

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

<b>SOLICITATION NUMBER</b>	<b>RELEASE DATE</b>
R411-24	October 15, 2024
<b>OPENING DATE AND TIME</b>	<b>PROCUREMENT CONTACT</b>
November 4, 2024, 3:00 p.m. Central Time	Dana Smith

**PLEASE READ CAREFULLY!**

**SCOPE OF SERVICE**

The State of Nebraska (State), Department of Transportation is issuing this solicitation for a service contract for the purpose of selecting a qualified bidder to provide Right of Way (ROW) Mowing Services. A more detailed description can be found in Section V. The resulting contract may not be an exclusive contract as the State reserves the right to contract for the same or similar services from other sources now or in the future.

The term of the contract will be one (1) year commencing upon execution of the contract by the State and the Vendor (Parties). The Contract includes the option to renew for four (4) additional one (1) year periods upon mutual agreement of the Parties. The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Parties.

In the event that a contract with the awarded bidder(s) is cancelled or in the event that the State needs additional Vendors to supply the solicited services, this solicitation may be used to procure the solicited services for up to eighteen (18) months from the date the Intent to Award is posted, provided that 1) the solicited goods or services will be provided by a bidder (or a successive owner) who submitted a response pursuant to this solicitation, 2) the bidder's solicitation response was evaluated, and 3) the bidder will honor the bidder's original solicitation response, including the proposed cost, allowing for any price increases that would have otherwise been allowed if the bidder would have received the initial award.

ALL INFORMATION PERTINENT TO THIS SOLICITATION CAN BE FOUND ON THE INTERNET AT <https://dot.nebraska.gov/business-center/business-opp/pre-maint/> .

**In accordance with Nebraska State Statutes 39-1351 & 39-1352, and Title 409 of the Nebraska Rules and Regulations; any person desiring to submit to the department a bid for the performance of this contract shall apply to the Department for prequalification not later than 5 days before the bid opening date of the Request for Proposal.**

**IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602.04, State contracts in effect as of January 1, 2014, and contracts entered into thereafter, must be posted to a public website. The resulting contract, the Solicitation, and the awarded solicitation response will be posted to a public website managed by DAS, which can be found at <http://statecontracts.nebraska.gov> and [https://www.nebraska.gov/das/materiel/purchasing/contract\\_search/index.php](https://www.nebraska.gov/das/materiel/purchasing/contract_search/index.php).

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

These postings will include the entire solicitation response. Bidder must request that proprietary information be excluded from the posting. The bidder must identify the proprietary information, mark the proprietary information according to state law, and submit the proprietary information in a separate file named conspicuously as "PROPRIETARY INFORMATION". The bidder should 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 SOLICITATION IS PROPRIETARY. COST SHEETS WILL NOT BE CONSIDERED PROPRIETARY AND ARE A PUBLIC RECORD IN THE STATE OF NEBRASKA.** The State will determine, in its sole discretion, if the disclosure of the information designated by the Bidder as proprietary would 1) give advantage to business competitors and 2) serve no public purpose. The Bidder will be notified of the State's decision. Absent a determination by the State that the information may be withheld pursuant to Neb. Rev. Stat. § 84-712.05, the State will consider all information a public record subject to disclosure.

If the State determines it is required to release withheld 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, or solicitation response for any purpose, and to authorize others to use the documents. Any individual or entity awarded a contract, or who submits a solicitation response, specifically waives any copyright or other protection the contract, or solicitation response may have; and acknowledges that they have the ability and authority to enter into such waiver. This reservation and waiver are a prerequisite for submitting a solicitation response, and award of a contract. Failure to agree to the reservation and waiver will result in the solicitation response being found non-responsive and rejected.

Any entity awarded a contract or submitting a solicitation response 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 solicitation response, awards, and other documents.

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## GLOSSARY OF TERMS

**Addendum:** A written correction or alteration to a document during the solicitation process (e.g., Questions and Answers, Revised Schedule of Events, Addendum to Contract Award).

**Agency:** All officers of the state, departments, bureaus, boards, commissions, councils, and institutions receiving legislative appropriations.

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

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

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

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

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

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

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

**Bid:** See Solicitation Response.

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

**Bid Opening:** The process of opening correctly submitted solicitation responses at the time and place specified in the written solicitation and in the presence of any bidder who wishes to attend.

**Bidder:** A Vendor who submits a Solicitation Response.

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

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

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

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

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

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

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

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

**Confidential Information:** See Proprietary Information.

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

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

**Contract Award:** Document that officially awards a contract to a bidder(s) as the result of a competitive solicitation or a vendor(s) in a contract that qualifies for an exception or exemption from the competitive bidding requirements of the State Procurement Act.

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

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

**Contractor:** See Vendor.

**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.

**Cost Sheet:** Commodities or Services specifically listed within the solicitation for evaluation.

**Customer Service:** The process of ensuring customer satisfaction by providing assistance and advice on those commodities or services provided by a Vendor.

**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.

**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".

**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 Vendor" and "Installation by State" as found in the solicitation or contract are completed.

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

**Late Solicitation Response:** A solicitation response received after the Opening Date and Time.

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

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

**Must:** See Shall.

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

**Non-Responsive Solicitation Response:** Any solicitation response that does not comply with the requirements of the solicitation or cannot be evaluated against the other solicitation responses.

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

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

**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 Vendor fulfills any and all obligations under the contract.

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

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

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

**Proposal:** See Solicitation Response.

**Proprietary Information:** Trade secrets, academic and scientific research work that is in progress and unpublished or other information that if released would give advantage to business competitors and serve 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 the solicitation or resultant contract under SPB's Protest Policy.

**Quote:** See Solicitation Response.

**Release Date:** The date of public release of the solicitation.

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

**Request for Proposal (RFP):** See Solicitation.

**Responsible Bidder:** A Vendor 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 Vendor who has submitted a solicitation response which conforms to all requirements of the solicitation.

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

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

**Solicitation:** A formal invitation to receive quotes in the form of a Request for Proposal or Invitation to Bid.

**Solicitation Response:** An offer, quote, bid, or proposal submitted by a Vendor in response to a Solicitation.

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

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

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

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

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

**Trademark:** A word, phrase, logo, or other graphic symbol used by a manufacturer or 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 with the State. or licensed to do so, who seeks to provide and contract for goods or services under the terms of a Solicitation and/or Contract.

**Will:** See Shall.

**Work Day:** See Business Day.

## ACRONYM LIST

**ARO** – After Receipt of Order

**ACH** – Automated Clearing House

**BAFO** – Best and Final Offer

**COI** – Certificate of Insurance

**NDOT** – Nebraska Department of Transportation

**NIGP** – National Institute for Governmental Purchasing

**PA** – Participating Addendum

**RFP** – Request for Proposal

**ROW** – Right of Way

INFORMATION ONLY

## I. PROCUREMENT PROCEDURE

### A. GENERAL INFORMATION

This solicitation is designed to solicit responses from qualified bidders who will be responsible for providing ROW Mowing Services at a competitive and reasonable cost.

Solicitation responses shall conform to all instructions, conditions, and requirements included in the solicitation. Prospective bidders are expected to carefully examine all documents, schedules, and requirements in this solicitation, and respond to each requirement in the format prescribed. Solicitation responses may be found non-responsive if they do not conform to the solicitation.

