

**State of Nebraska, Department of Health and Human Services  
REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES**

**RETURN TO:**  
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<b>SOLICITATION NUMBER</b>	<b>RELEASE DATE</b>
RFP 6303 Z1	June 1, 2020
<b>OPENING DATE AND TIME</b>	<b>PROCUREMENT CONTACT</b>
July 31, 2020 2:00 p.m. Central Time	Keith Roland

**PLEASE READ CAREFULLY!  
SCOPE OF SERVICE**

The State of Nebraska (State), Department of Health and Human Services, is issuing this Request for Proposal (RFP) Number 6303 Z1 for the purpose of selecting a qualified Contractor to provide External Quality Reviews (EQR) of contracted managed care organizations (MCOs) and a Dental Benefits Manager (DBM). 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 three (3) years commencing upon execution of the contract by the State and the Contractor (Parties). The Contract includes the option to renew for three (3) additional one (1) year periods upon mutual agreement of the Parties. The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Parties.

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 successful contractor's proposal or response will be posted to a public website managed by DAS, which can be found at <http://statecontracts.nebraska.gov>.**

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

These postings will include the entire proposal or response. Contractor must request that proprietary information be excluded from the posting. The contractor must identify the proprietary information, mark the proprietary information according to state law, and submit the proprietary information in a separate container or envelope marked conspicuously using an indelible method with the words "PROPRIETARY INFORMATION" or if submitting the proposal or response electronically, as a separate electronic file that is named "PROPRIETARY INFORMATION". The contractor must submit a detailed written document showing that the release of the proprietary information would give a business advantage to named business competitor(s) and explain how the named business competitor(s) will gain an actual business advantage by disclosure of information. The mere assertion that information is proprietary or that a speculative business advantage might be gained is not sufficient. (See Attorney General Opinion No. 92068, April 27, 1992) THE SUPPLIER MAY NOT ASSERT THAT THE ENTIRE PROPOSAL IS PROPRIETARY. COST PROPOSALS WILL NOT BE CONSIDERED PROPRIETARY AND ARE A PUBLIC RECORD IN THE STATE OF NEBRASKA. The State will 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 contractor will be informed. It will be the contractor's responsibility to defend the contractor's asserted interest in non-disclosure.

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

Any entity awarded a contract or submitting a proposal or response to the solicitation agrees not to sue, file a claim, or make a demand of any kind, and will indemnify and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney

fees and expenses, sustained or asserted against the State, arising out of, resulting from, or attributable to the posting of the contract or the proposals and responses to the solicitation, awards, and other documents.

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## 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.

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

**Agent/Representative:** A person authorized to act on behalf of another.

**Amend:** To alter or change by adding, subtracting, or substituting.

**Amendment:** A written correction or alteration to a document.

**Appropriation:** Legislative authorization to expend public funds for a specific purpose. Money set apart for a specific use.

**Automated Clearing House: (ACH)** Electronic network for financial transactions in the United States

**Award:** All purchases, leases, or contracts which are based on competitive proposals will be awarded according to the provisions in the solicitation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

advantage the competitor(s) would receive.

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

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

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

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

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

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

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

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

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

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

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

**Dental Benefits Manager:** A Dental Benefits Manager (DBM) manages and delivers dental benefits and services to eligible Nebraska Medicaid members. Dental providers have contracted with the DBM as part of its provider network. The DBM handles claims payment and prior authorizations and works with providers and Medicaid clients to coordinate a member's dental care. Managed Care of North America, Inc. (MCNA) is the Nebraska Medicaid and Long-term Care DBM.

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

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

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

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

**External Quality Review (EQR):** The analysis and evaluation by an EQRO, utilizing aggregated information on quality, timeliness, and access to the health care services that an MCO or DBM or its contractors furnish to Title XIX Medicaid and Title XXI SCHIP recipients.

**External Quality Review Organization (EQRO):** An organization that meets the competence and independence requirements set forth in 42 CFR §438.354 and performs external quality review, other EQR-related activities as set forth in 42 CFR §438.358, or both.

**Financial Relationship:** (1) A direct or indirect ownership or investment interest (including an option or nonvested interest) in any entity. This direct or indirect interest may be in the form of equity, debt, or other means and includes any indirect ownership or investment interest no matter how many levels removed from a direct interest; or (2) a compensation arrangement with an entity.

**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.

**Indian:** Any individual defined at 25 U.S.C. 1603, 1603(28), or 1679(a), or who has been determined eligible as an Indian, under 42 CFR 136.12.

**Indicators:** Measures or measurement tools used to monitor and/or measure some component of health care delivery.

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

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

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

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

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

**Managed Care Organizations (MCO):** A managed care organization as set forth in 42 CFR§438.2. Nebraska has three MCOs at the time this RFP was issued. There are multiple MCO's serving all 93 Nebraska counties. Current contracts are located on the State Purchasing Bureau website at <http://das.nebraska.gov/materiel/purchasing/>.

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

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

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

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

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

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

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

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

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

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

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

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

the environment established by such hardware and Operating System combination.

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

**Prepaid Ambulatory Health Plan (PAHP):** an entity as defined under 42 CFR § 438.2.

**Prepaid Inpatient Health Plan (PIHP):** an entity as defined under 42 CFR § 438.2.

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

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

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

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

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

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

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

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

**Quality:** Quality is the degree to which health services for individuals and populations increase the likelihood of desired outcomes and are consistent with current professional knowledge. As it pertains to external quality review, means the degree to which an MCO increases the likelihood of desired health outcomes of its enrollees through its structural and operational characteristics and through the provision of health services that are consistent with current professional knowledge.

