noting progress on annual goals and activities. The review will also serve to identify and address issues that have arisen and may threaten the DBE's ability to achieve its annual goals and objectives.

Upon completion of the quarterly business review, the Contractor will submit to the DBE a summary report of the review. The Contractor will submit a copy of this summary report to the NDOT HCRO.

I. DISCONTINUATION

A DBE may elect to discontinue its participation in the SSP at any time with written notice to the NDOT HCRO. If a DBE informs the Contractor, in writing or verbally, the Contractor will report this to the HCRO. The HCRO will then contact the DBE and make final determination on the DBE's SSP status.

Participation of a DBE firm in the program may be discontinued by the HCRO prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance.

Also, the Contractor can discontinue the participation of a DBE that does not actively pursue and bid on contracts, and a DBE that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The Contractor should take such action if over a 2-year period a DBE firm exhibits such a pattern.

J. REPORTS (4.0)

The Contractor shall provide the following reports related to the Program Management Plan at no additional cost to the State.

1. The Contractor will be responsible for submitting monthly DBE/SSP progress reports to the HCRO. The reports shall be submitted within fifteen (15) days following the end of the reporting month in a format approved by the State. The monthly report will include the following:
 - a. All report information will be quantified and qualified for purposes of measurement;
 - b. Status of goal attainment itemized by phase number as it relates to the Program Management Plan;
 - c. Deliverables status;
 - d. Planned activities for the upcoming month;
 - e. Budget status that reflects the total program funding and expenditures to date of report;
 - f. Identification of problems and solutions implemented, if encountered;
 - g. Updates made to the Project Management plan monthly;
 - h. Any additional items that may impact program or contract performance; and
 - i. The dated signature of the Contractor's DBE/SSP coordinator.
2. The Contractor will prepare an annual report/final report and submit it both electronically and in writing to the NDOT HCRO within 30 days after the end of the program year. The report will include and provide the following:
 - a. All entries will be quantified and qualified for purposes of measurement;

- b. Comprehensive account of accomplishments;
- c. Concerns identified and resolutions implemented;
- d. Recommendations for improvement;
- e. Status of goal attainment;
- f. Budget status that reflects the total program funding, expenditures, and explanation of deviation, if any, from those planned;
- g. The dated signature of the Contractor's DBE/SSP coordinator.

K. DELIVERABLES

Contractor shall provide a certified Disadvantaged Business Enterprise Support Services Program (DBE/SSP) for DBEs at an all-inclusive hourly rate as specified in this RFP and cost proposal bid sheet to the Nebraska Department of Transportation (NDOT).

L. ALLOWABLE COSTS

Payments for services under the resulting contract shall be made based on the all-inclusive hourly rate bid on the submitted cost proposal. Allowable costs shall be considered as the actual hours the Contractor worked directly on the services described herein multiplied by the hourly rate on the Cost Proposal Bid Sheet.

The hours charged under the contract shall be supported by adequate records that clearly indicate the activities completed for the pay period, such as:

- 1. Description of program services/activities provided;
- 2. Name(s) of the DBEs to which services were provided;
- 3. Date(s) of service(s)/activities;
- 4. Pertinent work phase(s); and
- 5. Any additional supporting information.

M. DIRECT NON-LABOR COSTS FOR REIMBURSEMENT

Non-labor costs shall be considered as the necessary, actual, and properly documented costs related to completing services/activities under the contract. All costs must be supported by detailed receipts or invoices to be eligible for reimbursement by the HCRO.

Direct non-labor costs include:

- 1. Transportation, mileage, lodging and meals, *subject to the limitations specified below*;
- 2. Communication costs;
- 3. Reproduction and printing costs;
- 4. Special equipment and materials required to complete services as approved by the State;
- 5. Special insurance premiums if solely required for the contract; and
- 6. Such other allowable items as approved by the State.

The following non-labor costs will be reimbursed at actual costs; not exceed the rates as shown:

1. Transportation

Automobile rentals, air fares, and taxi/shuttle transportation will be actual reasonable cost and if discounts are applicable, the Contractor shall give the State the benefit of all discounts. Receipts must be submitted with invoices.

2. Mileage

Reimbursement for mileage associated with the use of company owned vehicles will be the prevailing standard rate as established by the Internal Revenue Service (IRS) through its Revenue Procedures. Reimbursement for mileage associated with the use of a privately owned vehicle (POV), is limited to the lesser of:

- a. The mileage rate that the Contractor reimbursed to the person who submitted the claim for POV use; or
- b. The prevailing standard rate as established by the IRS.

3. Lodging

Reimbursement for lodging rates will be limited to the prevailing standard rate as indicated on the U.S. General Services Administration's (GSA) website @ <http://www.gsa.gov/portal/category/100120>. Contractor shall give the State the benefit of all lodging discounts. Receipts must be submitted with invoices.

4. Meals

Reimbursement for meals will be limited to the prevailing standard rate as indicated on the GSA website noted above. Expenses for alcoholic beverages are not allowed. Contractor shall give the State the benefit of all meal discounts.

For the Contractor and their employees to be eligible for the meal allowance, the following criteria must be met:

Breakfast:

- Contractor is required to depart at or before 6:30 a.m., or
- Contractor is on an overnight travel.

Lunch:

- Contractor must be on overnight travel; no reimbursement for same day travel;
- Contractor is required to leave for overnight travel at or before 11 a.m.; or
- Contractor returns from overnight travel at or after 2:00 p.m.

Dinner:

- Contractor leaves for overnight travel at or before 5:00 p.m.;
- Contractor returns from overnight travel or work location at or after 7:00 p.m.; or
- Contractor is on overnight travel.

Meals are not eligible for reimbursement if the Contractor eats within 20 miles of the headquarters town of the Contractor. Meal receipts must itemize all food and drink purchased; a credit card receipt alone is not sufficient documentation. Reimbursement for meal gratuities/tips will be whatever is usual, or customary, but shall not exceed 20 percent (20%).

N. REIMBURSEMENT SUBMISSION REQUIREMENTS

Direct non-labor expenses, other than travel related expenses, must be itemized and provide a complete description of each item billed with supporting receipts and invoices.

Travel related expenses must be itemized and submitted on Exhibit B Invoice Travel Log DR Form 163. Supporting receipts, must be submitted with the form when invoicing for these expenses. The Invoice Travel Log must document the employee name, locations traveled, date/time of departure to the project, date/time of return to the headquarters town, and expenses for transportation, meals, and lodging. Any item billed without a receipt will not be reimbursed.

O. INVOICE REQUIREMENTS

Each invoice submitted shall include a completed Cost Breakdown DR Form 162a (Exhibit A) and, if the invoice contains any travel related expenses, a completed Invoice Travel Log DR Form 163 (Exhibit B) shall also be included. Upon approval by State, Contractor may use a substitute Invoice Travel Log provided it documents substantially the same information as Exhibit B Invoice Travel Log DR Form 163. Contractor shall not substitute any form without prior approval of the NDOT.

VI. PROPOSAL INSTRUCTIONS

This section documents the requirements that should be met by Contractors in preparing the Technical and Cost Proposal. Contractors should identify the subdivisions of "Program 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. PROPOSAL SUBMISSION

1. 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 five (5) 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

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.

2. TECHNICAL APPROACH

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

- a. Understanding of the project requirements;
- b. Proposed development approach; and
- c. Technical considerations.

Form A
Contractor Proposal Point of Contact
Request for Proposal Number R208-20

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:	