

REQUEST FOR QUOTE

A. PROJECT OVERVIEW

The State of Nebraska ("State" or "AS Surplus Property" or "State Surplus") is seeking one Contractor to provide auctioneer services for conducting one or more public auctions to sell surplus personal property located at the former Youth Rehabilitation and Treatment Center in Geneva, Nebraska ("YRTC – Geneva") in early to mid-October 2022. The types of items sold will likely range from furniture items, kitchen equipment, electronics, etc. The sale of motor vehicles is not contemplated at this time, but the Contractor may be requested to sell such vehicles. These items will not include buildings, land, or livestock. These services are to be performed in close coordination with the Department of Administrative Services (AS) Surplus Property program and the AS Surplus Property Manager.

The State of Nebraska intends to incur no cost for these services. Instead, the Selected Auctioneer will be permitted to charge a premium in addition to the purchase price of the property, as agreed upon between the State and the Selected Auctioneer, to the winning buyer(s) of the personal property ("Buyer's Premium"). Due to no cost incurred by the State, the State is not required to competitively bid or competitively select an auctioneer. The State will select the auctioneer that meets the needs of and is in the best interests of the State, as determined solely by Nebraska State Surplus ("Selected Auctioneer" or "Contractor").

This is not and does not create an exclusive arrangement or agreement for auctioneering services. The State may contract for auctioneering services from other contractors or vendors, in the sole discretion of the State. The State reserves the right to not hold the auction or change the intended date of any auction(s).

By submitting a quote, the selected auctioneer is agreeing to the terms and conditions stated herein and the State's terms and conditions included here and in Attachment B.

B. REQUEST FOR QUOTE PROCEDURE

1. No later than **12:00 p.m. Central Time on Friday, September 16, 2022**, an interested bidder must submit notice of the bidder's interest to the AS Surplus Property Manager, Shannon Morris, at Shannon.morris@nebraska.gov. Such notification must include a point of contact for the interested bidder, including an email address and phone number. *Notifying the Surplus Property Manager does not commit or obligate the bidder to submit a response to the RFQ.*
2. The AS Surplus Property Manager will notify the interested bidders who notified pursuant to Section B.1. (above) of any opportunities to walk through the YRTC-Geneva campus prior to the deadline to submit a response to the RFQ.
3. Any questions regarding this RFQ must be submitted in writing by **5:00 p.m. Central Time on Wednesday, September 21, 2022**, to Jennifer.sommarslink@nebraska.gov. The answers, if any, to any submitted questions, if any, will be posted to the same website as this RFQ. The State will not be bound by any questions answered outside of this process (e.g., any questions answered during a walk-through at the campus).
4. Bidder must submit the following documents to Jennifer.sommarslink@nebraska.gov no later than **5:00 p.m. Central Time on Monday, September 26, 2022**:

- a. The bidder must provide a photocopy of their current, valid Nebraska Auctioneers License;
- b. The completed cost proposal (Attachment A);
- c. Any documents the bidder would like the State to consider incorporating into the Agreement (note: the state reserves the right to reject any and all additional or conflicting terms); and
- d. Information as to whether the bidder has a current, valid Nebraska Vehicle Auction dealer's license.

C. SCOPE OF WORK

- 1. Contractor shall:
 - a. Advertise the auction;
 - i. Such advertising shall be in accordance with industry best practices and in a manner and method that is reasonably calculated to secure strong competition at the auction;
 - ii. Advertising will be at the Contractor's sole expense. The auction is to be advertised by the Contractor in at least two local newspapers of general circulation in the area within a fifty (50) mile radius of the YRTC-Geneva. The advertisement shall appear in at least two newspapers twice before the auction and additionally in each paper in the Friday immediately preceding the auction. Proof of advertising is required and must be presented to AS Surplus Property with the final auction report no later than five (5) business days after the auction. The advertisement size must be a minimum of 1 column x 3". Any requests by the auctioneer service to make adjustments to this size requirement must be submitted in writing to and approved by the AS Surplus Property Manager.
 - iii. The Contractor shall prepare an original copy of a suitable flyer for each auction. This "original flyer" will be provided to AS Surplus Property in a PDF format a minimum of five (5) business days prior to the scheduled auction date. The form, format and content of the flyer must be appropriate for use on a government website and is subject to the approval of the AS Surplus Property Manager. This flyer may be posted to the AS Surplus Property website and other places by Administrative Services staff prior to the auction.
 - iv. The Contractor must maintain an updated website which is accessible to the general public. The auction shall also be announced on the Contractor's website at least five (7) calendar days in advance of the auction.
 - b. Register bidders;
 - i. The Contractor will provide complete and accurate bidder registration;
 - ii. The Contractor must provide sufficient staff to complete bidder registration quickly and efficiently. This is defined as having no more than five (5) bidders waiting in each registration line for more than ten (10) minutes; and
 - iii. Each registration record at a minimum, shall include the bidder's printed name and signature, address, telephone number, bidder number and provide for optional email address. If the Contractor