**Quality Indicators:** Quality indicators are disease, condition, or situation; specific statements that represent areas of consensus and are related to process/outcomes of care. These can incorporate guidelines, standards of care, and/or practice parameters and must be grounded in literature where available.

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

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

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

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

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

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



**Shall/Will/Must:** An order/command; mandatory.

**Should:** Expected; suggested, but not necessarily mandatory.

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

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

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

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

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

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

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

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

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

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

**Validation:** The review of information, data, and procedures to determine the extent to which they are accurate, reliable, free from bias, and in accordance with standards for data collection and analysis.

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

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

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

**Work Day:** See Business Day.

## ACRONYM LIST

**ARO** – After Receipt of Order

**ACH** – Automated Clearing House

**BAFO** – Best and Final Offer

**CMS** – Centers for Medicare and Medicaid Services

**COI** – Certificate of Insurance

**CPU** – Central Processing Unit

**DAS** – Department of Administrative Services

**DBM** – Dental Benefits Manager

**DHHS** – The State of Nebraska, Department of Health and Human Services, Division of Medicaid and Long Term Care

**F.O.B.** – Free on Board

**MCO** – Managed Care Organization

**MCNA** – Managed Care of North America, Inc.

**NCQA** – National Committee for Quality Assurance

**NIGP** – National Institute for Governmental Purchasing

**PA** – Participating Addendum

**PAHP** – Prepaid Ambulatory Health Plan

**PIP** – Performance Improvement Plan

**RFP** – Request for Proposal

**SPB** – State Purchasing Bureau

## I. PROCUREMENT PROCEDURE

### A. GENERAL INFORMATION

The solicitation is designed to solicit proposals from qualified Contractor who will be responsible for providing External Quality Reviews 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 contractors are expected to carefully examine all documents, schedules, and requirements in this solicitation, and respond to each requirement in the format prescribed. Proposals may be found non-responsive if they do not conform to the solicitation.

### B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS

Procurement responsibilities related to this solicitation reside with DHHS. The point of contact (POC) for the procurement is as follows:

Name: Keith Roland  
Agency: Department of Health and Human Services  
Address: 301 Centennial Mall S.  
Lincoln, NE 68509

Telephone: 402-471-0727

E-Mail: [dhhs.rfpquestions@nebraska.gov](mailto:dhhs.rfpquestions@nebraska.gov)

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

The following exceptions to these restrictions are permitted:

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

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

C. **SCHEDULE OF EVENTS**

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

<b>ACTIVITY</b>		<b>DATE/TIME</b>
1.	Release Solicitation	June 1, 2020
2.	Last day to submit written questions	June 15, 2020
3.	State responds to written questions through Solicitation "Addendum" and/or "Amendment" to be posted to the Internet at: <a href="http://das.nebraska.gov/materiel/purchase_bureau/vendor/agency-rfp.html">http://das.nebraska.gov/materiel/purchase_bureau/vendor/agency-rfp.html</a>	June 30, 2020
4.	Last day to submit "Notification of Intent To Submit a Proposal"	July 15, 2020
5.	Proposal Opening  Location for mailed/hand-delivered submissions: Department of Health and Human Services 301 Centennial Mall S., 3 <sup>rd</sup> floor Lincoln, NE 68509  Electronic submissions: <a href="https://nebraskastategov.sharefile.com/r-r4058b5be7e64e798">https://nebraskastategov.sharefile.com/r-r4058b5be7e64e798</a>	July 31, 2020 2:00 PM Central Time
6.	Review for conformance to solicitation requirements	August 1, 2020
7.	Evaluation period	August 1, 2020- August 31, 2020
8.	"Oral Interviews/Presentations and/or Demonstrations" (if required)	To be announced if required
9.	Post "Notification of Intent to Award" to Internet at: <a href="http://das.nebraska.gov/materiel/purchase_bureau/vendor/agency-rfp.html">http://das.nebraska.gov/materiel/purchase_bureau/vendor/agency-rfp.html</a>	September 1, 2020
10.	Contract finalization period	September 15, 2020
11.	Contract award	September 30, 2020
12.	Contractor start date	October 1, 2020

**D. WRITTEN QUESTIONS AND ANSWERS**

Questions regarding the meaning or interpretation of any solicitation provision must be submitted in writing to DHHS and clearly marked "RFP Number 6303 Z1; External Quality Review Questions". The POC is not obligated to respond to questions that are received late per the Schedule of Events.

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

It is preferred that questions be sent via e-mail to [dhhs.rfpquestions@nebraska.gov](mailto:dhhs.rfpquestions@nebraska.gov), but may be delivered by hand or by U.S. Mail. It is recommended that Contractors submit questions using the following format.

Solicitation Section Reference	Solicitation Page Number	Question

Written answers will be posted at [http://das.nebraska.gov/materiel/purchase\\_bureau/vendor/agency-rfp.html](http://das.nebraska.gov/materiel/purchase_bureau/vendor/agency-rfp.html) per the Schedule of Events.

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

All contractors must be authorized to transact business in the State of Nebraska and comply with all Nebraska Secretary of State Registration requirements. The contractor who is the recipient of an Intent to Award will be required to certify that it has complied and produce a true and exact copy of its current (within ninety (90) calendar days of the intent to award) Certificate or Letter of Good Standing, or in the case of a sole proprietorship, provide written documentation of sole proprietorship and complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <http://das.nebraska.gov/materiel/purchasing.html>. This must be accomplished prior to execution of the contract.

