State of Nebraska (Department of Labor)

## REQUEST FOR QUALIFICATION FOR CONTRACTUAL SERVICES FORM

RETURN TO:

Department of Labor

550 S. 16th Street

PO Box 94600

Phone: 402-471-9944

|  |  |
| --- | --- |
| SOLICITATION NUMBER | RELEASE DATE |
| 5827 Z1 | April 13, 2018 |
| OPENING DATE AND TIME | PROCUREMENT CONTACT |
| May 4, 2018 10:00 a.m. Central Time | Denise Schroder |

This form is part of the specification package and must be signed in ink and returned, along with proposal documents, by the opening date and time specified.

PLEASE READ CAREFULLY!

|  |
| --- |
| SCOPE OF SERVICE |

The State of Nebraska (State), Department of Labor (NDOL), is issuing this Request for Qualification, RFQ Number 5827 Z1 (RFQ) for the purpose of identifying a qualified pool of Amusement Ride inspectors to provide Amusement Ride inspection services across the State of Nebraska.

Written questions are due no later than April 20, 2018, and should be submitted via e-mail to [denise.schroder@nebraska.gov](mailto:denise.schroder@nebraska.gov).

Bidder should submit one (1) original of the entire proposal. Proposals must be submitted by the proposal due date and time.

PROPOSALS MUST MEET THE REQUIREMENTS OUTLINED IN THIS REQUEST FOR QUALIFICATION TO BE CONSIDERED VALID. PROPOSALS WILL BE REJECTED IF NOT IN COMPLIANCE WITH THESE REQUIREMENTS.

Sealed proposals must be received in the Department of Labor by the date and time of proposal opening indicated above. The Department of Labor may, in its sole discretion, accept proposals after the date of the proposal opening and add additional qualified contractors to the pool of Amusement Ride inspectors. No electronic, e-mail, fax, voice, or telephone proposals will be accepted.

This form “REQUEST FOR QUALIFICATION FOR CONTRACTUAL SERVICES” MUST be manually signed, in ink, and returned by the proposal opening date and time along with Bidder’s proposal and any other requirements as specified in the Request for Qualification in order for a Bidder’s proposal to be evaluated.

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

**IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602.02, all State contracts in effect as of January 1, 2014, and all contracts entered into thereafter, will be posted to a public website. The resulting contract, the RFQ, and the successful Bidder’s proposal or response will be posted to a public website managed by Department of Administrative Services (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 RFQ will be posted to the DAS public website.

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

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

**To facilitate such public postings, with the exception of proprietary information, the State of Nebraska reserves a royalty-free, nonexclusive, and irrevocable right to copy, reproduce, publish, post to a website, or otherwise use any contract, proposal, or response to this RFQ 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 RFQ, specifically waives any copyright or other protection the contract, proposal, or response to the RFQ 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 RFQ, and award of a contract. Failure to agree to the reservation and waiver will result in the proposal or response to the RFQ being found non-responsive and rejected.**

**Any entity awarded a contract or submitting a proposal or response to the RFQ 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 RFQ, 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.

Act: The Nebraska Amusement Ride Act at Neb. Rev. Stat. §§48-1801 to 48-1820.

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

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

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

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

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

Amendment: A written correction or alteration to a document.

Amusement Ride: means any mechanical device that carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure, or excitement, but such term shall not include (a) any single-passenger coin-operated ride that is manually, mechanically, or electrically operated and customarily placed in a public location and that does not normally require the supervision or services of an operator or (b) non-mechanized playground equipment, including, but not limited to, swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, slides, trampolines, and physical fitness devices. Bungee jumping is specifically designated as an Amusement Ride for purposes of the Act and shall mean the sport, activity, or other practice of jumping, diving, stepping out, dropping, or otherwise being released into the air while attached to a bungee cord, whereby the cord stretches, stops the fall, lengthens, and shortens allowing the person to bounce up and down, and is intended to finally bring the person to a stop at a point above a surface or the ground.

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

Award: All purchases, leases, or contracts which are based on competitive proposals will be awarded according to the provisions in the Request for Qualification. The State reserves the right to reject any or all proposals, wholly or in part, or to award to multiple Bidders in whole or in part. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the proposal, and do not improve the Bidder’s competitive position. All awards will be made in a manner deemed in the best interest of the State.

Best and Final Offer (BAFO): In a competitive bid, the final offer submitted which contains the Bidder’s (vendor’s) most favorable terms for price.

Bid/Proposal: The offer submitted by a vendor in a response to written solicitation.

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

Bidder: A vendor who submits an offer bid in response to a written solicitation.

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.

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

Contract Period: The duration of the contract.

Contractor: Any individual or entity having a contract to furnish commodities or services.

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

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

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

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

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

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

Evaluation: The process of examining an offer after opening to determine the vendor’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 bids/proposals (offers made in response to written solicitations).

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

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

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

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

Installation Date: The date when the procedures described in “Installation by Contractor“, and “Installation by State”, as found in the RFQ, or contract, are completed.

Kiddie Ride: An Amusement Ride designed primarily for use by children but which may accommodate adults.

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

Mandatory/Must: Required, compulsory, or obligatory.

Major Ride: An Amusement Ride designed by a manufacturer to carry a specific maximum number of passengers, adults, or children either by power or gravity in cars or other suitable fixtures for conveying persons.

May: Discretionary, permitted; used to express possibility.

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

Must: See Shall/Will/Must.

NAARSO: National Association of Amusement Ride Safety Officials

NDOL: Nebraska Department of Labor

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 DAS Materiel Division, State Purchasing Bureau.

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

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

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

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

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

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

Pre-Bid/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 RFQ, 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: See Bid/Proposal.