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

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

**RFP Number:** R411-24  
**Name:** Dana Smith  
**Agency:** Nebraska Department of Transportation  
Operations Division  
**Mailing Address:** PO Box 94759  
(USPS delivery) Lincoln, NE 68509-4759  
**Physical Address:** 5001 S. 14<sup>th</sup> Street  
(all other deliveries) Lincoln, NE 68512  
**Telephone:** (402) 479-4356  
**E-Mail:** [NDOT.ProcurementServices@nebraska.gov](mailto:NDOT.ProcurementServices@nebraska.gov)

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

The following exceptions to these restrictions are permitted:

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

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

### C. SCHEDULE OF EVENTS

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

Schedule of Events	
ACTIVITY	DATE/TIME
1. Release solicitation	October 15, 2024
2. Last day to submit written questions.	October 22, 2024
3. State responds to written questions through solicitation "Addendum" to be posted to the Internet at: <a href="https://dot.nebraska.gov/business-center/business-opp/pre-maint/">https://dot.nebraska.gov/business-center/business-opp/pre-maint/</a>	October 28, 2024
4. Proposal Opening Location: Nebraska Department of Transportation Operations Division 5001 So. 14 <sup>th</sup> Street Lincoln, NE 68512	November 4, 2024 3:00 PM Central Time
5. Review for conformance to solicitation requirements	November 5, 2024
6. Evaluation period	November 6, 2024
7. Post "Notification of Intent to Award" to Internet at: <a href="https://dot.nebraska.gov/business-center/business-opp/pre-maint/">https://dot.nebraska.gov/business-center/business-opp/pre-maint/</a>	November 8, 2024
8. Contract finalization period	November 12-15, 2024
9. Contract award	November 18, 2024
10. Vendor start date	April 1, 2025

**D. WRITTEN QUESTIONS AND ANSWERS**

Questions regarding the meaning or interpretation of any solicitation provision must be submitted in writing to the Nebraska Department of Transportation and clearly marked "Solicitation Number R411-24; ROW Mowing Services Questions". The POC is not obligated to respond to questions that are received late per the Schedule of Events.

Bidders should submit questions for any items upon which assumptions may be made when preparing a response to the solicitation. Any solicitation response containing assumptions may be deemed non-responsive and may be rejected by the State. Solicitation responses will be evaluated without consideration of any known or unknown assumptions of a bidder. The contract will not incorporate any known or unknown assumptions of a bidder.

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

RFP Section Reference	RFP Page Number	Question

Written answers will be posted at <https://dot.nebraska.gov/business-center/business-opp/pre-maint/> per the Schedule of Events.

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

All bidders must be authorized to transact business in the State of Nebraska and comply with all Nebraska Secretary of State Registration requirements. The bidder who is the recipient of an Intent to Award may be required to certify that it has complied and produce a true and exact copy of its current (within ninety (90) calendar days of the intent to award) Certificate or Letter of Good Standing, or in the case of a sole proprietorship, provide written documentation of sole proprietorship and complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at: <https://das.nebraska.gov/materiel/docs/pdf/Individual%20or%20Sole%20Proprietor%20United%20States%20Attestation%20Form%20English%20and%20Spanish.pdf> This should be accomplished prior to execution of the contract.

**F. ETHICS IN PUBLIC CONTRACTING**

The State reserves the right to reject solicitation responses, withdraw an intent to award or award, or terminate a contract if an ethical violation has been committed, which includes, but is 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. Utilizing 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 solicitation response on behalf of another Party or entity; and
5. Colluding with any person or entity to influence the bidding process, submit sham solicitation responses, preclude bidding, fix pricing or costs, create an unfair advantage, subvert the solicitation response, or prejudice the State.

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

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

**G. DEVIATIONS FROM THE SOLICITATION**

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

**H. SUBMISSION OF SOLICITATION RESPONSES**

Bidders should submit one (1) solicitation response marked on the first page: "ORIGINAL". If multiple solicitation responses are submitted, the State will retain one (1) copy marked "ORIGINAL" and destroy the other copies. The bidder is solely responsible for any variance between the copies submitted. Solicitation responses must reference the solicitation number and be sent to the specified address. Please note that the address label should appear as specified in Section I B. on the face of each container or bidder's solicitation response packet. If a recipient phone number is required for delivery purposes, (402) 479-4356 should be used. The solicitation number should be included in all correspondence. The State will not furnish packaging and sealing materials.

The solicitation and cost sheet posted on the NDOT website are **informational and for viewing only**. Solicitation proposal forms including the State issued bid bond and bidding documents to be used for bidding purposes will only be provided via email to bidders who are currently prequalified to bid in accordance with Nebraska State Statutes 39-1351 & 39-1352, and Title 409 of the Nebraska Rules and Regulations. The "Request for Bidding Proposal Form" must be completed, signed, and submitted with the Nebraska Department of Transportations before 5:00 PM CDT on the day preceding the bid opening. The "Request for Bidding Proposal Form" is available at: <https://dot.nebraska.gov/business-center/business-opp/pre-maint/>.

It is the bidder's responsibility to ensure the required bid bond and solicitation response are received in separate but attached sealed envelopes or containers and submitted by the date and time indicated in the Schedule of Events. Sealed solicitations must be received in the Nebraska Department of Transportation by the date and time of the solicitation opening per the Schedule of Events. No late solicitation responses will be accepted.

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. The website can be found here: <https://dot.nebraska.gov/business-center/business-opp/pre-maint/>.

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

The "Contractual Agreement Form" must be signed manually in ink or by DocuSign and returned by the opening date and time along with the bidder's solicitation response and any other requirements as stated in this solicitation in order for the bidder's solicitation response to be evaluated.

By signing this Contractual Agreement Form, the bidder guarantees compliance with the provisions stated in this solicitation and agrees to the terms and conditions unless otherwise indicated in writing.

#### **I. SOLICITATION GUARANTEE BID BOND**

Bidders shall submit a bid bond with their solicitation response. The bid bond must be in the amount of five percent (5%) of their total bid price. The bid bond shall be executed on the Department bid bond form by corporations authorized to contract as a surety in the State of Nebraska. An original Department bid bond form may be requested from the Department by contacting the Operations Division at [NDOT.ProcurementServices@nebraska.gov](mailto:NDOT.ProcurementServices@nebraska.gov). Any alterations, conditions or limitations added to the Department's bid bond form will be unacceptable and cause the solicitation response not to be read. The bid bond will be released upon execution of the awarded contract (See Exhibit A: Contractor Prequalification).

**Option 1: The completed bid bond and solicitation response shall be placed in separate sealed envelopes, attached to each other, and furnished to the Department.** Any alterations, conditions, or limitations added to the Department's bid bond form will be unacceptable and cause the solicitation response not to be read.

**Option 2: (Annual Bid Bond) The Department at its discretion may allow a bidder to place an "Annual Bid Bond" on file with the Department. This bond would cover all projects on which the bidder bids on for a 12-month period shown in the bond. The bidder must indicate in the solicitation response to the Department that their "annual bid bond" applies to the submitted response. If the "annual bid bond" is applicable the bidder shall indicate this in writing on the bid bond envelope. The envelope containing the solicitation response shall be marked by the bidder to indicate its content. The annual bid bond shall be executed on the Department of Transportation' bid bond form, copies of which may be obtained from the Department.**

In the event the low bidder fails to comply with any requirement regarding the execution of the contract, the Department shall immediately be entitled to recover the full amount of the bid bond as liquidated damages.