**F. ETHICS IN PUBLIC CONTRACTING**

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

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

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

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

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

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

**H. SUBMISSION OF PROPOSALS**

The State is accepting either electronically submitted responses or hard copy, paper responses for this RFP.

For bidders submitting electronic responses:

1. Bidders submitting electronically can upload the response via ShareFile here:  
a. <https://nebraskastategov.sharefile.com/r-r4058b5be7e64e798>

- b. ShareFile works with Firefox, Internet Explorer and Chrome. It does not work with Microsoft Edge.
2. The Technical, Cost Proposal and Proprietary information should be uploaded as separate and distinct files. If multiple proposals are submitted, the State will retain only the most recently submitted response. It is the bidder's responsibility to submit the proposal by the date and time indicated in the Schedule of Events. Electronic proposals must be received by SPB by the date and time of the proposal opening per the Schedule of Events. No late proposals will be accepted
3. **ELECTRONIC PROPOSAL FILE NAMES**  
The bidder should clearly identify the uploaded RFP proposal files. To assist in identification please use the following naming convention:
- a. RFP 6264 Z1 ABC Company
  - b. If multiple files are submitted for one RFP proposal, add number of files to file names: RFP 6264 Z1 ABC Company File 1 of 2.
  - c. If multiple RFP proposals are submitted for the same RFP, add the proposal number to the file names: RFP 6264 Z1 ABC Company Proposal 1 File 1 of 2.

For bidders submitting paper/hard copy responses:

4. Bidders who are submitting a paper response should submit one proposal marked on the first page: "ORIGINAL". If multiple proposals are submitted, the State will retain one copy marked "ORIGINAL" and destroy the other copies. The Contractor is solely responsible for any variance between the copies submitted. Proposal responses should include the completed Form A, "Contractor Proposal Point of Contact". Proposals must reference the RFP number and be sent to the specified address. Please note that the address label should appear as specified in Section I B. on the face of each container or contractor's proposal response packet. If a recipient phone number is required for delivery purposes, 402-471-0727 should be used. The RFP number should be included in all correspondence. The State will not furnish packaging and sealing materials. It is the contractor'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 State Purchasing Bureau by the date and time of the proposal opening per the Schedule of Events. No late proposals will be accepted.

United States Postal Services (USPS) delivered proposal responses shall be mailed to:

ATTN: Keith Roland  
DHHS - Central Procurement Services  
PO BOX 94926  
Lincoln, NE 68509

Hand delivered proposal responses or responses delivered by Federal Express (FedEx), United Parcel Service (UPS), etc. shall be delivered to:

ATTN: Keith Roland  
DHHS - 3rd Floor Reception Desk  
301 Centennial Mall South  
Lincoln, NE 68509

5. The Technical, Cost Proposal, and Proprietary Information should be presented in separate sections (loose-leaf binders are preferred) on standard 8 ½" x 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 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 bidder's technical approach in as much detail as possible, including, but not limited to, the information required by the Technical Proposal instructions. Bidder must use the State's Cost Proposal Form.

The State will not furnish packaging or sealing materials. It is the bidder's responsibility to ensure the solicitation is received either electronically or 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 State Purchasing Bureau by the date and time of the proposal opening per the Schedule of Events.

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

It is the responsibility of the contractor to check the website for all information relevant to this Request for Proposal to include addenda and/or amendments issued prior to the opening date. Website address is as follows: [http://das.nebraska.gov/materiel/purchase\\_bureau/vendor/agency-rfp.html](http://das.nebraska.gov/materiel/purchase_bureau/vendor/agency-rfp.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.

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.

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

**I. PROPOSAL PREPARATION COSTS**

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

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

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

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

**K. PROPOSAL CORRECTIONS**

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

**L. LATE PROPOSALS**

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

**M. PROPOSAL OPENING**

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

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

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

1. Original Request for Proposal for Contractual Services form signed using an indelible method;
2. Clarity and responsiveness of the proposal;
3. Completed Form A – Contractor Proposal Point of Contact;
4. Completed Corporate Overview;
5. Completed Sections II through IV;
6. Completed Attachment 1 - Technical Approach Narrative;
7. Draft Work Plan;
8. Draft Communications Plan; and
9. Completed Cost Proposal.

**O. EVALUATION COMMITTEE**

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

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

**P. EVALUATION OF PROPOSALS**

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

1. Corporate Overview should include but is not limited to:
  - a. the ability, capacity, and skill of the contractor to deliver and implement the system or project that meets the requirements of the solicitation;
  - b. the character, integrity, reputation, judgment, experience, and efficiency of the contractor;
  - c. whether the contractor can perform the contract within the specified 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, including Draft Work and Communications Plans and,
3. 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 Vendor Performance Report (See Terms & Conditions, Section H) may be used in evaluating responses to solicitations for goods and services to determine the best value for the State.

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

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

Therefore, if a resident disabled veteran or business located in a designated enterprise zone submits a proposal in accordance with Neb. Rev. Stat. §73-107 and has so indicated on the solicitation cover page under “Contractor must



complete the following” requesting priority/preference to be considered in the award of this contract, the following will need to be submitted by the contractor within ten (10) business days of request:

1. Documentation from the United States Armed Forces confirming service;
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 contractor 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. Every contractor may not be given an opportunity to interview/present and/or give demonstrations; the State reserves the right, in its discretion, to select only the top scoring contractors to present/give oral interviews. The scores from the oral interviews/presentations and/or demonstrations will be added to the scores from the Technical and Cost Proposals. The presentation process will allow the contractors to demonstrate their proposal offering, explaining and/or clarifying any unusual or significant elements related to their proposals. Contractors’ key personnel, identified in their proposal, may be requested to participate in a structured interview to determine their understanding of the requirements of this proposal, their authority and reporting relationships within their firm, and their management style and philosophy. Only representatives of the State and the presenting contractor will be permitted to attend the oral interviews/presentations and/or demonstrations. A written copy or summary of the presentation, and demonstrative information (such as briefing charts, et cetera) may be offered by the contractor, but the State reserves the right to refuse or not consider the offered materials. Contractors shall not be allowed to alter or amend their proposals.