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 service 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 Request for Qualification or resultant contract, brought by a vendor who has timely submitted a bid 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.

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

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

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

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

Request for Qualification (RFQ): A written solicitation utilized for obtaining qualification offers.

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

Responsive Bidder: A Bidder who has submitted a bid which conforms to all requirements of the solicitation document.

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

Should: Expected; suggested, but not necessarily mandatory.

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

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

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

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

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.

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

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

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

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

Vendor Performance Report: A report issued to the Contractor by State Purchasing Bureau when products or services delivered or performed fail to meet the terms of the purchase order, contract, and/or specifications, as reported to State Purchasing Bureau by the agency. The State Purchasing Bureau shall contact the Contractor regarding any such report. The vendor performance report will become a part of the permanent record for the Contractor. The State may require vendor to cure. Two such reports may be cause for immediate termination.

Will: See Shall/Will/Must.

Work Day: See Business Day

1. SCOPE OF THE REQUEST FOR QUALIFICATION

The State of Nebraska, Department of Labor, is issuing this Request for Qualification, RFQ Number 5827 Z1 for the purpose of identifying qualified Contractors to provide Amusement Ride inspection services at various locations across the State of Nebraska. Any resulting contract is not an exclusive contract to furnish the services provided for in this Request for Qualification, and does not preclude the purchase of similar services from other sources.

A contract resulting from this Request for Qualification will be issued from the date of award to December 31, 2019 as mutually agreed upon by all parties. The contract includes the option to renew for five (5) additional one (1) year periods upon mutual agreement of the parties.

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

* 1. SCHEDULE OF EVENTS

The State expects to adhere to the tentative procurement schedule shown below. It should be noted, however, that some dates are approximate and subject to change.

| ACTIVITY | | DATE/TIME |
| --- | --- | --- |
| 1. 1 | Release Request for Qualification | April 13, 2018 |
| 1. 3 | Last day to submit written questions | April 20, 2018 |
| 1. 7 | State responds to written questions through Request for Qualification “Addendum” and/or “Amendment” to be posted to the Internet at: <http://das.nebraska.gov/materiel/purchasing.html> | April 26, 2018 |
| 1. 1 | Proposal Opening  Location: Department of Labor  550 S. 16th Street  Lincoln, NE 68509 | May 4, 2018  10:00 AM  Central Time |
| 1. 1 | Review for conformance of mandatory requirements | May 7, 2018 |
|  | Evaluation period | May 7, 2018 – May 8, 2018 |
|  | Post List of Qualified Contractors to Internet at: <http://das.nebraska.gov/materiel/purchasing.html> | May 9, 2018 |
|  | Release Request for Quote(s) | To Be Determined |

1. PROCUREMENT PROCEDURE
   1. PROCURING OFFICE AND CONTACT PERSON

Procurement responsibilities related to this Request for Qualification reside with Department of Labor. The point of contact for the procurement is as follows:

Name: Denise Schroder

Agency: Department of Labor

Address: 550 S. 16th Street

PO Box 94600

Lincoln, NE 68509

Telephone: 402-471-9944

E-Mail: [denise.schroder@nebraska.gov](mailto:denise.schroder@nebraska.gov)

* 1. GENERAL INFORMATION

The Request for Qualification is designed to solicit proposals from qualified vendors who will be responsible for providing Amusement Ride inspection services for the Department of Labor. Proposals that do not conform to the mandatory items as indicated in the Request for Qualification will not be considered.

Proposals shall conform to all instructions, conditions, and requirements included in the Request for Qualification. Prospective Bidders are expected to carefully examine all documentation, schedules, and requirements stipulated in this Request for Qualification, and respond to each requirement in the format prescribed.

In addition to the provisions of this Request for Qualification and the awarded proposal, which shall be incorporated by reference in the contract, any additional clauses or provisions required by the terms and conditions will be included as an amendment to the contract.

* 1. CUSTOMER SERVICE

In addition to any specified service requirements contained in this RFQ, the Contractor agrees and understands that satisfactory customer service is required. Contractor will develop or provide technology and business procedures designed to enhance the level of customer satisfaction and to provide the customer appropriate information given their situation. Contractor, its employees, Subcontractors, and agents must be accountable, responsive, reliable, patient, and have well-developed communication skills as set forth by the customer service industry’s best practices and processes.

* 1. COMMUNICATION WITH STATE STAFF AND EVALUATORS

From the date the Request for Qualification is issued until a determination is announced regarding the selection of the Contractor(s), contact regarding this project between potential Contractors and individuals employed by the State is restricted to only written communication with the staff designated above as the point of contact for this Request for Qualification. Bidders shall not have any communication with, or attempt to communicate with or influence in any way, any evaluator involved in this RFQ.

Once a Contractor(s) is preliminarily selected, as documented in the intent to contract, that Contractor is restricted from communicating with NDOL staff until a contract is signed. Violation of this condition may be considered sufficient cause to reject a Contractor’s proposal and/or selection irrespective of any other condition.

The following exceptions to these restrictions are permitted:

* + 1. Written communication with the person(s) designated as the point(s) of contact for this Request for Qualification or procurement;
    2. Contacts made pursuant to any pre-existing contracts or obligations; and
    3. State-requested presentations, key personnel interviews, clarification sessions or discussions to finalize a contract.

Violations of these conditions may be considered sufficient cause to reject a Bidder’s proposal and/or selection irrespective of any other condition. No individual member of the State, employee of the State, or member of the Evaluation Committee is empowered to make binding statements regarding this Request for Qualification. The buyer will issue any clarifications or opinions regarding this Request for Qualification in writing.