#### **J. SOLICITATION PREPARATION COSTS**

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

#### **K. FAILURE TO COMPLY WITH SOLICITATION**

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

1. Rejection of a bidder's solicitation response,
2. Withdrawal of the Intent to Award,
3. Withdrawal of the Award,
4. Negative documentation regarding Vendor Performance,
5. Termination of the resulting contract,
6. Legal action; and
7. Suspension or Debarment 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.

#### **L. SOLICITATION RESPONSE CORRECTIONS**

A bidder may correct a mistake in a solicitation response prior to the time of opening by giving written notice to the State of intent to withdraw the solicitation response for modification or to withdraw the solicitation response completely.

Changing a solicitation response after opening may be permitted if the change is made to correct a minor error that does not affect price, quantity, quality, delivery, or contractual conditions. In case of a mathematical error in extension of price, unit price shall govern.

#### **M. LATE SOLICITATION RESPONSES**

Solicitation Responses received after the time and date of the opening will be considered late responses. Late responses will be considered non-responsive. The State is not responsible for responses that are late or lost regardless of cause or fault.

**N. BID OPENING**

The opening will consist of opening solicitation responses and announcing the names of bidders. Responses **WILL NOT** be available for viewing by those present at the opening. Responses will be posted to the Department’s website once an Intent to Award has been posted to the website. Once responses are opened, they become the property of the State of Nebraska and will not be returned.

**O. SOLICITATION REQUIREMENTS**

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

1. Original Contractual Agreement Form signed manually in ink or by DocuSign;
2. Clarity and responsiveness;
3. Completed Sections II thru IV; and
4. Completed Cost Sheet.

**P. EVALUATION OF SOLICITATION RESPONSES**

All proposals that are responsive to the Request for Proposal will be evaluated based on the following:

1. Cost Proposal

Neb. Rev. Stat. § 73-808 allows the State to consider a variety of factors, including, but not limited to, the quality of performance of previous contracts to be considered when evaluating responses to competitive solicitations in determining a responsible bidder. Information obtained from any Contract Compliance Request or any Contract Non-Compliance Notice (See Terms & Conditions, Section H) may be used in evaluating responses to solicitations for goods and services to determine the best value for the State.

Neb. Rev. Stat. § 73-107 allows for a preference for a resident disabled veteran or business located in a designated enterprise zone. When a state contract is to be awarded to the lowest responsible 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 (a) of this paragraph and (ii) the management and daily business operations of the business are controlled by one or more persons described in (a) of this paragraph. 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 solicitation response in accordance with Neb. Rev. Stat. § 73-107 and has so indicated on the Contractual Agreement Form under “Vendor 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.

**Q. BEST AND FINAL OFFER**

Each bidder should provide its best offer with their original solicitation response and should not expect the State to request a best and final offer (BAFO).

The State reserves the right to conduct more than one BAFO. If requested by the State, the BAFO must be submitted on the BAFO Cost Sheet and in accordance with the State’s instructions. Failure to submit a requested BAFO or failure to submit a BAFO in accordance with the State’s instructions may result in rejection of the bidder’s entire solicitation response. BAFOs may be scored and ranked by the Evaluation Committee.

**R. REFERENCE AND CREDIT CHECKS**

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

## S. AWARD

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

1. Amend the solicitation;
2. Extend the date and time of a solicitation;
3. Waive deviations or errors in the State's solicitation process and in bidder responses that are not material, do not compromise the solicitation process or a bidder's response, and do not improve a Vendor's competitive position;
4. Accept or reject a portion of or all of a solicitation response;
5. Accept or reject all responses;
6. Withdraw the solicitation;
7. Elect to re-release the solicitation;
8. Award single lines or multiple lines to one or more Vendors; or,
9. Award one or more all-inclusive contracts.

The State of Nebraska may consider, but is not limited to considering, one or more of the following award criteria:

1. Price,
2. Location,
3. Quality,
4. Delivery time,
5. Bidder qualifications and capabilities, and
6. State contract management requirements and/or costs.

The solicitation does not commit the State to award a contract. Once intent to award decision has been determined, it will be posted to the Internet at: <https://dot.nebraska.gov/business-center/business-opp/pre-maint/>

Any protests must be filed by a bidder within ten (10) business days after the intent to award decision is posted to the Internet. Grievance and protest procedure is available on the Internet at: [https://das.nebraska.gov/materiel/docs/NE\\_DAS\\_Materiel\\_Purchasing\\_Agency-SPB\\_Policy\\_23\\_07\\_Protest\\_Policy.pdf](https://das.nebraska.gov/materiel/docs/NE_DAS_Materiel_Purchasing_Agency-SPB_Policy_23_07_Protest_Policy.pdf)

## T. LUMP SUM OR "ALL OR NONE" SOLICITATION RESPONSES

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

**"LUMP SUM" OR "ALL OR NONE" RESPONSES SHOULD BE CLEARLY IDENTIFIED ON THE FIRST PAGE OF THE SOLICITATION AND COST SHEET (IF APPLICABLE)**

## U. REJECTION OF SOLICITATION RESPONSES

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

## V. PRICES & COST CLARIFICATION

Discount and Price provisions are discussed in Sections III.F and III.G. The State reserves the right to review all aspects of cost for reasonableness and realism as those terms are defined in (Neb. Rev. Stat. § 73-810 (1) (a) and (b) The State may request clarification of any solicitation where the cost component indicates a significant and unsupported deviation from industry standards or in areas where detailed pricing is required. Under Neb. Rev. Stat. § 73-810 (2), the State may reject a bid if the price is not reasonable or realistic.

**II. TERMS AND CONDITIONS**

Bidder should read the Terms and Conditions within this section and must initial either “Accept All Terms and Conditions Within Section as Written” or “Exceptions Taken to Terms and Conditions Within Section as Written” in the table below. If the bidder takes any exceptions, they must provide the following within the “Exceptions” field of the table below (Bidder may provide responses in separate attachment if multiple exceptions are taken):

1. The specific clause, including section reference, to which an exception has been taken;
2. An explanation of why the bidder took exception to the clause; and
3. Provide alternative language to the specific clause within the solicitation response.

By signing the solicitation, bidder agrees to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the solicitation response. 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 solicitation response. The State reserves the right to reject solicitation responses that attempt to substitute the bidder’s commercial contracts and/or documents for this solicitation.

Accept All Terms and Conditions Within Section as Written (Initial)	Exceptions Taken to Terms and Conditions Within Section as Written (Initial)	Exceptions: (Bidder must note the specific clause, including section reference, to which an exception has been taken, an explanation of why the bidder took exception to the clause, and provide alternative language to the specific clause within the solicitation response.)

The bidders should submit with their solicitation response 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 solicitation response 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 has been negotiated and agreed to, the Addendum to Contract Award shall be interpreted as follows:

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

**A. GENERAL**

1. The contract resulting from this Solicitation shall incorporate the following documents:
  - a. Solicitation, including any attachments and addenda;
  - b. Questions and Answers;
  - c. Bidder’s properly submitted solicitation response, including any terms and conditions or agreements submitted by the bidder;
  - d. Addendum to Contract Award (if applicable);and
  - e. Amendments to the Contract. (if applicable)

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) Addendums to the solicitation and any Questions and Answers, 4) the original solicitation document and any Addenda or attachments, and 5) the Vendor’s submitted solicitation response, including any terms and conditions or agreements that are accepted by the State.

Unless otherwise specifically agreed to in writing by the State, the State’s standard terms and conditions, as executed by the State, shall always control over any terms and conditions or agreements submitted or included by the Vendor.