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

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

**R. BEST AND FINAL OFFER**

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

**S. REFERENCE AND CREDIT CHECKS**

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

**T. AWARD**

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

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 contractor proposals that are not material, do not compromise the solicitation process or a contractor’s proposal, and do not improve a contractor’s competitive position;
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 contractors; or,
9. Award one or more all-inclusive contracts.

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

[http://das.nebraska.gov/materiel/purchase\\_bureau/vendor/agency-rfp.html](http://das.nebraska.gov/materiel/purchase_bureau/vendor/agency-rfp.html)

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

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

**U. ALTERNATE/EQUIVALENT PROPOSALS**

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

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

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

**W. EMAIL SUBMISSIONS**

SPB will not accept proposals by email, electronic, voice, or telephone proposals 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**

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

The contractors should submit with their proposal any license, user agreement, service level agreement, or similar documents that the contractor wants incorporated in the Contract. The State will not consider incorporation of any document not submitted with the contractor’s proposal as the document will not have been included in the evaluation process. These documents shall be subject to negotiation and will be incorporated as addendums if agreed to by the Parties.

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

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. Contractor’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 Contractor’s submitted Proposal.

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

**B. NOTIFICATION**

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

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. NOTICE (POC)**

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

**D. GOVERNING LAW (Statutory)**

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

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

**E. BEGINNING OF WORK**

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

**F. AMENDMENT**

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

**G. CHANGE ORDERS OR SUBSTITUTIONS**

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

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

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

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

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

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

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

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

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

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

**5. ALL REMEDIES AT LAW**

Nothing in this agreement shall be construed as an indemnification by one Party of the other for liabilities of a Party or third parties for property loss or damage or death or personal injury arising out of and during the performance of this contract. Any liabilities or claims for property loss or damages or for death or personal injury by a Party or its agents, employees, contractors or assigns or by third persons, shall be determined according to applicable law.

**6.** 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. OFFICE OF PUBLIC COUNSEL (Statutory)**

If it provides, under the terms of this contract and on behalf of the State of Nebraska, health and human services to individuals; service delivery; service coordination; or case management, Contractor shall submit to the jurisdiction of the Office of Public Counsel, pursuant to Neb. Rev. Stat. §§ 81-8,240 et seq. This section shall survive the termination of this contract.

**T. LONG-TERM CARE OMBUDSMAN (Statutory)**

Contractor must comply with the Long-Term Care Ombudsman Act, per Neb. Rev. Stat. §§ 81-2237 et seq. This section shall survive the termination of this contract.

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

**V. 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. DISCOUNTS**

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

**F. PRICES**

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

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

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

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

**G. COST CLARIFICATION**

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

**H. PERMITS, REGULATIONS, LAWS**

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

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

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

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

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

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

**J. INSURANCE REQUIREMENTS**

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

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

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

<b>REQUIRED INSURANCE COVERAGE</b>	
<b>COMMERCIAL GENERAL LIABILITY</b>	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Medical Payments	\$10,000 any one person
Damage to Rented Premises (Fire)	\$50,000 each occurrence
Contractual	Included
Independent Contractors	Included
Abuse & Molestation	Included
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>	
<b>WORKER'S COMPENSATION</b>	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
Voluntary Compensation	Statutory
<b>COMMERCIAL AUTOMOBILE LIABILITY</b>	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
Motor Carrier Act Endorsement	Where Applicable
<b>UMBRELLA/EXCESS LIABILITY</b>	
Over Primary Insurance	\$1,000,000 per occurrence
<b>CYBER LIABILITY</b>	
Breach of Privacy, Security Breach, Denial of Service, Remediation, Fines and Penalties	\$1,000,000
Includes Non-Owned Disposal Sites	
<b>MANDATORY COI SUBROGATION WAIVER LANGUAGE</b>	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
<b>MANDATORY COI LIABILITY WAIVER LANGUAGE</b>	
"Commercial General Liability & Commercial Automobile Liability policies shall name the State of Nebraska as an Additional Insured and the policies shall be primary and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory as additionally insured."	

#### 4. 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:

Department of Health and Human Services  
 Division of Medicaid and Long-Term Care  
 Attn: EQRO Contract Manager  
 301 Centennial Mall S., 5th floor  
 Lincoln, NE 68509

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.

#### 5. DEVIATIONS

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

**K. 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.

**L. 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.

**M. 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.



**N. 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.

**O. 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.

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

Contractor shall review the Nebraska Technology Access Standards, found at <https://nitc.nebraska.gov/standards> 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.

**Q. 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.

**R. 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.

**S. 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. **Contractor shall submit invoices to the DHHS Contract Manager for payment at the fixed rate for services provided in accordance with the Contractor's statement of work upon completion of deliverables. Contractor shall submit invoices within thirty (30) calendar days following the date of deliverable completion and no later than thirty (30) calendar days following the end of each contract term.** 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

### A. PROJECT OVERVIEW

DHHS is seeking a Contractor to provide the following services:

1. Provide the DHHS and the Federal Government with an annual external and independent review of access to, timeliness, and quality outcomes of the services included in the contract between the DHHS the Managed Care Organizations (MCOs) and Dental Benefits Manager (DBM) providing integrated health care to DHHS consumers enrolled in Medicaid managed care programs. The Contractor must meet requirements established in 42 CFR §438, Subpart E.
2. Monitor the MCOs and DBMs internal Quality Assurance and Performance Improvement programs (QAPI) and standards on a continuing basis.