* 1. WRITTEN QUESTIONS AND ANSWERS

Any explanation desired by a Bidder regarding the meaning or interpretation of any Request for Qualification provision must be submitted in writing to NDOL and clearly marked “RFQ Number 5827 Z1; Amusement Ride Inspections Questions”. Such questions must be sent via e-mail to [denise.schroder@nebraska.gov](mailto:denise.schroder@nebraska.gov).

It is recommended that Bidders submit questions sequentially numbered, include the RFQ reference and page number using the following format.

|  |  |  |  |
| --- | --- | --- | --- |
| Question Number | RFQ Section Reference | RFQ Page Number | Question |
|  |  |  |  |

Written answers will be provided through an addendum to be posted on the Internet on the DAS website at

<http://das.nebraska.gov/materiel/purchasing.html> on or before the date shown in the Schedule of Events.

* 1. SUBMISSION OF PROPOSALS

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

To facilitate the proposal evaluation process, one (1) original of the entire proposal should be submitted. Proposals must be submitted by the proposal due date and time. **A separate sheet must be provided that clearly states which sections have been submitted as proprietary or have copyrighted materials.** All proprietary information the Bidder wishes the State to withhold must be submitted in accordance with the instructions outlined in this RFQ regarding Proprietary Information. Proposal responses should include the completed Form A, Bidder Contact Sheet. Proposals must reference the Request for Qualification number and be sent to the specified address. Container(s) utilized for original documents should be clearly marked “ORIGINAL DOCUMENTS”. Please note that the address label should appear as specified in Section II part A on the face of each container or Bidder’s bid response packet. If a recipient phone number is required for delivery purposes, 402-471-9944 should be used. The Request for Qualification number must be included in all correspondence.

Emphasis should be concentrated on conformance to the Request for Qualification instructions, responsiveness to requirements, completeness and clarity of content. If the Bidder’s proposal is presented in such a fashion that makes evaluation difficult or overly time consuming, it is likely that the proposal will be rejected.

* 1. PROPOSAL OPENING

Anyone may attend the opening. It is considered a public opening. NDOL will read the names of the respondents. A List of Respondents will be posted to the DAS website. The bids will **NOT** be available for public viewing until the evaluation process has been completed and the Intent to Award has been posted to the DAS website. Information identified as proprietary by the submitting vendor, in accordance with the RFQ and state statute, will not be posted. If the state determines submitted information should not be withheld, in accordance with the [Public Records Act](https://ago.nebraska.gov/public_records/statutes), or if ordered to release any withheld information, said information may then be released. The submitting Bidder will be notified of the release and it shall be the obligation of the submitting Bidder to take further action, if it believes the information should not be released.

* 1. REJECTION OF PROPOSALS

The State reserves the right to reject any or all proposals, wholly or in part, or to award to multiple Bidders in whole or in part. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the proposal and do not improve the Bidder’s competitive position. All awards will be made in a manner deemed in the best interest of the State.

* 1. MANDATORY REQUIREMENTS

The proposals will first be examined to determine if all mandatory requirements listed below have been addressed to warrant further evaluation. Proposals not meeting mandatory requirements will be excluded from further evaluation. The mandatory requirement items are as follows:

* + 1. Request for Qualification For Contractual Services form, signed in ink;
    2. Completed Section III, Section IV and Section V;
    3. Corporate Overview;
    4. Completed Form C – Contractor’s Responsibilities;
    5. Proof of NAARSO Certification(s) for all of Bidder’s inspectors;
    6. Certificate of Insurance; and
    7. Proof of Registration with the Nebraska Secretary of State (unless sole proprietor).

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

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

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

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

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

* 1. REFERENCE CHECKS

The State reserves the right to check any reference(s), regardless of the source of the reference information, including but not limited to, those that are identified by the company in the proposal, those indicated through the explicitly specified contacts, those that are identified during the review of the proposal, or those that result from communication with other entities involved with similar projects. The State may use a third-party to conduct reference checks.

Information to be requested and evaluated from references may include, but is not limited to, some or all of the following: financial stability of the company, project description and background, job performed, functional and technical abilities, communication skills and timeliness, cost and schedule estimates and accuracy, problems (poor quality deliverables, contract disputes, work stoppages, et cetera), overall performance, and whether or not the reference would rehire the firm or individual. Only top scoring Bidders may receive reference checks, and negative references may eliminate Bidders from consideration for award.

* 1. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS

All Bidders must be authorized to transact business in the State of Nebraska, be in good standing, and comply with all Nebraska Secretary of State Registration requirements. In the case of a sole proprietorship, the Bidder 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>. Completion of the Attestation Form must be accomplished prior to execution of the contract.

* 1. VIOLATION OF TERMS AND CONDITIONS

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

* + 1. Rejection of a Bidder’s proposal;
    2. Withdrawal of the Intent to Award;
    3. Termination of the resulting contract;
    4. Legal action; and/or
    5. Suspension of the Bidder from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.
  1. ETHICS IN PUBLIC CONTRACTING

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

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

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

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

* 1. DEVIATIONS FROM THE REQUEST FOR QUALIFICATIONS

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

* 1. BID PREPARATION COSTS

The State shall not incur any liability for any costs incurred by Bidders in replying to this RFQ, including any activity related to submitting quotes in response to this RFQ.

* 1. AWARD

All purchases, leases, or contracts which are based on competitive proposals will be awarded according to the provisions in the Request for Qualification. The State reserves the right to reject any or all proposals, wholly or in part, or to award to multiple Bidders in whole or in part, and at its discretion, may withdraw or amend the Request for Qualification at any time. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the proposal, and do not improve the Bidder’s competitive position. All awards will be made in a manner deemed in the best interest of the State. The Request for Qualification does not commit the State to award a contract. If, in the opinion of the State, revisions or amendments will require substantive changes in proposals, the due date may be extended.