has other requirements the Contractor wants to include in the registration process, such requirements must be submitted to the Surplus Property Manager for approval prior to implementation.

- c. Conduct the auction(s);
 - i. All items shall to be sold through an open competitive bidding process;
 - ii. Items to be sold will be provided by the State through or in coordination with State Surplus.
 - iii. While conducting the auctions, when describing items to be sold, the Contractor service must demonstrate general knowledge of a majority of items offered at YRTC – Geneva.
 - iv. The date of the auction(s) is anticipated to be early to mid-October 2022, with the specific date being agreed to between the State and the Contractor. The auction date(s) may not be changed without the prior written approval of State Surplus.
 - v. In coordination between State Surplus and the Contractor, all property shall be sold using assigned lot numbers. Lots shall not be combined for sale unless agreed to by State Surplus in advance. The lot number, a brief description of the item(s), the bidder number for the successful bidder, the bidder's name, and the sale price must all be clearly and accurately recorded by the Contractor as each sale is completed. The Contractor will provide AS Surplus Property with copies of the recorded sale and no-sale information at the conclusion of the auction and prior to leaving the auction site.
 - a) The State reserves the right to add or withdraw any item or lot prior to the time it is offered for sale on the auction date.
 - vi. The Contractor shall provide a professional-quality sound system to be approved by the AS Surplus Property Manager. This sound system is to provide adequate service so bidders and others attending the auctions are able to reasonably be aware of sales transactions as they occur and instructions from the contractor. The entire sound system shall be a standalone system and be contained within the auction facility for the inside auction.
 - vii. The Contractor, its employees, or subcontractors may not purchase items for the purpose of resale.
 - viii. Everything will be sold to the highest bidder on an “**AS IS, WHERE IS**” basis, WITH ABSOLUTELY NO GUARANTEES OR WARRANTIES MADE OR IMPLIED. All purchases are made at the bidder's risk. At the beginning of each auction, the Contractor is required to announce to those attending that all items are sold “as is, where is” with no guarantees or warranties real or implied, and that all items sold, if not removed by the date and time established by the AS Surplus Property Manager, will be disposed of in a manner determined by the AS Surplus Property Manager to be in the best interests of the State, including the possibility of resale. The announcement is also to include that the “State of Nebraska is not responsible for damaged, lost or stolen items.”
 - ix. Once an item or items have been declared “sold”, no sale prices will be discounted.