### B. PROJECT ENVIRONMENT

Currently physical health, behavioral health, and pharmacy services are provided by three (3) MCOs; United Healthcare Community Plan, Nebraska Total Care and Anthem (WellCare). The State's dental health care is provided by one (1) Dental Benefits Manager (DBM) contract with Managed Care of North America, Inc. (MCNA). For all three MCOs and the DBM, the National Committee for Quality Assurance (NCQA) is the accrediting authority. Current contracts are located on the State Purchasing Bureau website at <http://das.nebraska.gov/materiel/purchasing.html>.

### C. BUSINESS REQUIREMENTS

The External Quality Review Organization (EQRO) must meet the competence and independence requirements as specified in 42 CFR §438.354(b) and 42 CFR §438.354(c).

#### 1. Independence.

The EQRO and subcontractors must be independent from the State Medicaid agency, MCOs and DBMs entities that they review. To qualify as "independent":

- a. If the Contractor is a State Agency, Department, University, or other State entity, the Contractor
  - i. May not have Medicaid purchasing or managed care licensing authority; and
  - ii. Must be governed by a Board or similar body the majority of whose members are not government employees.
- b. The Contractor may not:
  - i. Review any MCO or DBM entity or a competitor operating in the State, over which the EQRO exerts control or which the exerts control over the EQRO ("control" has the meaning given the term in 48 CFR 19.101) through:
    - a) Stock ownership,
    - b) Stock options and convertible debentures,
    - c) Voting trusts,
    - d) Common management, including interlocking management, and
    - e) Contractual relationships.
- c. The Contractor may not deliver any health care services to Medicaid beneficiaries.
- d. The Contractor may not conduct, on the State's behalf, ongoing Medicaid managed care program operations related to oversight of the quality of MCO or DBM entity services, except for EQR-related activities specified at 42 CFR § 438.358.
- e. The Contractor may not review any MCO or DBM entity for which it is conducting or has conducted an accreditation review within the previous three (3) years.
- f. The Contractor may not have a present, or future, direct or indirect financial relationship with an MCO or DBM entity that it will review as an EQRO.
  - i. Financial relationship means a direct or indirect ownership or investment interest, including an option or non-vested interest, in any entity. This direct or indirect interest may be in the form of equity, debt, or other means and includes any indirect ownership or investment interest no matter how many levels removed from a direct interest; or a compensation arrangement with an entity.

#### 2. Non-duplication.

Contractors must ensure mandatory activities with Medicare or accreditation review are not duplicated. The State may use information from a Medicare or private accreditation review of an MCO or DBM to provide information for the annual EQR instead of conducting one or more of the EQR activities relating to the validation of performance improvement projects, validation of performance measures, and compliance review.

42 CFR § 438.360 Non-duplication of mandatory activities with Medicare or accreditation review, details the conditions that must be met to use the information from a private accreditation instead of conducting one or more of the EQR activities.

## **D. PROJECT REQUIREMENTS**

The Request for Proposal is designed to solicit proposals from qualified vendors who will be responsible for providing an annual external and independent review service as a component of the contract between DHHS and the Managed Care Organizations (MCOs) and Dental Benefits Managers (DBMs) providing health care to DHHS consumers enrolled in managed care at a competitive and reasonable cost.

### **1. Protocols.**

The protocols required to be used by State Medicaid Agencies and the EQRO in conducting EQR activities are outlined in 42 CFR § 438, subpart E. In the event these protocols are revised by CMS, the Contractor shall ensure current versions are utilized in performance of duties under this contract.

The revised CMS EQR Protocols and updated EQR Technical Report Toolkit are available at: <https://www.medicaid.gov/medicaid/quality-of-care/medicaid-managed-care/external-quality-review/index.html>. CMS also developed a web page devoted to Quality Strategies which includes an updated State Quality Strategy Toolkit, available at: <https://www.medicaid.gov/medicaid/quality-of-care/medicaid-managed-care/state-quality-strategy/index.html>.

- a. The Contractor will perform contract activity consistent with these protocols (§438.352), specifying:
  - i. The data to be gathered;
  - ii. The sources of the data;
  - iii. The activities and steps to be followed in collecting the data to promote its accuracy, validity and reliability;
  - iv. The proposed method(s) for analyzing and interpreting
  - v. The data once obtained; and
  - vi. Instructions, guidelines, worksheets, and other documents or tools necessary for implementing the protocol.
- b. The Contractor will report any problems with the administration of the MCO or the DBM Contracts and will propose a corrective action plan for any problems directly related to the performance of this Contract.

### **2. EQRO Activities.**

The EQRO shall be responsible for all of the following activities, performed by utilization of EQR protocols.