By submitting a proposal in response to this Request for Qualification, the Bidder grants to the State the right to contact or arrange a visit in person with any or all of the Bidder’s clients.

Once intent to award decision has been determined, it will be posted to the Internet at:

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

Grievance and protest procedure is available on the Internet at:

<http://das.nebraska.gov/materiel/purchase_bureau/docs/vendors/protest/ProtestGrievanceProcedureForVendors.pdf>

Any protests must be filed by a vendor within ten (10) business days after the intent to award decision is posted to the Internet.

1. TERMS AND CONDITIONS

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

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

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

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

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| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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The contract resulting from this RFQ shall incorporate the following documents:

* + 1. Request for Qualification and Addenda;
    2. Amendments to the RFQ;
    3. Questions and Answers;
    4. Contractor’s proposal (RFQ and properly submitted documents);
    5. The executed Contract; and,
    6. Amendments 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 RFQ and any Questions and Answers, 4) the original RFQ document and any Addenda, 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.

* 1. NOTIFICATION

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| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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Contractor shall identify the contract manager who shall serve as the point of contact for the executed contract. Contractor will communicate with NDOL’s designated representatives regarding specific matters as outlined in this RFQ.

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 three (3) calendar days following deposit in the mail.

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| --- | --- |
| Name of Contract Manager | Office of General Counsel |
| Contractor | Nebraska Department of Labor |
| Street Address | 550 S. 16th Street, PO Box 94600 |
| City, State, Zip | Lincoln, NE 68509 |

* 1. GOVERNING LAW (Statutory)

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| Accept (Initial) | NOTES/COMMENTS: |
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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.

* 1. BEGINNING OF WORK

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| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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The Bidder shall not commence any billable work until a valid contract has been fully executed by NDOL and the successful Contractor. The Contractor will be notified in writing when work may begin.

* 1. CHANGE ORDERS

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| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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NDOL and the Contractor, upon the written agreement, may make changes to the contract within the general scope of the RFQ. Changes may involve specifications, the quantity of work or such other items as NDOL 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. NDOL 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 NDOL, 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.

* 1. NOTICE OF POTENTIAL CONTRACTOR BREACH

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| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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If Contractor breaches the contract or anticipates breaching the contract, the Contractor shall immediately give written notice to NDOL. 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. NDOL may, in its discretion, temporarily or permanently waive the breach. By granting a waiver, NDOL 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.

* 1. BREACH

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| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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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, NDOL may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

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

* 1. NON-WAIVER OF BREACH

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| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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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.

* 1. SEVERABILITY

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| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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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.

* 1. INDEMNIFICATION

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| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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* + 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.

* + 1. **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, NDOL gives the Contractor prompt notice in writing of the claim. The Contractor may not settle any infringement claim that will affect NDOL’s use of the Licensed Software without NDOL’s prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the NDOL’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 RFQ.

* + 1. **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.

* + 1. **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.

* + 1. 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.
  1. ATTORNEY'S FEES

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| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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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 order by the court, including attorney's fees and costs, if the other Party prevails.

* 1. ASSIGNMENT, SALE, OR MERGER

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| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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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.

* 1. CONTRACTING WITH OTHER NEBRASKA POLITICAL SUB-DIVISIONS

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| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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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 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.

* 1. FORCE MAJEURE

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| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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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.

* 1. CONFIDENTIALITY

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| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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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.

* 1. EARLY TERMINATION

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| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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The contract may be terminated as follows:

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

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| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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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 Contactor, person or entity in the assumption of any or all of the obligations of this contract;
    5. Cooperate with any successor Contactor, person or entity with the transfer of information or data related to this contract;
    6. Return or vacate any state owned real or personal property; and,
    7. Return all data in a mutually acceptable format and manner.

Nothing in this Section should be construed to require the 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.

1. CONTRACTOR DUTIES
   1. INDEPENDENT CONTRACTOR / OBLIGATIONS

|  |  |  |  |
| --- | --- | --- | --- |
| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ 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 NDOL. Replacement of these personnel, if approved by NDOL, 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; and
    5. Determining the hours to be worked and the duties to be performed by the Contractor’s employees.
    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 Bidder’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 NDOL.

NDOL 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.

* 1. EMPLOYEE WORK ELIGIBILITY STATUS

|  |  |  |  |
| --- | --- | --- | --- |
| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ 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>

The completed United States Attestation Form should be submitted with the RFQ response.

* + 1. 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.

* + 1. 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.
  1. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Statutory)

|  |  |
| --- | --- |
| Accept (Initial) | NOTES/COMMENTS: |
|  |  |

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 services to be covered by any contract resulting from this RFQ.

* 1. COOPERATION WITH OTHER CONTRACTORS

|  |  |  |  |
| --- | --- | --- | --- |
| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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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.

* 1. PERMITS, REGULATIONS, LAWS

|  |  |  |  |
| --- | --- | --- | --- |
| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ 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.

* 1. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES

|  |  |  |  |
| --- | --- | --- | --- |
| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ 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.

* 1. INSURANCE REQUIREMENTS

|  |  |  |  |
| --- | --- | --- | --- |
| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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The Contractor shall throughout the term of the contract maintain insurance as specified herein and provide NDOL 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 NDOL that the Contractor has verified that each subcontractor has the required coverage; or,
    3. Provide NDOL 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 NDOL 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 (five) (5) 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 (five) (5) 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 contactors’ 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.

* + 1. **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 of Nebraska and the Nebraska Department of Labor, 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.