- x. No opening bids for under two dollars (\$2.00) will be accepted and no item (lot) will be sold for less than two dollars (\$2.00).
 - xi. No items will be offered with a reserve unless approved by the AS Surplus Property Manager. The Contractor will announce at the time of the sale there is a reserve.
 - xii. Prior to the auction, the Contractor and will be required to do one (1) on site review of all items to be sold during office hours observed by AS Surplus Property.
 - xiii. The Contractor may accept telephone and internet bids provided the pace of the auction is not slowed as a result and there are no additional fees charged to the State or the bidders.
 - xiv. The Contractor may secure concession services, if Contractor desires. In such case, Contractor will be solely responsible for securing concession services for the day of the auction. The State will assume no liability for, nor accept any compensation from this service. The Contractor shall be responsible for the clean-up of debris from the sale of refreshments.
 - xv. The Contractor shall provide support to display each item for bidders and clearly announce the lot number, a very brief description of items, the sale amount and the successful bidder number for each item or lot sold.
- d. Record all sales transactions and collect all payments, including the Buyer's Premium(s) from the winning buyer(s);
- i. The Contractor assumes liability for all forms of payment accepted by the Contractor for items sold. The Contractor should make reasonable efforts to have a variety of payment options available at auctions. The Contractor is responsible for notifying the AS Surplus Property Manager immediately of any disputes regarding sales of items or disputes regarding payment.
 - ii. No additional fees or charges by the Contractor are permitted.
 - iii. The Contractor service must provide sufficient staff to collect and process all bidder payments in a quick and efficient manner that does not produce waiting lines determined to be excessive by AS Surplus Property. This is defined as having no more than five (5) bidders waiting in each line for extended periods of time. The definition of extended periods of time is more than ten (10) minutes.
- e. Transmit all gross receipts to the State of Nebraska within five (5) business days of the auction.
- i. The Contractor will assume all responsibility for unpaid amounts due when merchandise is removed from the auction site or if checks do not clear due to insufficient funds. The total amount due to the State as proceeds may not be reduced by the Contractor to offset any bidder payments or premiums that are not collected or not able to be collected.
 - ii. AS Surplus Property is the sole authority in determining disposition of items which are sold but not claimed by the bidder. Such items retained by the State of Nebraska may be sold at a later date.

- iii. Payment shall be in the name of "The State of Nebraska" and will be submitted to AS Central Services 1526 K Street, Suite 150, Lincoln, NE 68508-2732.
- f. Report and pay sales taxes and provide the State with auction proceeds and detailed reports.
- g. Provide Surplus Property with the following reports:
 - i. Auction Results Report (Electronic). Within two (2) business days of the completion of an auction, the Contractor is to provide AS Surplus Property with the following information electronically using a format approved by the AS Surplus Property Manager:
 - a) Listing of all lots sold and information captured on written clerk sheets (Excel)
 - b) Auction Financial Summary Page (Gross receipts plus Buyer Premium) (Excel)
 - c) Complete Bidder List in Bidder Number Order (PDF)
 - d) Any corrections or adjustments to this report must be made within five (5) business days of the initial submission of the report.
 - ii. Upon request, an auction summary report will be provided by the Contractor to the AS Surplus Property after the auction has concluded and before leaving the auction site. This report shall include at a minimum the total number of lots offered to bidders, the total number of Lots sold and the total number of lots for which no bids were received (no sales). The report shall also include the total number of registered bidders which is to be broken down into the number of bidders who were successful in purchasing a lot(s) and the number of registered bidders who did not make any purchases.

Attachment A
Cost Proposal

Bidder Name _____

In submitting a quote, the bidder should consider all of bidder's expenses, including, but not limited to, labor costs, travel, and advertising.

1. The fee schedule for a personal property auction conducted should be designated as a premium charged to the winning buyer of the personal property. Interested auctioneers should list the premium charged as a percentage of the specific dollar amount in conjunction with the gross sale price break points as designated below. If the proposed buyer's premium is the same regardless of the gross sale price the item sold for, the bidder should list the same percentage on each line below. This fee schedule is also applicable to items sold via internet auction(s), if any.

_____ %	For gross sale price up to and including \$ 500.00
_____ %	For gross sale price between \$ 501.00 to \$1,000.00
_____ %	For gross sale price between \$1,001.00 to \$ 2,000.00
_____ %	For gross sale price between \$ 2,001.00 to \$ 3,000.00
_____ %	For gross sale price between \$ 3,001.00 to \$ 4,000.00
_____ %	For gross sale price between \$ 4,001.00 to \$ 5,000.00
_____ %	For gross sale price equaling or exceeding \$ 5,001.00

Attachment B
DRAFT AGREEMENT
for Auctioneering Services for YRTC-Geneva for the State of Nebraska
Between
The State of Nebraska and _____

This Agreement ("Agreement") is made by the State of Nebraska and _____ (the "Contractor") to provide auctioneering services to the State of Nebraska related to the sale of personal property at the Youth Rehabilitation and Treatment Center - Geneva. This Agreement becomes effective upon the date of the last signature, whichever is sooner, and continues for one year or until complete performance by the parties, whichever is sooner. This Agreement may be renewed or extended only upon mutual agreement of the parties and in accordance with Nebraska law.