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

**B. NOTIFICATION**

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

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

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

**C. BUYER'S REPRESENTATIVE**

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

**D. GOVERNING LAW (Nonnegotiable)**

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

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

**E. BEGINNING OF WORK & SUSPENSION OF SERVICES**

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

The State may, at any time and without advance notice, require the Vendor to suspend any or all performance or deliverables provided under this Contract. In the event of such suspension, the Contract Manager or POC, or their designee, will issue a written order to stop work. The written order will specify which activities are to be immediately suspended and the reason(s) for the suspension. Upon receipt of such order, the Vendor shall immediately comply with its terms and take all necessary steps to mitigate and eliminate the incurrence of costs allocable to the work affected by the order during the period of suspension. The suspended performance or deliverables may only resume when the State provides the Vendor with written notice that such performance or deliverables may resume, in whole or in part.

**F. AMENDMENT**

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

**G. CHANGE ORDERS OR SUBSTITUTIONS**

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

The Vendor 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 Vendor shall be determined in accordance with applicable unit prices if any, a pro-rated value, or through negotiations. The State shall not incur a price increase for changes that should have been included in the Vendor's solicitation response, were foreseeable, or result from difficulties with or failure of the Vendor's solicitation response or performance.

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

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

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

**H. RECORD OF VENDOR PERFORMANCE**

The State may document the vendor's performance, which may include, but is not limited to, the customer service provided by the vendor, the ability of the vendor, the skill of the vendor, and any instance(s) of products or services delivered or performed which fail to meet the terms of the purchase order, contract, and/or specifications. In addition to other remedies and options available to the State, the State may issue one or more notices to the vendor outlining any issues the State has regarding the vendor's performance for a specific contract ("Contract Compliance Request"). The State may also document the Vendor's performance in a report, which may or may not be provided to the vendor ("Contract Non-Compliance Notice"). The Vendor shall respond to any Contract Compliance Request or Contract Non-Compliance Notice in accordance with such notice or request. At the sole discretion of the State, such

Contract Compliance Requests and Contract Non-Compliance Notices may be placed in the State's records regarding the vendor and may be considered by the State and held against the vendor in any future contract or award opportunity. The record of vendor performance will be considered in any suspension or debarment action.

**I. NOTICE OF POTENTIAL VENDOR BREACH**

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

**J. BREACH**

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 email, delivery receipt requested; 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.

The State's failure to make payment shall not be a breach, and the Vendor shall retain all available statutory remedies. (See Indemnity - Self-Insurance and Payment)

**K. NON-WAIVER OF BREACH**

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

**L. SEVERABILITY**

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

**M. INDEMNIFICATION**

**1. GENERAL**

The Vendor 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 Vendor, its employees, Subcontractors, consultants, representatives, and agents, resulting from this contract, except to the extent such Vendor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

**2. INTELLECTUAL PROPERTY**

The Vendor 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 Vendor or its employees, Subcontractors, consultants, representatives, and agents; provided, however, the State gives the Vendor prompt notice in writing of the claim. The Vendor may not settle any infringement claim that will affect the State's use of the Licensed Software without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the Vendor has indemnified the State, the Vendor shall, at the Vendor'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 Vendor, and the State may receive the remedies provided under this Solicitation.

**3. PERSONNEL**

The Vendor 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 Vendor.

**4. SELF-INSURANCE**

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

5. The Parties acknowledge that Attorney General for the State of Nebraska is required by statute to represent the legal interests of the State, and that any provision of this indemnity clause is subject to the statutory authority of the Attorney General.

**N. ATTORNEY'S FEES**

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

**O. PERFORMANCE BOND**

The Awarded Bidder shall be required to supply a bond executed by a corporation authorized to contract surety in the State of Nebraska, payable to the State of Nebraska, in the sum equal to the full amount of the contract. The bond must be executed on the form furnished by the Department. (See Exhibit A: Contractor Prequalification).

The bond will guarantee that the Awarded Bidder will faithfully perform all requirements, terms and conditions of the contract. Failure to comply shall be grounds for forfeiture of the bond as liquidated damages. Amount of forfeiture will be determined by the agency based on loss to the State. The bond will be returned when the contract has been satisfactorily completed as solely determined by the State, after termination or expiration of the contract.

**P. ASSIGNMENT, SALE, OR MERGER**

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

The Vendor retains the right to enter into a sale, merger, acquisition, internal reorganization, or similar transaction involving Vendor's business. Vendor 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 Vendor 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.

**Q. CONTRACTING WITH OTHER NEBRASKA POLITICAL SUBDIVISIONS OF THE STATE OR ANOTHER STATE**

The Vendor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. § 81-145(2), to use this contract. The terms and conditions, including price, of the contract may not be amended. The State shall not be contractually obligated or liable for any contract entered into pursuant to this clause. A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

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

**R. FORCE MAJEURE**

Neither Party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the contract due to a natural or manmade event outside the control and not the fault of the affected Party ("Force Majeure Event") that was not foreseeable at the time the Contract was executed. 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.

**S. CONFIDENTIALITY**

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

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.

**T. EARLY TERMINATION**

The contract may be terminated as follows:

1. The State and the Vendor, by mutual written agreement, may terminate the contract, in whole or in part, at any time.
2. The State, in its sole discretion, may terminate the contract, in whole or in part, for any reason upon thirty (30) calendar day's written notice to the Vendor. Such termination shall not relieve the Vendor of warranty or other service obligations incurred under the terms of the contract. In the event of termination, the Vendor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
3. The State may terminate the contract, in whole or in part, immediately for the following reasons:

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

**U. CONTRACT CLOSEOUT**

Upon termination of the contract for any reason the Vendor shall within thirty (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 Vendor is permitted to keep the information or data by contract or rule of law. Vendor 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 Vendor'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 Vendor to surrender intellectual property, real or personal property, or information or data owned by the Vendor for which the State has no legal claim.

**V. AMERICANS WITH DISABILITIES ACT**

Vendor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131–12134), as amended by the ADA Amendments Act of 2008 (ADA Amendments Act) (Pub.L. 110–325, 122 Stat. 3553 (2008)), which prohibits discrimination on the basis of disability by public entities.

### III. VENDOR DUTIES

Bidder should read the Vendor Duties within this section and must initial either "Accept All Terms and Conditions Within Section as Written" or "Exceptions Taken to Vendor Duties Within Section as Written" in the table below. If the bidder takes any exceptions, they must provide the following within the "Exceptions" field of the table below (Bidder may provide responses in separate attachment if multiple exceptions are taken):

1. The specific clause, including section reference, to which an exception has been taken;
2. An explanation of why the bidder took exception to the clause; and
3. Provide alternative language to the specific clause within the solicitation response.

By signing the solicitation, bidder agrees to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the solicitation response. 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 solicitation response. The State reserves the right to reject solicitation responses that attempt to substitute the bidder's commercial contracts and/or documents for this solicitation.

Accept All Vendor Duties Within Section as Written (Initial)	Exceptions Taken to Vendor Duties Within Section as Written (Initial)	Exceptions: (Bidder must note the specific clause, including section reference, to which an exception has been taken, an explanation of why the bidder took exception to the clause, and provide alternative language to the specific clause within the solicitation response.)