* + 1. **PROFESSIONAL LIABILITY INSURANCE**

The Contractor shall take out and maintain professional liability insurance (errors and omissions) for all of the Contractor’s 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 such professional liability insurance. The amounts of such insurance shall not be less than the limits stated hereinafter.

* + 1. **INSURANCE COVERAGE AMOUNTS REQUIRED**

[SEE INSURANCE AMOUNT REQUIREMENTS ON FOLLOWING PAGE]

|  |  |  |
| --- | --- | --- |
| COMMERCIAL GENERAL LIABILITY | | |
| General Aggregate | $2,000,000 |
| Products/Completed Operations Aggregate | $2,000,000 |
| Personal/Advertising Injury | $1,000,000 per occurrence |
| Bodily Injury/Property Damage | $1,000,000 per occurrence |
| Medical Payments | $10,000 any one person |
| Damage to Rented Premises | $100,000 each occurrence |
| Contractual | Included |
| Independent Contractors | Included |
| Abuse & Molestation | Included |
| WORKER’S COMPENSATION | | |
| Employers Liability Limits | $500K/$500K/$500K |
| Statutory Limits- All States | Statutory - State of Nebraska |
| USL&H Endorsement | Statutory |
| Voluntary Compensation | Statutory |
| COMMERCIAL AUTOMOBILE LIABILITY | | |
| Bodily Injury/Property Damage | $1,000,000 combined single limit |
| Include All Owned, Hired & Non-Owned Automobile liability | Included |
| Motor Carrier Act Endorsement | Where Applicable |
| PROFESSIONAL LIABILITY | | |
| All Other Professional Liability (Errors & Omissions) | $1,000,000 Per Claim / Aggregate |
| MANDATORY COI SUBROGATION WAIVER LANGUAGE | | |
| “Workers’ Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska.” | | |
| MANDATORY COI LIABILITY WAIVER LANGUAGE | | |
| “Commercial General Liability & Commercial Automobile Liability policies shall name the State of Nebraska as an Additional Insured and the policies shall be primary and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory as additionally insured.” | | |

If the mandatory COI subrogation waiver language or mandatory COI liability waiver language on the COI states that the waiver is subject to, condition upon, or otherwise limit by the insurance policy, a copy of the relevant sections of the policy must be submitted with the COI so the State can review the limitations imposed by the insurance policy.

* + 1. **EVIDENCE OF COVERAGE**

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

Nebraska Department of Labor

Attn: Denise Schroder

550 S. 16th Street

PO Box 94600

Lincoln, NE 68509

These certificates or the cover sheet shall reference the RFQ 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.

* + 1. **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.

* 1. ANTITRUST

|  |  |  |  |
| --- | --- | --- | --- |
| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ 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.

* 1. CONFLICT OF INTEREST

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

By submitting a proposal, Bidder certifies that there does not now exist a relationship between the Bidder and any person or entity which is or gives the appearance of a conflict of interest related to this RFQ or project.

The Bidder certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder or which creates an actual or an appearance of conflict of interest.

The Bidder certifies that it will not knowingly employ any individual known by Bidder to have a conflict of interest.

* 1. STATE PROPERTY

|  |  |  |  |
| --- | --- | --- | --- |
| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ 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.

* 1. SITE RULES AND REGULATIONS

|  |  |  |  |
| --- | --- | --- | --- |
| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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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.

* 1. ADVERTISING

|  |  |  |  |
| --- | --- | --- | --- |
| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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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 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.

* 1. NEBRASKA TECHNOLOGY ACCESS STANDARDS (Statutory)

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| --- | --- |
| Accept (Initial) | NOTES/COMMENTS: |
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Contractor shall review the Nebraska Technology Access Standards, found at <http://nitc.nebraska.gov/standards/2-201.html> and ensure that products and/or services provided under the contract are in compliance or will comply with the applicable standards to the greatest degree possible. In the event such standards change during the Contractor’s performance, the State may create an amendment to the contract to request the contract comply with the changed standard at a cost mutually acceptable to the parties.

* 1. DISASTER RECOVERY/BACK UP PLAN

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| --- | --- | --- | --- |
| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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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 services as specified under the specifications in the contract in the event of a disaster.

* 1. DRUG POLICY

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| --- | --- | --- | --- |
| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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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.

1. PAYMENT
   1. PROHIBITION AGAINST ADVANCE PAYMENT (Statutory)

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| --- | --- |
| Accept (Initial) | NOTES/COMMENTS: |
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Payments shall not be made until contractual deliverable(s) are received and accepted by NDOL.

* 1. TAXES (Statutory)

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| --- | --- |
| Accept (Initial) | NOTES/COMMENTS: |
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The State is not required to pay taxes and assumes no such liability as a result of this solicitation. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

* 1. INVOICES

|  |  |  |  |
| --- | --- | --- | --- |
| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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Invoices for payments must be submitted by the Contractor to NDOLby email to [denise.schroder@nebraska.gov](mailto:denise.schroder@nebraska.gov) with sufficient detail to support payment. Invoices may be verified by NDOL with the NDOL Safety Division prior to payment. The terms and conditions included in the Contractor’s invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

* 1. INSPECTION AND APPROVAL

|  |  |  |  |
| --- | --- | --- | --- |
| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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Final inspection and approval of all work required under the contract shall be performed by the designated State officials.

The State of Nebraska 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.

* 1. PAYMENT

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| --- | --- | --- | --- |
| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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State will render payment to Contractor when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the Contractor as solely determined by the State. (Neb. Rev. Stat. Section 73-506(1))  Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408).  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 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.

* 1. LATE PAYMENT (Statutory)

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| --- | --- |
| Accept (Initial) | NOTES/COMMENTS: |
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The Contractor may charge NDOL interest for late payment in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408).