- a. Conduct an annual external quality review of the Managed Care Organizations (MCO) and the Dental Benefits Managers (DBM) in Nebraska and produce the required report(s). The quality review must use information from mandatory activities as set forth in 42 CFR § 438.358(b).
  - i. The Contractor will provide a review, conducted annually, to determine the MCO's/DBM's compliance with standards (except with respect to standards under 42 CFR §438.240(b)(1) and (2), for conducting performance improvement projects and calculations of performance measures, respectively) established by the State to comply with the requirements of 42 CFR § 438.204(g).
  - ii. The Contractor will conduct the on-site review of each MCO and DBM in the second calendar quarter of each year. The Contractor will establish and provide a schedule for documentation requests of the MCOs and DBMs ahead of reviews.
  - iii. The Contractor will deliver a draft review report to DHHS within ninety (90) days of the on-site review, in electronic format and will deliver a final report to DHHS within thirty (30) days of the draft report delivery, in electronic format.
- b. The Contractor will perform validation of Performance Improvement Projects (PIPs) required by the State to comply with requirements set forth in 42 CFR § 438.330(b)(1), that were underway during the preceding calendar year.
- c. The Contractor will provide validation of MCO and DBM performance measures reported (as required by the State) or MCO and DBM performance measures calculated by the State during the preceding calendar year to comply with requirements set forth in 42 CFR § 438.330(b)(2). Some performance measures may be required by the State to be continued, based on specific outcomes for a specified period of time.

- d. The Contractor will perform a review, conducted within the previous 3-year period, to determine the MCOs and DBMs compliance with the standards set forth in 42 CFR 438, subpart D and the quality assessment and performance improvement requirements described in 42 CFR § 438.330.
- e. The Contractor will perform validation of MCO and DBM network adequacy during the preceding calendar year to comply with requirements set forth in 42 CFR § 438.68.

### 3. Technical Assistance.

- a. The Contractor will, at the State's direction, provide technical guidance to groups of MCOs or the DBM to assist them in conducting activities related to the mandatory and additional activities that provide information for the EQR.
- b. The Contractor will report in writing any problems with the administration of the MCO or the DBM Contracts and will propose a corrective action plan for any problems directly related to the performance of this Contract.
- c. The Contractor will provide technical guidance in the development of performance improvement projects.

### 4. Reporting.

The Contractor shall be responsible for providing accurate, complete written reports and recommendations to DHHS. The Contractor must provide the following reports, assessments, and recommendations as specified in 42 CFR § 438.364.

- a. For each MCO and DBM, the Contractor will provide an annual detailed technical report that summarizes findings on access and quality of care, including a description of the manner in which the data from all activities conducted in accordance with 42 CFR § 438.358 were aggregated and analyzed, and conclusions were drawn as to the quality, timeliness, and access to the care furnished by the MCO and DBM entity.
  - i. This report shall be provided to DHHS annually, by October 15th.
  - ii. The report must also include the following for each activity conducted in accordance with 42 CFR § 438.358:
    - a) Objectives.
    - b) Technical methods of data collection and analysis.
    - c) Description of data obtained including validated performance measurement data for each activity conducted in accordance with 42 CFR § 438.358(b)(1)(i) and (ii); and
    - d) Conclusions drawn from the data.
- b. The Contractor will provide DHHS with an annual assessment of each MCO's or DBM's strengths and weaknesses for the quality, timeliness, and access to health care services furnished to Medicaid beneficiaries.
- c. The Contractor will provide DHHS with recommendations for improving the quality of health care services furnished by each MCO or DBM including how the State can target goals and objectives in the quality strategy, under 42 CFR § 438.340, to better support improvement in the quality, timeliness, and access to health care services furnished to Medicaid beneficiaries at least quarterly, or with more frequency, as necessary.
- d. The Contractor will provide DHHS with methodologically appropriate, comparative information about all MCOs and DBMs, upon request by the State.
- e. The Contractor will provide DHHS with an annual assessment of the degree to which each MCO or DBM has effectively addressed the recommendations for quality improvement made by the EQRO during the previous year's EQR.
- f. The Contractor will provide ad hoc studies and reports as required by DHHS. The billable hours for each ad hoc study and report will be mutually agreed upon between DHHS and the Contractor and billed at the hourly contracted consultant rate.

### 5. Distribution of the EQR reports, assessments, and recommendations.

- a. The Contractor must provide copies of the information specified in Section V.D.4. above, upon request, through print or electronic media, to interested parties such as participating health care providers, enrollees, and potential enrollees of the MCO or DBM, beneficiary advocacy groups and members of the general public.
  - i. This information must be made available in alternative formats for persons with disabilities, when requested.
  - ii. The information released must not disclose the identity of any patient or any other information protected by law.

- iii. The Contractor will not share or deliver to any other individual or entity without prior written approval of DHHS, reports and any data utilized for reporting purposes. The schedule, number of copies, and media for reports shall be specified by DHHS.
- b. The Contractor will be required to develop, update, and maintain a report distribution list during the contract period to incorporate changes required by DHHS.

**6. Meetings.**

- a. The Contractor will establish monthly technical assistance meetings or conference calls with DHHS staff.
- b. The Contractor will prepare agendas ahead of meetings.
- c. The Contractor is responsible for taking and distributing minutes at all meetings required under this contract. Distribution will be no less than five (5) business days before the meeting.
- d. The Contractor will participate, in conjunction with DHHS, in the quarterly operational meetings with the MCOs and DBM.

**7. Quality Review.**

The quality review may use information from additional activities as set forth in 42 CFR § 438.358(c), including information derived during the preceding calendar year from the following activities. Contractors outline pricing in **Form C Cost Proposal.**

- a. The Contractor will provide, at the State's direction, validation of encounter data reported by the MCOs and the DBM.
- b. The Contractor will perform administration or validation of consumer or provider surveys of quality of care.
- c. The Contractor will, at the State's direction, calculate performance measures in addition to those reported by an MCO or DBM and validated by an EQRO in accordance with 42 CFR §438.358(b)(1)(ii).
- d. The Contractor will, at the State's direction, conduct performance improvement projects in addition to those conducted by an MCO or DBM and validated by an EQRO in accordance with 42 CFR §438.358(b)(1)(i) .
- e. The Contractor will, at the State's direction, conduct studies on quality that focus on a particular aspect of clinical or nonclinical services at a point in time.
- f. The Contractor will, at the State's direction, assist with the quality rating of the MCOs and DBM consistent with 42 CFR § 438.334.
- g. The Contractor will, at the State's direction, provide technical guidance to MCOs or DBMs, to assist n conducting activities related to the mandatory and optional activities that provide information for the EQR and the resulting EQR technical report.