#### A. INDEPENDENT VENDOR / OBLIGATIONS

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

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

The Vendor shall secure, at its own expense, all personnel required to perform the services under the contract. The personnel the Vendor 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 bidder's solicitation response shall not be changed without the prior written approval of the State. Replacement of these personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

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

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

If the Vendor intends to utilize any subcontractor, the subcontractor's level of effort, tasks, and time allocation should be clearly defined in the solicitation response. The Vendor shall agree that it will not utilize any subcontractors not specifically included in its solicitation response in the performance of the contract without the prior written authorization of the State. If the Vendor subcontracts any of the work, the Vendor agrees to pay any and all subcontractors in accordance with the Vendor's agreement with the respective subcontractor(s).

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

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

## **B. EMPLOYEE WORK ELIGIBILITY STATUS**

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

1. The Vendor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at: <https://das.nebraska.gov/materiel/docs/pdf/Individual%20or%20Sole%20Proprietor%20United%20States%20Attestation%20Form%20English%20and%20Spanish.pdf>.
2. The completed United States Attestation Form should be submitted with the Solicitation response.
3. If the Vendor indicates on such attestation form that he or she is a qualified alien, the Vendor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Vendor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
4. The Vendor understands and agrees that lawful presence in the United States is required, and the Vendor may be disqualified, or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

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

The Vendor 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 Vendors 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 Vendor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Vendor shall insert a similar provision in all Subcontracts for goods and services to be covered by any contract resulting from this Solicitation.

## **D. COOPERATION WITH OTHER VENDORS**

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

## **E. DISCOUNTS**

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

## **F. PRICES**

Prices submitted on the cost sheet shall remain fixed for the first year of the contract. Any request for a price increase subsequent to the first year of the contract shall be submitted in writing to the NDOT a minimum of sixty (60) days prior to the end of the current contract period. Documentation may be required by the State to support the price increase.

**The State reserves the right to deny any requested price increase, cancel the contract and rebid if determined to be in the best interest of the State. No price increases are to be billed to any State Agencies prior to written amendment of the contract by the parties.**

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

## **G. PERMITS, REGULATIONS, LAWS**

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

## **H. INSURANCE REQUIREMENTS**

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

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

The Vendor shall not allow any Subcontractor to commence work until the Subcontractor has equivalent insurance. The failure of the State to require a COI, or the failure of the Vendor to provide a COI or require subcontractor insurance shall not limit, relieve, or decrease the liability of the Vendor hereunder.

In the event that any policy written on a claims-made basis terminates or is canceled during the term of the contract or within one (1) year of termination or expiration of the contract, the Vendor shall obtain an extended discovery or reporting period, or a new insurance policy, providing coverage required by this contract for the term of the contract and one (1) year following termination or expiration of the contract.

If by the terms of any insurance a mandatory deductible is required, or if the Vendor elects to increase the mandatory deductible amount, the Vendor 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 Vendor 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 Vendor shall require the Subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. **The policy shall include a waiver of subrogation in favor of the State. The COI shall contain the mandatory COI subrogation waiver language found hereinafter.** The amounts of such insurance shall not be less than the limits stated hereinafter. For employees working in the State of Nebraska, the policy must be written by an entity authorized by the State of Nebraska Department of Insurance to write Workers' Compensation and Employer's Liability Insurance for Nebraska employees.

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

The Vendor shall take out and maintain during the life of this contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Vendor 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 Vendor 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 Vendors, Personal Injury, and Contractual Liability coverage. **The policy shall include the State, and others as required by the contract documents, as Additional Insured(s). This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory. The COI shall contain the mandatory COI liability waiver language found hereinafter.** The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned, and Hired vehicles.

<b>REQUIRED INSURANCE COVERAGE</b>	
<b>COMMERCIAL GENERAL LIABILITY</b>	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Medical Payments	\$10,000 any one person
Damage to Rented Premises (Fire)	\$300,000 each occurrence
Contractual	Included
XCU Liability (Explosion, Collapse, and Underground Damage)	Included
Independent Vendors	Included
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>	
<b>WORKER'S COMPENSATION</b>	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
Voluntary Compensation	Statutory
<b>COMMERCIAL AUTOMOBILE LIABILITY</b>	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
<b>UMBRELLA/EXCESS LIABILITY</b>	
Over Primary Insurance	\$1,000,000 per occurrence
<b>VENDOR'S POLLUTION LIABILITY</b>	
Each Occurrence/Aggregate Limit	\$2,000,000
Includes Non-Owned Disposal Sites	
<b>MANDATORY COI SUBROGATION WAIVER LANGUAGE</b>	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
<b>MANDATORY COI LIABILITY WAIVER LANGUAGE</b>	
"Commercial General Liability & Commercial Automobile Liability policies shall name the State of Nebraska as an Additional Insured and the policies shall be primary and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory as additionally insured."	

### 3. EVIDENCE OF COVERAGE

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

Nebraska Department of Transportation  
RFP #411-24  
PO Box 94759  
Lincoln, NE 68509-4759

[NDOT.ProcurementServices@nebraska.gov](mailto:NDOT.ProcurementServices@nebraska.gov)

These certificates or the cover sheet shall reference the solicitation 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 Vendor to maintain such insurance, then the Vendor shall be responsible for all reasonable costs properly attributable thereto.

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

### 4. DEVIATIONS

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

#### I. ANTITRUST

The Vendor 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.

#### J. CONFLICT OF INTEREST

By submitting a solicitation response, vendor certifies that no relationship exists between the vendor and any person or entity which either is, or gives the appearance of, a conflict of interest related to this solicitation or project.

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

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

**K. STATE PROPERTY**

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

**L. SITE RULES AND REGULATIONS**

The Vendor 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 Vendor 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 Vendor.

**M. ADVERTISING**

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

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

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

**O. DRUG POLICY**

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

**P. WARRANTY**

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

**Q. TIME IS OF THE ESSENCE**

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

**IV. PAYMENT**

Bidder should read the Payment clauses within this section and must initial either “Accept All Terms and Conditions Within Section as Written” or “Exceptions Taken to Payment clauses Within Section as Written” in the table below. If the bidder takes any exceptions, they must provide the following within the “Exceptions” field of the table below (Bidder may provide responses in separate attachment if multiple exceptions are taken):

1. The specific clause, including section reference, to which an exception has been taken;
2. An explanation of why the bidder took exception to the clause; and
3. Provide alternative language to the specific clause within the solicitation response.

By signing the solicitation, bidder agrees to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the solicitation response. 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 solicitation response. The State reserves the right to reject solicitation responses that attempt to substitute the bidder’s commercial contracts and/or documents for this solicitation.

Accept All Payment Clauses Within Section as Written (Initial)	Exceptions Taken to Payment Clauses Within Section as Written (Initial)	Exceptions: (Bidder must note the specific clause, including section reference, to which an exception has been taken, an explanation of why the bidder took exception to the clause, and provide alternative language to the specific clause within the solicitation response.)

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

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

**B. TAXES (Nonnegotiable)**

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

**C. INVOICES**

Invoices for payments must be submitted by the Vendor to the agency requesting the services with sufficient detail to support payment.

The terms and conditions included in the Vendor’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. **The State shall have forty-five (45) calendar days to pay after a valid and accurate invoice is received by the State.**

**D. INSPECTION AND APPROVAL**

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

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

**E. PAYMENT (Nonnegotiable)**

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

**F. LATE PAYMENT (Nonnegotiable)**

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

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

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 Vendor 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 Vendor 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 Vendor be paid for a loss of anticipated profit.