* 1. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS

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

The State’s obligation to pay amounts due on the Contract for 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.

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

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| --- | --- | --- | --- |
| Accept (Initial) | Reject (Initial) | Reject & Provide Alternative within RFQ Response (Initial) | NOTES/COMMENTS: |
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The State shall have the right to audit the Contractor’s performance of this contract upon a 30 days’ written notice. Contractor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable the State to audit the contract. 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.

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 (.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 days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

1. PROJECT DESCRIPTION

NDOL seeks to prequalify a pool of Contractors able to perform Amusement Ride inspections. The inspections will take place on an as needed basis, on rides located in, or brought into, the State of Nebraska.

NDOL has responsibility for administration of the Nebraska Amusement Ride Act, found in Neb. Rev. Stat. §§ 48-1801 through 48-1820 (Act). The Act requires that each Amusement Ride be inspected prior to being originally put into operation for public use within the state, and at least once every year after such ride is put into operation. Following testing and inspection, Amusement Rides may only be operated after a valid permit is issued by NDOL. All Amusement Rides operating in the State of Nebraska must be in compliance with the Act and Title 228 of the Nebraska Administrative Code (Regulations).

The process for obtaining a permit involves submission of an application for permit to NDOL, inspection, presentation of proof of liability insurance, and payment to NDOL of the required fees. Permits are valid through December 31st of the year in which the inspection is performed.

The requirements for submission of an application for an Amusement Ride permit are outlined in NDOL’s 2018 Permit Guide available on NDOL’s website: <https://dol.nebraska.gov/Safety/AmusementRideInspections/Overview>.

NDOL estimates that there will be applications for permits for approximately 400 rides (at approximately 40 locations) to be operated within the State of Nebraska annually. These rides include those that are installed at a permanent location, and those that are transported around the state to various locations (e.g. fairs, carnivals, and festivals). Completion of inspections may involve travel across the state, as inspections will need to be performed in both urban and rural areas of Nebraska.

NDOL also has the authority to inspect Amusement Rides at any time, without notice, when an Amusement Ride is operating in the state. NDOL may also inspect an Amusement Ride following an accident.

NDOL charges a $130 inspection fee for each ride, and a $50 permit charge, for a total of $180 dollars per ride. Payment is made to NDOL using check or money order, no cash is accepted by NDOL. Contractors will be required to arrange inspections in conjunction with NDOL, to allow for NDOL to be present during, or following inspection to receive payment of inspection and permitting fees, and issue permits for rides that pass inspection. Fees collected must be credited to the Mechanical Safety Inspection Fund, as required by the Act and Regulations.

Contractor will complete all Amusement Ride inspections requested by NDOL in accordance with the Act, Regulations, and the National Association of Amusement Ride Safety Officials inspection standards. If requested by NDOL, Contractor will also verify proof of liability insurance presented by Amusement Ride owners.

Contractor will complete NDOL’s Amusement Ride Inspection Checklist form, and submit one copy to the Amusement Ride owner/operator (as appropriate), and one copy to NDOL. NDOL must receive the completed Amusement Ride Inspection Checklist form prior to issuing a permit for the Amusement Ride.

NDOL requires that firms submit a response to this RFQ for NDOL approval, in order to be included in the list of prequalified inspectors.

1. SCOPE OF WORK

NDOL will receive applications for permits for Amusement Rides through regular mail (or email) with required attachments. NDOL will then identify locations, approximate dates, and estimated number of rides that will need to be inspected.

NDOL will request a quote from the pool of qualified Contractors for each inspection, or group of inspections, as needed. The Contractor will be required to quote project-specific inspections and submit a formal quote within a minimum of three (3) working days or as required on the quote. The total inspection cost quoted must include all expenses, including, but not limited to, travel costs.

Contractor will complete inspections of Amusement Rides under these circumstances, upon request of NDOL.

1. PROPOSAL INSTRUCTIONS

As indicated in Section, II. Part I. Mandatory Requirements, in addition to other Mandatory Requirements, Bidders must provide the following information in response to this Request for Qualification.

* 1. CORPORATE OVERVIEW

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

* + 1. **BIDDER IDENTIFICATION AND INFORMATION**

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

* + 1. **INSPECTOR CERTIFICATIONS**
       1. Inspectors must have at least a NAARSO Level II Certification. Inspectors with NAARSO Level I Certification will only be permitted to perform inspections, if there will be a NAARSO Level II Certification present to supervise performance of inspections.
       2. Contractor must provide evidence of level of NAARSO Certification held by each individual that will be performing inspections.
    2. **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 Bidder must describe the circumstances of such change and indicate when the change will likely occur. Any change of ownership to an awarded vendor(s) will require notification to the State.

* + 1. **OFFICE LOCATION**

The Bidder’s office location responsible for performance pursuant to an award of a contract with the State of Nebraska must be identified.

* + 1. **CONTRACT PERFORMANCE**

If the Bidder or any proposed Subcontractor has had a contract terminated for default during the past three (3) 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 Bidder's non-performance or poor performance, and the issue was either not litigated due to inaction on the part of the Bidder or litigated and such litigation determined the Bidder to be in default.

It is mandatory that the Bidder submit full details of all termination for default experienced during the past three (3) years, including the other party's name, address and telephone number. The response to this section must present the Bidder’s position on the matter. The State will evaluate the facts and will score the Bidder’s proposal accordingly. If no such termination for default has been experienced by the Bidder in the past three (3) years, so declare.

If at any time during the past three (3) years, the Bidder 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.

* + 1. **SUMMARY OF BIDDER’S CORPORATE EXPERIENCE**

The Bidder shall provide the following information.