**E. SCOPE OF WORK**

**1. Mandatory EQR-related activities.**

The Contractor shall do the following mandatory EQR-related activities, using the most recent federally-approved EQR protocol:

- a. Review, within the previous three-year period, to determine MCO/DBM compliance with State standards for access to care, structure and operations, and quality measurement and improvement.
- b. Validation of performance measures.
- c. Validation of performance improvement projects (PIPs).

**2. Other EQR-related activities.**

At the request of DHHS, the Contractor shall perform the following EQR-related activities, using the most recent federally approved EQR protocol:

- a. Validation of encounter data reported by an MCO or DBM.
- b. Administration or validation of consumer or provider surveys of quality of care.
- c. Calculation of performance measures in addition to those reported by an MCO or DBM and validated by an EQRO.
- d. Conduct PIPs in addition to those conducted by an MCO or DBM and validated by an EQRO.
- e. Conduct studies on quality that focus on an aspect of clinical or nonclinical services as a point in time.



## F. DELIVERABLES

### 1. Deliverables.

Contractor shall provide all EQR-related services necessary to analyze and evaluate aggregated information on quality, timeliness, and access to the health care services that a managed care plan, or its contractors, furnish to Medicaid beneficiaries in a way that meets or exceeds the minimum requirements of section V.

- a. Deliverable 1: Annual EQR Report- MCO.
  - i. Fixed cost per report. One (1) annual report for each MCO.
- b. Deliverable 2: Annual EQR Report- DBM.
  - i. Fixed cost per report. One (1) annual report for each DBM
- c. Deliverable 3: Annual Validation of PIP Report- MCO.
  - i. Fixed cost per report. One (1) annual report for each MCO.
- d. Deliverable 4: Annual Validation of PIP Report- DBM.
  - i. Fixed cost per report. One (1) annual report for each DBM.
- e. Deliverable 5: Annual Validation of Performance Measures Report- MCO.
  - i. Fixed cost per report. One (1) annual report for each MCO.
- f. Deliverable 6: Annual Validation of Performance Measures Report- DBM.
  - i. Fixed cost per report. One (1) annual report for each DBM.
- g. Ad-Hoc Deliverable 7: Annual Validation of Network Adequacy Report, at DHHS request- MCO.
  - i. Fixed cost per report. One (1) annual report for each MCO.
- h. Ad-Hoc Deliverable 8: Annual Validation of Network Adequacy Report, at DHHS request- DBM.
  - i. Fixed cost per report. One (1) annual report for each DBM.
- i. Ad-Hoc Deliverable 9: Ad-hoc technical assistance and consultation, at DHHS request.
  - i. Services at a fixed hourly rate. All rates shall be prorated for any fraction of an hour spent actually providing services, which shall be rounded to the nearest 15-minute increment for each hour worked pursuant this contract.
- j. Optional Deliverable 10: Ad-hoc reports, at DHHS request.
  - i. Fixed cost per project based on hourly rate. Work may be needed that was not originally delineated in this RFP, but considered within the scope of work. This additional work may stem from legislative mandates, emerging technologies, and/or secondary research not otherwise addressed in this RFP or known at the time this RFP was issued. If additional work is needed, the Contractor must submit a Detailed Project Work Plan, Title/Role(s), number of hours, and due dates/deliverables for DHHS review and approval prior to commencing work.

### 2. Deadlines.

The Contractor shall meet the following deadlines:

- a. Deliverable due dates as listed in the most current and DHHS-approved Contractor Detailed Work Plan.
- b. All Annual EQR Reports shall be provided to DHHS annually, by October 15th.
  - a. The Contractor will deliver a draft review report to DHHS within ninety (90) days of the on-site review, in electronic format and will deliver a final report to DHHS within thirty (30) days of the draft report delivery, in electronic format.
- c. Unless otherwise approved in writing by DHHS, all deliverables must be complete no later than December 31<sup>st</sup> of each contract term.
- d. Contractor shall submit invoices within thirty (30) calendar days following the date of deliverable completion and no later than thirty (30) calendar days following the end of each contract term.

### **3. Deliverable Approval Process.**

- a. DHHS must review all deliverables submitted by Contractor. DHHS must approve a deliverable submitted by Contractor if it is of sufficient quality and meets the requirements in section V. Approval of a deliverable must be communicated by DHHS to Contractor in writing within fifteen (15) State business days. DHHS will not disburse payment for a deliverable until the deliverable is approved.
- b. DHHS must reject the deliverable submitted by Contractor if it is not of sufficient quality or does not meet the requirements in section V. Rejection of a deliverable must be communicated by DHHS to Contractor in writing within fifteen (15) State business days, and DHHS's written communication must include its reasons for rejection.
- c. Within a time period established by DHHS and the Contractor, Contractor may correct the defects identified by DHHS and re-submit the rejected deliverable. Any corrections or improvements requested by DHHS are not changes in scope of this Contract. If a rejected deliverable requires more than two corrections, DHHS may permanently reject the deliverable and deny payment for the deliverable. Nothing in this section limits any other remedies available to DHHS under this Contract or at law.