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

The State shall have the right to audit the Vendor's performance of this contract upon a thirty (30) days' written notice. Vendor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable the State to audit the contract. (Neb. Rev. Stat. § 84-304 et seq.) The State may audit, and the Vendor 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 Vendor shall make the Information available to the State at Vendor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Vendor so elects, the Vendor 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 Vendor be required to create or maintain documents not kept in the ordinary course of Vendor's business operations, nor will Vendor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to Vendor.

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 Vendor, the Vendor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within ninety (90) days of written notice of the claim. The Vendor agrees to correct any material weaknesses or condition found as a result of the audit.

## V. PROJECT DESCRIPTION AND SCOPE OF WORK

The bidder should provide the following information in response to this Solicitation.

### A. PROJECT OVERVIEW

The State of Nebraska Dept. of Transportation (NDOT), District 6, Maintenance Superintendent Area 630 I-80 and Secondary, is requesting proposals for the provision of Right-of-Way (ROW) Mowing Services per Exhibit 2 - District 6 Map and Exhibit 5 – Highway Maps. ROW Mowing Services shall include machine rotary mowing of the Highway ROW on all designated areas where vegetation exists beyond the shoulder or pavement edge(s) of the roadway and as specified in this RFP. **Contracts will be awarded according to Maintenance Superintendent Areas, with one contract awarded for Superintendent Area 630 I-80 and one contract awarded for Superintendent Area 630 Secondary. Proposals may be submitted with pricing for all areas listed in District 6 OR per individual superintendent area, as desired.**

### B. SCOPE OF WORK

Contractor(s) shall be responsible for providing all labor, equipment, fuel, materials, and insurance, to properly accomplish ROW mowing in accordance with schedules, and requirements of the RFP and as directed by NDOT at a bid price per acre.

### C. MOWING PROCEDURES

The work as specified in this request for proposal shall be performed during the mowing season of May 1 through on or about October 31. A mowing cycle shall consist of one complete mowing of the areas designated in the Mowing Schedules (See Exhibit 1 Mowing Schedule). Budget restraints, weather conditions, vegetation growth, and road construction or repairs may alter the mowing frequency and estimated acres. The Mowing Schedule contains necessary information such as highway and reference post numbers, designated acreage, etc., for the contractor to accomplish the work. The contractor shall perform the number of mowing cycles as described in this RFP and in the mowing schedule. The Department reserves the right to increase or decrease the number of mowing cycles. In addition, the Department has the option to amend the Mowing Schedule to include additional locations not specified in the Exhibit 1 Mowing Schedule but that are within the District Superintendent's area at the "Optional" bid price per acre as provided by the Contractor on the Cost Proposal/Bid Sheet.

#### 1. Mowing Cycles

Mowing cycles are subject to change per the direction of the Area Maintenance Superintendent. If conditions warrant an earlier start or a later finish than the mowing schedule, written and/or verbal authorization must be received from the Department of Transportation before any work is performed. Additional mowing cycles shall be performed as directed and approved by NDOT personnel in accordance with the mowing schedule or as conditions warrant.

- a. First mowing cycle: between May 1 and June 7
- b. Second mowing cycle: between June 25 and August 15
- c. Third mowing cycle after normally August 15th
- d. Fourth mowing cycle: between September 1 and October 31 in Area 630 (determined if needed by Area Superintendent)

#### 2. Notification to Begin Work/Time Frame

The Area Maintenance Superintendent will verbally notify the contractor when to begin each mowing cycle by giving them a "notice to proceed".

The contractor must begin work within three (3) days after notification and continuously work to complete each mowing cycle within four (4) weeks after receiving notification to proceed.

Upon completion of mowing in one direction, the opposite side of the highway must be mowed within five (5) calendar days. Mowing operations shall be performed only during the daylight hours. The Contractor shall notify the Area Maintenance Superintendent when a mowing cycle is completed and ready for inspection.

#### 3. Inclement Weather/Road Construction

If inclement weather or road construction prevents the Contractor from completing the mowing cycle within the required time frame, the Contractor must notify the Area Maintenance Superintendent immediately.

The mowing activity may need to be conducted through construction zones, and around construction contractor's personnel, equipment, and operation or traffic control devices. Care is to be taken to prevent damage to the construction contractor's equipment and any disruption to the construction operation. For guidance, contact the Area Maintenance Superintendent.

#### 4. Completion of Mowing Cycle

A mowing cycle shall be considered complete when it is inspected and accepted by the Area Maintenance Superintendent or his/her appointee. Photos of the area may be taken by the Area Maintenance Superintendent prior to the work beginning and immediately following the completion of the mowing cycle as a method to document performance. If all or a portion of a mowing cycle is considered unacceptable, the contractor shall be required to correct the problem area to an acceptable condition, at no additional cost to the Department of Transportation. Payment will be made only after the work performed meets the contract requirements.

### D. EQUIPMENT AND SAFETY FEATURES

All contractor equipment must be in good working condition and is suitable and safe for the work to be performed. The contractor shall furnish all fuel, oil, and grease for said equipment for operation. Any equipment found to be unsuitable or a hazard to highway

users shall be repaired or replaced prior to beginning work. All labor and repairs necessary for repairing equipment will be at the contractor's expense. All-wheel drive tractors with fifteen (15) foot batwing rotary mower shall be equipped with skirt guards of metal or chain to restrict foreign objects from being thrown on to the roadway surface.

Tractors shall be equipped so as to conform to the Public Convenience and Safety Requirements for Operations on Highways and Streets as specified under the 2017 Edition Standard Specifications for Highway Construction, available at <https://dotstore.nebraska.gov/storefront/Store/tabid/78/CatID/8/Publications.aspx> and per OSHA regulations, which include flashing amber lights and slow moving vehicle emblems.

The contractor shall equip rotary mowers with fluorescent orange/red, 24-inch diameter flags as an added safety feature. All equipment traveling on the shoulder will have a flashing amber strobe light during mowing or any other operation in the performance of this contract.

When equipment is not in use, it shall be parked or stored off the pavement or shoulder of the highway in an inconspicuous location no less than 50 feet from the edge of the pavement (outside the fixed obstacle clear zone). The equipment shall be parked or stored so that it will not cause sight distance problems with the traveling public for egress or ingress to or from the highway system.

All mowing operators shall wear an appropriate Type III reflective safety vest while on the ROW (delineator, signs and guardrail mowing). The use of batwing mowers shall be limited to areas of sufficient width to allow the operation of all sections of the mowers in the down position. The PTO shaft for the mower shall not be engaged as the mower (of any type) is being moved from one site to another and while the mower unit is raised.

**E. DAMAGE TO PRIVATE NDOT PROPERTY OR INFRASTRUCTURE OR NSP PROPERTY ON THE RIGHT OF WAY**

The contractor shall carry out operations in such a manner to not damage existing ground areas, trees, shrubs, signs, delineator posts, mailboxes and posts, or other roadside features. Trees outside the fixed obstacle clear zone are an asset to the roadside corridor and shall be protected from immediate and long-term damage from vehicles, equipment, or materials too close to the trees. Throughout the duration of the contract, no materials, vehicles, or equipment shall be allowed to be stored or parked with 25 feet of existing trees 4" caliper or larger, whether standing alone or in groups.

The contractor shall not mow in wet conditions where turf damage or rut damage would occur. In the event damage should occur to any of the above-mentioned features, regardless of if it is State or private property, the contractor shall replace or repair the damaged areas or items at no cost to the Department of Transportation. The cost of such repair and/or replacement of damaged State property shall be deducted from any payment due the contractor. The cost of repair and/or replacement of damaged private property shall be the responsibility of the contractor and the property owner, with no involvement of the Department of Transportation.