* + - 1. Provide narrative descriptions to include the following:
         1. The time period of the project;
         2. The scheduled and actual completion dates;
         3. The Contractor’s responsibilities;
         4. 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
         5. Each project description shall identify whether the work was performed as the prime Contractor or as a Subcontractor. If a Bidder performed as the prime Contractor, the description must provide the originally scheduled completion date and budget, as well as the actual (or currently planned) completion date and actual (or currently planned) budget.
      2. Contractor and Subcontractor(s) experience must be listed separately. Narrative descriptions submitted for Subcontractors must be specifically identified as Subcontractor projects.
      3. If the work was performed as a Subcontractor, the narrative description shall identify the same information as requested for the Contractors above. In addition, Subcontractors shall identify what share of contract costs, project responsibilities, and time period were performed as a Subcontractor.
    1. **SUBCONTRACTORS**

If the Bidder intends to Subcontract any part of its performance hereunder, the Bidder must provide:

* + - 1. Name, address, and telephone number of the Subcontractor(s);
      2. Specific tasks for each Subcontractor(s);
      3. Percentage of performance hours intended for each Subcontract;
      4. Total percentage of Subcontractor(s) performance hours; and
      5. Documentation of NAARSO Certification Level for all Subcontractors.
    1. **FINANCIAL STATEMENTS**

The Bidder should provide Bidder’s financial statements. If publicly held, the Bidder 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 Bidder’s financial or banking organization.

If the Bidder 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 Bidder 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.

NDOL may elect to use a third party to conduct credit checks.

* + 1. **REFERENCES**

Provide three (3) professional recommendations including:

* + - 1. Company Name
      2. Contact Person Name and Title
      3. Phone number; and
      4. Email address.

# Form A Bidder Contact Sheet

Request for Qualification Number 5827 Z1

The Bidder Contact Sheet should be completed and submitted with each response to this Request for Qualification. This is intended to provide the State with information on the Bidder’s name and address, and the specific person(s) who are responsible for preparation of the Bidder’s response. Each Bidder shall also designate a specific contact person who will be responsible for responding to the State if any clarifications of the Bidder’s response should become necessary. This will also be the person who the State contacts to set up a presentation/demonstration, if required.

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

Each Bidder shall also designate a specific contact person who will be responsible for responding to the State if any clarifications of the Bidder’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 | |
| Bidder Name: |  |
| Bidder Address: |  |
| Contact Person & Title: |  |
| E-mail Address: |  |
| Telephone Number (Office): |  |
| Telephone Number (Cellular): |  |
| Fax Number: |  |

# Form B Example Request for Quote

*(NOTE: THIS IS ONLY A SAMPLE – NO ATTACHMENTS ARE PROVIDED FOR THE SAMPLE)*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **STATE OF NEBRASKA DEPARTMENT OF LABOR**  **AMUSEMENT RIDE INSPECTION SERVICES - REQUEST FOR QUOTE** | | | | |
| DATE: |  | | CONTRACT #: |  |
| CONTRACT MANAGER & PHONE INFO: | Denise Schroder, 402-471-9944  denise.schroder@nebraska.gov | |  | |
| Description of Work Requested: Completion of Amusement Ride Inspections in Nebraska in accordance with the Contract resulting from RFQ 5827 Z1. | | | | |
| Onsite NDOL Contact Name: | |  | | |
| Onsite NDOL Contact Cell Phone #: | |  | | |

Inspection for which quotes are sought are numbered and listed below. Please see the attachments for each numbered project/site for additional information (attachments may include Permit Application(s) and Route Listing). For each inspection project/site in which a quote is being submitted, please review attached information, and complete the inspection cost quote. **The price quoted must be the total, fixed price for each site, including all expenses.**

**Project/Site #1**

Date of Event

Location

Approximate Number of Rides

**Total Inspection Cost $**

**Project/Site #2**

Date of Event

Location

Approximate Number of Rides

**Total Inspection Cost $**

**If you wish to submit a quote for performance of all project/site inspections identified on this quote. Please indicate the total, fixed cost of quote below, include all expenses.**

**TOTAL COST QUOTE $**

By submitting this Quote, Contractor is agreeing to comply with all requirements contained in the Contract resulting from RFQ 5827 Z1 issued by NDOL for Amusement Ride Inspection Services.

|  |  |
| --- | --- |
| NDOL: | Contractor: |
| Signature: | Signature: |
| Printed Name: Denise Schroder | Printed Name: |
| Title: Business Manager | Title: |
| Date: | Date: |
| A copy of the signed Request for Quote form should be attached to the invoice when submitted for payment. | |

# Form C Contractor’s Responsibilities

Request for Qualification Number 5827 Z1

**Bidder shall respond to each of the following statements.**  A “yes” response means the Bidder guarantees they can meet the requirement. If the Bidder does not indicate a “yes”, the Bidder may not be considered to be in the pool of Contractors.