I. TERMS AND CONDITIONS

A. GENERAL

This Agreement represents the entire agreement between the State and Contractor. Unless otherwise specifically stated and agreed to in a future contract amendment or addenda, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with letter "a" receiving preference over all other documents in alphabetic hierarchy.

- a. Amendment/Addenda to the Agreement with the most recent dated amendment/addenda having the highest priority;
- b. The original Agreement;
- c. The Request for Quote; and
- d. Any documents provided by the Contractor that are agreed to in writing by the State.

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

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

Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered personally, electronically or mailed. All notices, requests, or communications shall be deemed effective upon receipt.

C. **BUYER'S REPRESENTATIVE**

The State reserves the right to appoint a buyer's representative to manage the Agreement on behalf of the State. The buyer's representative will be appointed in writing, and the appointment document may 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. The Contractor 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**

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. The Contractor will be notified when work may begin.

F. **AMENDMENT**

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

G. **CHANGE ORDERS OR SUBSTITUTIONS**

The State and the Contractor, upon the written agreement, may make changes to the Agreement within the general scope of the original Agreement. 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 original Agreement 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 Agreement is amended to reflect the change and associated costs, if any. If there is a dispute regarding the cost, but both parties agree that immediate implementation is necessary, the change may be implemented, and cost negotiations may continue with both Parties retaining all remedies under the contract and law.

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

H. VENDOR PERFORMANCE REPORT(S)

The State may document any instance(s) of products or services delivered or performed which exceed or fail to meet the terms of the Agreement. The State may contact the Contractor regarding any such report. Vendor performance report(s) will become a part of the permanent record of the Contractor and may be considered and held against the Contractor in future contracting opportunities.

I. NOTICE OF POTENTIAL CONTRACTOR BREACH

If Contractor breaches the contract or anticipates breaching the Agreement, 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 Agreement. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

J. BREACH

Either Party may terminate the Agreement, in whole or in part, if the other Party breaches its duty to perform its obligations under the Agreement 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. 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 Agreement 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, including, but not limited to, charging interest to the State (Refer to Prompt Payment Act).

K. NON-WAIVER OF BREACH

Allowing time to cure or the acceptance of late performance with or without objection or reservation by a Party shall not waive any rights of the Party, including, but not limited to the right to immediately terminate the Agreement for the same or a different breach, or constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.

L. SEVERABILITY

If any term or condition of the Agreement 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 Agreement did not contain the provision held to be invalid or illegal.

M. INDEMNIFICATION

D.

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 Agreement.

3. PERSONNEL

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

The State may withhold ten percent (10%) of each payment due as retainage. The entire retainage amount will be payable upon successful completion of the project. Upon completion of the project, the Contractor will invoice the State for any outstanding work and for the retainage. The State may reject the final invoice by identifying the specific reasons for such rejection in writing to the Contractor within forty-five (45) calendar days of receipt of the final invoice. Otherwise, the project will be deemed accepted and the State will release the final payment and retainage in accordance with the contract payment terms.

O. ASSIGNMENT, SALE, OR MERGER

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

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

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

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

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. COVID-19 is not a force majeure event.

R. CONFIDENTIALITY

All materials and information provided by the Parties or acquired by a Party on behalf of the other Party shall be regarded as confidential information. All materials and information provided or acquired shall be handled in accordance with federal and state law, and ethical standards. Should said confidentiality be breached by a Party, the Party shall notify the other Party immediately of said breach and take immediate corrective action. This Agreement and any incorporated document, including any provided by the Contractor and agreed to by the State, is not confidential and may be posted to a public website.

It is incumbent upon the Parties to inform 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

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 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 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

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.

II. CONTRACTOR DUTIES

A. INDEPENDENT CONTRACTOR / OBLIGATIONS

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

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

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

By-name personnel commitments made in the Contractor's 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 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's employees.

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

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

B. EMPLOYEE WORK ELIGIBILITY STATUS

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing 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 within a reasonable period of time.
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

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 Agreement.

D. COOPERATION WITH OTHER CONTRACTORS

Contractor may be required to work with or in close proximity to other contractors or individuals that may be working on 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. PERMITS, REGULATIONS, LAWS

The contract price shall include the cost of all royalties, licenses, permits, and approvals, whether arising from patents, trademarks, copyrights or otherwise, that are in any way involved in the contract. The Contractor shall obtain and pay for all royalties, licenses, and permits, and approvals necessary for the 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.

F. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES

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

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

G. INSURANCE REQUIREMENTS

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 two (2) years of termination or expiration of the contract, the contractor shall obtain an extended discovery or reporting period, or a new insurance policy, providing coverage required by this contract for the term of the contract and two (2) years following termination or expiration of the contract.

If by the terms of any insurance a mandatory deductible is required, or if the 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 as Additional Insured(s). This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory. The COI shall contain the mandatory COI liability waiver language found hereinafter.** The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned, and Hired vehicles.

REQUIRED INSURANCE COVERAGE	
COMMERCIAL GENERAL LIABILITY	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Medical Payments	\$10,000 any one person
Damage to Rented Premises (Fire)	\$300,000 each occurrence
Contractual	Included
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
USL&H Endorsement	Statutory
Voluntary Compensation	Statutory
COMMERCIAL AUTOMOBILE LIABILITY	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
Motor Carrier Act Endorsement	Where Applicable
UMBRELLA/EXCESS LIABILITY	
Over Primary Insurance	\$5,000,000 per occurrence
PROFESSIONAL LIABILITY	
Professional liability (Medical Malpractice)	Limits consistent with Nebraska Medical Malpractice Cap
Qualification Under Nebraska Excess Fund	
All Other Professional Liability (Errors & Omissions)	\$1,000,000 Per Claim / Aggregate
COMMERCIAL CRIME	
Crime/Employee Dishonesty Including 3rd Party Fidelity	\$1,000,000
CONTRACTOR'S POLLUTION LIABILITY	
Each Occurrence/Aggregate Limit	\$2,000,000
Includes Non-Owned Disposal Sites	
MANDATORY COI SUBROGATION WAIVER LANGUAGE	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
MANDATORY COI LIABILITY WAIVER LANGUAGE	
"Commercial General Liability & Commercial Automobile Liability policies shall name the State of Nebraska as an Additional Insured and the policies shall be primary and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory as additionally insured."	

3. **EVIDENCE OF COVERAGE**

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

Agency Name: Department of Administrative Services
Attn: Jennifer Sommars-Link
1526 K Street
Suite 130
Lincoln, Nebraska
E-mail address: Jennifer.sommarslink@nebraska.gov

These certificates or the cover sheet shall reference the Agreement 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.

H. **ANTITRUST**

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

I. **CONFLICT OF INTEREST**

By signing this Agreement, Contractor certifies that no relationship exists between the Contractor and any person or entity which either is, or gives the appearance of, a conflict of interest related to this Contract.

Contractor further certifies that Contractor will not employ any individual known by Contractor to have a conflict of interest nor shall Contractor 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, Contractor 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 and cancel the Agreement.

J. **STATE PROPERTY**

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

K. **SITE RULES AND REGULATIONS**

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

L. **ADVERTISING**

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its goods 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.

M. **NEBRASKA TECHNOLOGY ACCESS STANDARDS**

Contractor shall review the Nebraska Technology Access Standards, found at https://das.nebraska.gov/materiel/purchase_bureau/vendor-info.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.

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

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.

O. **DRUG POLICY**

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

P. **WARRANTY**

Despite any clause to the contrary, the Contractor represents and warrants that its services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, the Contractor shall, for a period of 90 days from performance of the service, perform the services again, at no cost to the State, or if Contractor is unable to perform the services as warranted, Contractor shall reimburse the State all fees paid to Contractor for the unsatisfactory services. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies

of the parties provided by law or equity, including, without limitation actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

Q. TIME IS OF THE ESSENCE

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

III. PAYMENT

A. PROHIBITION AGAINST ADVANCE PAYMENT

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." Payment will be made within forty-five (45) days of receipt of a valid invoice.

B. TAXES

The State is not required to pay taxes and assumes no such liability as a result of this Agreement. The Contractor may request a copy of the Nebraska Department of Revenue, Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13. 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

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

D. INSPECTION AND APPROVAL

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

E. PAYMENT

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

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**

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 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**

The State shall have the right to audit the Contractor's performance of this contract upon a 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by both parties below.

State of Nebraska

Contractor:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____