**1. Damaged Signs**

The operator shall straighten delineators and signs that are bent over during the mowing operations, at the time damage occur. In the event highway traffic control and/or warning signs are damaged beyond repair, the operator shall notify the Area Maintenance Superintendent immediately so that replacement of the damaged sign(s) can be made. The cost of such repair and/or replacement of damaged State property shall be deducted from any payment due the contractor. Stop and yield signs that are damaged or down shall be reported immediately.

**F. CONSERVATION CONDITIONS / ENVIRONMENTAL COMMITMENT**

The conservation conditions and environmental commitment requirements are outlined and defined in Exhibit 3 Environmental Commitments and shall be followed by the Contractor throughout the duration of the contract period(s). The NDOT District Environmental Coordinator and District Maintenance Superintendent(s) will serve as NDOT point of contact. Contact information shall be provided to the Contractor upon commencement of the contract.

**G. CONTRACTOR LIABILITY**

The contractor shall assume full liability for hazards to traffic that might be created by the mowing operation and save harmless the Nebraska Department of Transportation. Prior to mowing, it is the contractor's responsibility to clear the ROW mowing path of foreign objects such as tires, logs, cans, bottles, excessive vegetation, debris, etc. that may be thrown onto the pavement by the mowing operation and become a hazard to highway users.

**H. ESTIMATED QUANTITY**

The total estimated acreages are based on three or four (3 or 4) mowing cycles based accordingly to the Maintenance Superintendent Area average rainfall and soil type. Actual weather conditions may vary the amount of mowing needed during the mowing season. The estimated acres in the RFP are not guaranteed quantities.

Budget restraints, weather conditions, vegetation growth, and road construction or repairs may alter the mowing frequency and estimated acres. The Mowing Schedule (Exhibit 1) includes the necessary information such as highway and reference post numbers, designated acreage, supervisor number, etc., for the contractor to accomplish his/her work. The contractor shall perform the number of mowing cycles as described in this RFP and the mowing schedule or as directed by NDOT district personnel.

The Department reserves the right to increase or decrease the number of mowing cycles. In addition, the Department has the option to amend the Mowing Schedule to include additional locations not specified in the Exhibit 1 Mowing Schedule but that are within the District Superintendent's area at the "Optional" bid price per acre as provided by the contractor on the Cost Proposal/Bid Sheet. It shall be clearly understood by all parties that the estimated quantities shown are given for the purpose of securing a unit price bid.

## I. PROPOSAL PRICING

Proposal pricing shall consist of the following:

1. Bid price shall be per acre as specified in this RFP.
2. Optional bid price shall be per acre as specified in this RFP.

## J. DELIVERABLES

The Contractor(s) shall provide the service of Right-of-Way (ROW) mowing on all designated areas where vegetation exists beyond the shoulder or pavement edge(s) of the roadway, which may include the interchange areas, divided highway medians, around delineators and guardrails and as specified in this RFP.

## K. MOWING REQUIREMENTS

Right-of-Way (ROW) mowing is necessary for NDOT to meet its objectives for traveler safety and for controlling problem vegetation. ROW mowing is defined as machine rotary mowing of vegetation along the highway.

### 1. SAFETY

Shoulders and medians are mowed to provide adequate sight distance and room for a vehicle to pull off the paved road. The width of the clear zone along a horizontal alignment is dependent on roadside geometry, design speed, and radius of horizontal curvature. Maintenance of the clear zone is related to sight distance, which allows a vehicle's operator to see ahead a sufficient distance to perform the vehicle maneuvers that may be needed. The roadside clear zone should be maintained sufficiently wide where possible to provide adequate intersection sight distance at at-grade intersections or private driveways or farm entrances where vehicles may be entering or leaving the traveled roadway. Vegetation shall be removed from around culverts, object markers and delineators near the driveway.

### 2. SECONDARY HIGHWAY ROW MOWING

**Method of Measurement:** Per Acre

**Equipment:** Machine Rotary Mowers

- a. **ROW mowing** is defined as machine rotary mowing of vegetation along the highway.
- b. **Acceptable Cutting Height:** The acceptable cutting height of vegetation shall be six (6) inches with a variable of +/- one (1) inch and **must not be less than five (5) inches** from the ground. Blades shall be kept sharp to provide a neat uniform cut across the entire width of the cut area. No stripping, scalping, or shallow cutting will be permitted. If the area mowed is considered unacceptable by the Area Superintendent, the contractor may be required to re-mow the area to correct unsightly conditions, at no additional cost to the Department of Transportation.
- c. **Median:** where present, mow out complete median.
- d. **Outside shoulders:** Mow out to 15 feet (refer to Exhibit 1 Mowing Schedule) from along the surfaced shoulders. Mowing may be required beyond 15 feet to the right of way line for sight distance at field entrances, farmsteads, County Road intersections, and rural businesses.
- e. In the event widening is required, use smooth sweeping curves to blend in with the topography and the other mowing to maintain sight distance. Special care is to be taken to completely mow out "high use" intersections, those intersections with delineators on the radius to the return for sight distance to motorists.
- f. Fence line mowing will not be required on secondary roads.
- g. Snow control may be necessary for a width to 30 feet from the shoulder and is to be performed on or with the final cut (September 15<sup>th</sup> to October 31<sup>st</sup>).
- h. Intersection mow outs: Mow a minimum of 30 feet wide along ½ mile length of each intersection leg for ¼ mile around highway junctions, as specified in Exhibit 1 Mowing Schedule. Mowing is not required in the village or city limits.
- i. Mow out within 12" from any culvert or any other obstructions.
- j. Mow out within 12" from all trees & shrub beds or apparatus (12" maximum from outside branches if tractor will not clear the branches).
- k. Mow out within 12" distance from signs & poles or towers.
- l. Care is to be taken to prevent damage to delineators, signposts, trees, and structures.
- m. Mow out within 12" distance from washouts, flumes, or drainage structures.
- n. Do not mow wetland areas (See Exhibit 3 - Environmental Commitment, Wetlands).

During the mowing operation, if the grass clumps or balls up and/or grass streaks of uncut grass, the contractor will be required to complete two (2) passes or whatever is necessary to shred the grass into finer pieces at no additional cost to the Nebraska Department of Transportation.

The contractor shall be responsible for reseeding all areas torn up by the mowing operation at no additional cost to the Nebraska Department of Transportation. The Department will furnish the seed and fertilizer mix that the contractor is to use. Reseeding these areas shall be done at the end of each mowing cycle.

When secondary highways abut to the interstate, the secondary highway mowing contractor shall mow to half of the first field entrance, driveway, or County Road adjacent to the Interstate interchange (interstate mowing contractor responsibilities) and begin again when the route continues past the interchange, on the second half of the first field entrance, driveway, or County Road adjacent to the Interstate interchange and beyond.