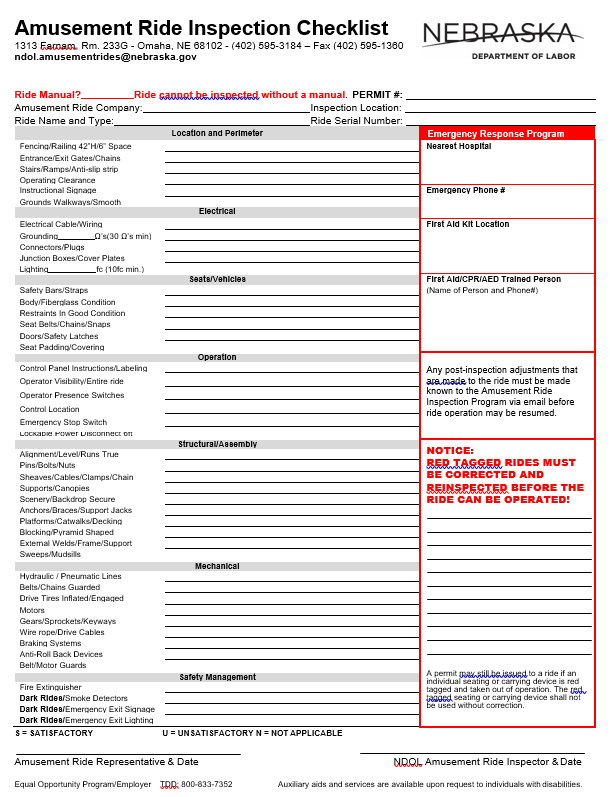
|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **GENERAL CONTRACTOR REQUIREMENTS** | | **YES** | **NO** | **NO & PROVIDE ALTERNATIVE** |
| 1. | The Contractor shall be capable of providing project management for more than one (1) inspection project simultaneously. |  |  |  |
| 2. | Contractor’s vehicle drivers shall hold a valid driver’s license for types of vehicles operated which may include a CDL license. |  |  |  |
| 3. | Contractor’s Designated Manager shall be required to provide a timeline for completion of each inspection project, and total coordination of the inspection process. |  |  |  |
| 4. | The Contractor will be required to submit pricing on the Request for Quote. The Request for Quote will describe the general scope of work required. The Request for Quote may be emailed to [denise.schroder@nebraska.gov](mailto:denise.schroder@nebraska.gov). The Request for Quote and Purchase Order will be returned to the Contractor upon acceptance and signature by NDOL. The Contractor guarantees not to exceed the amount on the Purchase Order. A copy of the Purchase Order and approved quote should be attached to the invoice when submitted for payment. |  |  |  |
| 5. | The Contractor shall ensure there is communication between all individuals associated with each inspection (Amusement Ride owner/operator, Contractor, and NDOL). |  |  |  |
| 6. | The Contractor shall provide 48 hours (two (2) business days) prior notification to the NDOL Safety Division Director should the Contractor be unable to report to the inspection site at the time and date specified. |  |  |  |
| 7. | The Contractor shall use its best efforts to ensure that its employees, agents and subcontractors comply with any site rules and regulations while performing inspections. |  |  |  |
| 8. | Contractor’s personnel may be subject to background checks. |  |  |  |
| 9. | The Contractor shall not require physical participation of State of Nebraska personnel in the performing inspections. |  |  |  |
| 10. | The Contractor shall not require the use of State of Nebraska equipment, such as tools, ladders, carts, etc. |  |  |  |
| 11. | The Contractor’s personnel may be required to wear ID Cards issued by NDOL. |  |  |  |
| 12. | The Contractor’s personnel must wear some identification displaying the Contractor’s name (such as a company uniform, badge, T-shirt) to identify employees as authorized Amusement Ride inspectors. |  |  |  |
| 13. | The Contractor shall notify the NDOL Safety Division Director immediately of any damage or injury to the inspection site, Amusement Rides, or personnel involved. |  |  |  |
| 14. | The Contractor shall complete Amusement Ride Inspection Checklist forms provided by NDOL for each inspection completed. The Contractor shall be required at the end of each inspection project to submit to a detailed listing of inspections completed, along with inspection checklist forms. |  |  |  |
| 15. | Contractor will ensure scheduling of Amusement Ride inspections in conjunction with the NDOL Safety Division Director to ensure NDOL can issue permits in conjunction with completion of inspections. |  |  |  |
| 16. | The Contractor shall use only NAARSO Certified Inspectors in performing inspections required under this RFQ, and such inspectors shall remain his/her employees subject to his/her direction at all times. NAARSO Level I Certified Inspectors may only inspect if there is a NAARSO Level II present to supervise. |  |  |  |
| 17. | In the event an Amusement Ride does not pass inspection, is denied a permit for safety reasons, or is otherwise suspended from operation, the Contractor shall immediately notify the NDOL Safety Division Director of such determination being made. Operation of such an Amusement Ride will not resume until the hazardous or unsafe condition is corrected to the satisfaction of the Contractor (and, if requested by NDOL, the Commissioner of NDOL). |  |  |  |
| 18. | It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing the relationship of partners between the parties hereto. The Contractor represents that he/she has, or will secure at his/her own expense, all personnel required to perform the services under this agreement. The Contractor or other persons engaged in work or services required by the Contractor under this agreement shall have no contractual relationship with the State, and shall not be considered employees of the State. All claims on behalf of any person arising out of employment or alleged employment (including without limits claims of discrimination against the Contractor, its officers or its agents) shall in no way be the responsibility of the State. |  |  |  |
| 19. | Contractor will only inspect Amusement Rides that were included on an application for Amusement Ride permit submitted to NDOL, and for which NDOL has requested inspection. |  |  |  |

NDOL Safety Division Director: Chris Cantrell

Phone Number: 402-471-4721

Email: [christopher.cantrell@nebraska.gov](mailto:christopher.cantrell@nebraska.gov)

# Form D Amusement Ride Inspection Checklist



# REQUEST FOR QUALIFICATIONS FOR CONTRACTUAL SERVICES FORM

|  |
| --- |
| BIDDER MUST COMPLETE THE FOLLOWING |

By signing this Request for Qualifications for Contractual Services form, the Bidder guarantees compliance with the procedures stated in this Request for Qualifications, and agrees to the terms and conditions unless otherwise indicated in writing and certifies that Bidder 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 RFQ.

\_\_\_\_\_\_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: |  |