## **G. WORK PLAN**

No later than two (2) weeks after the contract start date, the contractor must develop and submit a Detailed Work Plan that includes a schedule for all deliverable tasks, subtasks, and activities, and deliverable milestones and submission timelines listed in Section V.F. The contractor's Project Work Plan must also maintain the following date-sensitive information:

1. Originally scheduled Start and End dates for all tasks, subtasks, and activities (including milestones and deliverables);
2. Anticipated Start dates for tasks, subtasks, and activities, if schedule fluctuation has occurred;
3. Anticipated End dates for tasks, subtasks, and activities, if schedule fluctuation has occurred;
4. Actual Start dates for all current and completed tasks, subtasks, and activities;
5. Actual End dates for all completed tasks, subtasks, and activities, and;
6. Descriptions of tasks.

DHHS may approve or reject, in writing, the Detailed Projected Work Plan or any proposed updates to the Detailed Project Work Plan.

The contractor shall submit a progress report in writing on the status of work completed from the Detailed Project Work Plan to DHHS for review on at least a monthly basis.

## **H. PROJECT PLANNING AND MANAGEMENT**

### **1. Communication Planning.**

No later than two (2) weeks after the contract start date, the contractor must develop and submit a Detailed Communications Plan meeting the requirements of Section V.D. The Detailed Communications Plan must include but is not limited to the following:

- a. Contract communication protocols, including formal and informal communications with DHHS staff and communication with other parties other than DHHS staff.
  - i. Protocols must include notification to DHHS in writing of any key staff hiring, resignations and dismissals within one (1) business day after initial knowledge of the change.
  - ii. Protocols must include distribution of the EQR reports, assessments, and recommendations that meet the requirements of Section V.D.5.
  - iii. Protocols must include meeting planning that meet the requirements of Section V.D.6.
  - iv. Protocols must include technical assistance planning that meets the requirements of Section V.D.3 of this RFP
- b. Deliverable submission and DHHS draft report review protocols.
  - i. Protocols must include submission of draft reports to DHHS with a minimum of two (2) months lead time for review and a correction of any noted deficiencies identified by DHHS within two (2) weeks.
- c. Ad-hoc deliverable request and initiation protocols.
  - i. Protocols must include responses to DHHS EQR-related informational requests within one (1) business day, or as agreed upon with DHHS, throughout the Contract.
- d. Work plan progress review protocols.

- i. Protocols must include conference calls with DHHS monthly or as directed by DHHS throughout the Contract to review contract deliverables.

DHHS may approve or reject, in writing, the Detailed Communications Plan or any proposed updates to the Detailed Communications Plan.

#### **I. DHHS RESPONSIBILITIES**

Primary and overall responsibility for administration of the External Quality Review for Medicaid Managed Care contract will remain with DHHS. DHHS will:

1. Ensure that the EQRO is provided with sufficient and accurate information to use in reporting on the State-conducted annual review. The information provided will be obtained through methods consistent with EQR-related activities and protocols specified by CMS.
2. For ongoing operations, the DHHS Contract Manager, or a designee, shall be available via telephone and email to the Contractor to answer questions regarding policy and procedures, to coordinate responses to Contractor questions, and to refer the Contractor to appropriate staff, when necessary.
3. Attend scheduled meetings with the Contractor to discuss issues, changes, deliverables' status, and specific agenda items proposed by either DHHS or the Contractor. The Contractor will chair the meetings, however, DHHS will retain the option to chair the meetings, as necessary. The schedule for the regular meetings will be determined by DHHS. The State will provide space for such meetings.
4. Share with the Contractor information relative to changes in federal and state law, rules or regulations, or the judicial interpretation of any such laws, rules, or regulations that can be reasonably expected to have an impact on the performance of the Contract.
5. Review and approve all reports and publications prior to public release.

#### **J. ADDENDA**

The following Addenda apply to this RFP and are hereby incorporated as additional terms and conditions of the contractual services to be rendered.

- A. DHHS HIPAA Business Associate Agreement Provisions
- B. DHHS Data Use Agreement

## VI. PROPOSAL INSTRUCTIONS

This section documents the requirements that should be met by bidders in preparing the Technical and Cost Proposal. Bidders should identify the subdivisions of "Project Description and Scope of Work" clearly in their proposals; failure to do so may result in disqualification. Failure to respond to a specific requirement may be the basis for elimination from consideration during the State's comparative evaluation. See Section I.H. of this RFP for additional information regarding proposal submission.

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 ten (10) 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 sixty (60) 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 ten (10) 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 ten (10) 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 ten (10) years, so declare.

If at any time during the past ten (10) 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**

In order to be an EQRO, the Contractor must have the following:

- i. Staff with demonstrated experience and knowledge of Medicaid beneficiaries, policies, data systems and processes;
- ii. Staff with demonstrated experience and knowledge of managed care delivery systems, organizations, and financing;

- iii. Staff with demonstrated experience and knowledge of quality assessment and improvement methods;
- iv. Staff with demonstrated experience and knowledge of research design and methodology, including statistical analysis;
- v. Physical, technological, and financial resources to conduct EQR or EQR-related activities; and,
- vi. Other clinical and nonclinical skills necessary to carry out EQR or EQR-related activities and to oversee the work of any subcontractors.

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.

**Form A**  
**Contractor Proposal Point of Contact**  
**Request for Proposal Number 6303 Z1**

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**

By signing this Request for Proposal for Contractual Services form, the contractor guarantees

**CONTRACTOR MUST COMPLETE THE FOLLOWING**

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:	