### 3. **INTERSTATE ROW MOWING**

**Method of Measurement: Per Acre**

**Equipment-ROW: Machine Rotary Mowers**

- a. **Acceptable cutting height:** The acceptable cutting height of vegetation shall be six (6) inches with a variable of +/- one (1) inch and must not be less than five (5) inches from the ground. Blades shall be kept sharp to provide a neat uniform cut across the entire width of the cut area. No stripping, scalping, or shallow cutting will be permitted. If the area mowed is considered unacceptable to the Area Superintendent, the contractor may be required to re-mow the area to correct unsightly conditions, at no additional cost to the Department of Transportation.
- b. **Outside shoulders:** Mow out to 15 feet from along the surfaced shoulders.
- c. **Median:** Mow out complete median.
- d. **Fence line:** Mow out a minimum of 10 feet, and a maximum of 15 feet along the ROW fence line (Final mow only). Fence lines shall be cut within 2 feet from the fence line. *Care is to be taken to prevent damage to ROW fence.*
- e. Mow within 12" from any culvert or other structure or device.
- f. Mow within 12" from all trees & shrub beds (12" maximum from outside branches if tractor will not clear the branches).
- g. Mow within 12" from washouts.
- h. Mow within 12" from signs & poles.
- i. Care is to be taken to prevent damage to delineators, signposts, trees, and structures.
- j. During the mowing operation, if the grass clumps, balls up and/or streaks, the contractor will be required to complete two (2) passes or whatever is necessary to shred the grass into finer pieces at no additional cost to the Nebraska Department of Transportation.
- k. The contractor shall be responsible for reseeding all areas torn up by the mowing operation at no additional cost to the Nebraska Department of Transportation. The Department will furnish the seed and fertilizer mix that the contractor is to use. Reseeding these areas shall be done at the end of each mowing cycle.
- l. Snow control is necessary for an additional 15 feet for a total width on each shoulder to 30 feet from the pavement edge performed with or after the final cut.
- m. Trimming in the machine mowed snow control area will be required after machine mowing is complete.

### 4. **INTERCHANGE, WEIGH SCALE AND REST AREA MOWING**

**Method of Measurement: Per Acre**

**Equipment: Machine Rotary Mowers**

- a. Complete "mow out" on the interchanges, rest areas and weigh scale sites from fence to fence including quadrants.
- b. The complete "mow out" areas begin where the "off ramp" begins, up the ramps and to the first field entrance, drive or County Road adjacent to the interstate interchange on the dissecting road (interchanges), then across to the other side of the dissecting road from the first field entrance, drive or County Road adjacent to the "on ramp", and continue to the "on ramp" to the end of the "on ramp." Intersection "mow out" areas include the median and shoulder with the interchange, rest area or weigh scale.

### 5. **SLOPE MOWING (SEE EXHIBIT 4 MOWING DETAILS AND SAFETY)**

**Method of Measurement: Per Acre**

**Equipment: Rotary mowers only**

- a. Slopes 3:1 and steeper shall not be mowed and shall be identified with a marker, or a slope indicator shall be attached to each tractor that is used for mowing. (see exhibit 4)

### 6. **SANDHILL'S REGION MOWING (Special Provisions)**

The Sandhill region is identified by the tan color on our highway map provided here:

<http://www.nebraskatransportation.org/maps/highway/state-map/front-03.pdf>

**Method of Measurement: Per Acre**

**Equipment: Rotary mowers only**

- a. **Mowing Operations:** The soil and vegetation characteristics of the Nebraska Sandhill's Region differs significantly from other areas of Nebraska, whose soils contain a higher level of organic matter.
- b. Because of this difference, shoulder mowing in the Sandhill's Region shall be given special consideration. Height of vegetation shall be maintained at a minimum of 6 inches. This height can be obtained with one mowing, The Sandhills Region is normally mowed twice a year unless excessive rainfall and additional growth occurs.
- c. Where back slopes are within the 15 feet to be mowed out, it is recommended that the mower stay on the level portion of the shoulder and stay off the back slope to prevent damage to the soil or sod.

## 7. TRIMMING

**Method of Measurement:** Per Mile

**Equipment:** smaller mowers, weed eaters, string trimmers, push mowers, or by-hand scythes, etc.

- a. Trimming is defined as the mowing/cutting of vegetation within one (1) inch or closer around obstructions such as light poles, fences, sign bases, guardrails/posts, delineators, traffic control devices, trees, shrubs, bridge abutments, retaining walls, culvert ends and outlets. Care shall be exercised to avoid damage to culvert pipe headwalls, parapet walls, etc. The acceptable cutting height of vegetation shall be six (6) inches with a variable of +/- one (1) inch and must not be less than five (5) inches from the ground. Prior to the mowing operation, clear the area of debris, or trash.
- b. Smaller mowers, weed eaters, string trimmers (small rotary hand mowers), push mowers or hand scythes are to be used in areas that require mowing, but are inaccessible to a large tractor/mower.
- c. Trimming in the machine mowed area will be required while the machine mowing is being performed and shall be completed at the same time as the mowing cycle. (Upon completion of mowing in one direction, the opposite side of the highway must be mowed within five (5) calendar days. Trimming operations shall be performed only during the daylight hours. The Contractor shall notify the Area Superintendent when a trimming cycle is completed and ready for inspection.)

## 8. ADDITIONAL MOWING

**Method of Measurement:** Per Acre

**Equipment:** Rotary mowers

Additional mowing within the Maintenance Superintendent Area identified in Exhibit 1 Mowing Schedule shall be performed as directed and approved by NDOT personnel in accordance with the Mowing Schedule or as conditions warrant.

Examples of additional Mowing:

- a. Weedy areas
- b. **Total Mow-out** areas where additional mowing is needed.
- c. **Additional Snow or Weed Control Mowing outside the areas identified as Interstate or Secondary mowing and trimming in this RFP** – Normally these areas require mobilization to the site.

## 9. SAFETY SPECIAL PROVISIONS

- a. The Contractor shall take caution when travelling from one site to the next site and when travelling across the travelled lanes of traffic or shoulder to ensure it is performed in a safe manner with the risk of encroaching into the travelled lanes when vehicles are present. Within 1500 feet and to cross when the roadway is clear.
- b. Any riding mower will need rollover protection, seatbelts, and warning lights (amber and blue optional) for safe operation on the highway system. The operators will be required to wear Class III safety attire while on NDOT right of ways in accordance with Federal Highway Regulations.
- c. **Visibility:** Caution shall be taken for activities in the East bound and West bound lanes when the sun is setting or rising to provide worker and equipment visibility to the motorists. The contractor will determine if the sunrise and sundown on a clear day will affect worker visibility.
- d. Mowing operations are not to begin before sunrise and preferably in the West bound lane in the morning for worker visibility and to cease at sunset preferably in the East bound lane for worker visibility at sundown.
- e. Any equipment that is non-operational and in need of repair will need to be moved to the right of way fence line (if 50 feet or more) within one hour of breakdown and remain there until repairs are made and it becomes operational.

## CONTRACTUAL AGREEMENT FORM

### BIDDER MUST COMPLETE THE FOLLOWING

By signing this Contractual Agreement Form, the bidder guarantees compliance with the provisions stated in this solicitation and agrees to the terms and conditions unless otherwise indicated in writing and certifies that bidder is not owned by the Chinese Communist Party.

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

\_\_\_\_\_ NEBRASKA VENDOR AFFIDAVIT: Bidder hereby attests that bidder is a Nebraska Vendor. “Nebraska Vendor” shall mean any bidder who has maintained a bona fide place of business and at least one employee within this state for at least the six (6) months immediately preceding the posting date of this Solicitation. All vendors who are not a Nebraska Vendor are considered Foreign Vendors under Neb. Rev Stat § 73-603 (c).

\_\_\_\_\_ 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 MANUALLY IN INK OR BY DOCUSIGN

BIDDER:	
COMPLETE ADDRESS:	
TELEPHONE NUMBER:	
EMAIL ADDRESS:	
DATE:	
SIGNATURE:	
TYPED NAME & TITLE OF SIGNER:	