

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

<b>REQUEST FOR PROPOSAL NUMBER</b>	<b>RELEASE DATE</b>
RFP R407-24	February 9, 2024
<b>OPENING DATE AND TIME</b>	<b>PROCUREMENT CONTACT</b>
February 28, 2024, 2:00 p.m. Central Time	Dana Smith

**PLEASE READ CAREFULLY!**

**SCOPE OF SERVICE**

The State of Nebraska (State), Department of Transportation (NDOT), is issuing this Request for Proposal (RFP) Number R407-24 for the purpose of selecting a qualified Contractor to provide Right-of-Way 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 Contractor (Parties). The Contract includes the option to renew for five (5) 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 contractors to supply the solicited services, this RFP 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 bid pursuant to this RFP, 2) the bidder's proposal was evaluated, and 3) the bidder will honor the bidder's original proposal, 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 REQUEST FOR PROPOSAL 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 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 Request for Proposal, and the awarded bidder's proposal and 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 proposals or responses received regarding this Request for Proposal will be posted to the State Purchasing Bureau public website.

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

If the 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, proposal, or response to this Request for Proposal for any purpose, and to authorize others to use the documents. Any individual or entity awarded a contract, or who submits a proposal or response to this Request for Proposal, specifically waives any copyright or other protection the contract, proposal, or response to the Request for Proposal 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 proposal or response to this Request for Proposal, and award of a contract. Failure to agree to the reservation and waiver will result in the proposal or response to the Request for Proposal being found non-responsive and rejected.**

**Any entity awarded a contract or submitting a proposal or response to the Request for Proposal agrees not to sue, file a claim, or make a demand of any kind, and will indemnify and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses, sustained or asserted against the State, arising out of, resulting from, or attributable to the posting of the contract or the proposals and responses to the Request for Proposal, awards, and other documents.**

# TABLE OF CONTENTS

REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES .....	i
TABLE OF CONTENTS.....	ii
GLOSSARY OF TERMS.....	iv
ACRONYM LIST .....	vii
<b>I. PROCUREMENT PROCEDURE .....</b>	<b>1</b>
A. GENERAL INFORMATION.....	1
B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS.....	1
C. SCHEDULE OF EVENTS .....	1
D. WRITTEN QUESTIONS AND ANSWERS.....	3
E. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS.....	3
F. ETHICS IN PUBLIC CONTRACTING .....	3
G. DEVIATIONS FROM THE REQUEST FOR PROPOSAL .....	3
H. PRICES & COST CLARIFICATION.....	3
I. SUBMISSION OF PROPOSALS .....	3
J. PROPOSAL GUARANTEE BID BOND.....	4
K. PROPOSAL PREPARATION COSTS .....	4
L. FAILURE TO COMPLY WITH REQUEST FOR PROPOSAL .....	4
M. PROPOSAL CORRECTIONS.....	5
N. LATE PROPOSALS.....	5
O. PROPOSAL OPENING.....	5
P. REQUEST FOR PROPOSAL/PROPOSAL REQUIREMENTS.....	5
Q. EVALUATION OF PROPOSALS .....	5
R. BEST AND FINAL OFFER.....	6
S. REFERENCE AND CREDIT CHECKS .....	6
T. AWARD .....	6
U. LUMP SUM OR "ALL OR NONE" PROPOSALS .....	6
V. EMAIL SUBMISSIONS .....	6
W. REJECTION OF PROPOSALS .....	6
X. RESIDENT BIDDER .....	6
<b>II. TERMS AND CONDITIONS .....</b>	<b>8</b>
A. GENERAL.....	8
B. NOTIFICATION .....	8
C. BUYER'S REPRESENTATIVE .....	8
D. GOVERNING LAW (Nonnegotiable).....	8
E. DISCOUNTS.....	9
F. PRICES .....	9
G. BEGINNING OF WORK & SUSPENSION OF SERVICES.....	9
H. AMENDMENT.....	9
I. CHANGE ORDERS OR SUBSTITUTIONS .....	9
J. RECORD OF VENDOR PERFORMANCE .....	10
K. CORRECTIVE ACTION PLAN .....	10
L. NOTICE OF POTENTIAL CONTRACTOR BREACH .....	10
M. BREACH.....	10
N. NON-WAIVER OF BREACH.....	10
O. SEVERABILITY .....	10
P. INDEMNIFICATION .....	10
Q. ATTORNEY'S FEES.....	11
R. PERFORMANCE BOND.....	11
S. ASSIGNMENT, SALE, OR MERGER.....	11
T. CONTRACTING WITH OTHER NEBRASKA POLITICAL SUB-DIVISIONS OF THE STATE OR ANOTHER STATE	11
U. FORCE MAJEURE .....	11

V.	CONFIDENTIALITY .....	11
W.	EARLY TERMINATION .....	12
X.	CONTRACT CLOSEOUT .....	12
<b>III.</b>	<b>CONTRACTOR DUTIES .....</b>	<b>13</b>
A.	INDEPENDENT CONTRACTOR / OBLIGATIONS.....	13
B.	EMPLOYEE WORK ELIGIBILITY STATUS.....	13
C.	COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Nonnegotiable) .....	14
D.	COOPERATION WITH OTHER CONTRACTORS .....	14
E.	PERMITS, REGULATIONS, LAWS .....	14
F.	INSURANCE REQUIREMENTS .....	14
G.	ANTITRUST.....	15
H.	CONFLICT OF INTEREST .....	16
I.	STATE PROPERTY.....	16
J.	SITE RULES AND REGULATIONS.....	16
K.	ADVERTISING .....	16
L.	DISASTER RECOVERY/BACK UP PLAN.....	16
M.	DRUG POLICY .....	16
N.	WARRANTY .....	16
O.	TIME IS OF THE ESSENCE.....	16
<b>IV.</b>	<b>PAYMENT .....</b>	<b>17</b>
A.	PROHIBITION AGAINST ADVANCE PAYMENT (Nonnegotiable).....	17
B.	TAXES (Nonnegotiable).....	17
C.	INVOICES.....	17
D.	INSPECTION AND APPROVAL .....	17
E.	PAYMENT (Nonnegotiable).....	17
F.	LATE PAYMENT (Nonnegotiable).....	17
G.	SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Nonnegotiable).....	17
H.	RIGHT TO AUDIT (First Paragraph is Nonnegotiable) .....	17
<b>V.</b>	<b>PROJECT DESCRIPTION AND SCOPE OF WORK .....</b>	<b>19</b>
A.	PROJECT OVERVIEW.....	19
B.	SCOPE OF WORK .....	19
C.	MOWING PROCEDURES .....	19
D.	EQUIPMENT AND SAFETY FEATURES .....	19
E.	DAMAGE TO HIGHWAY PROPERTY.....	20
F.	CONSERVATION CONDITIONS / ENVIRONMENTAL COMMITMENT .....	20
G.	CONTRACTOR LIABILITY .....	20
H.	ESTIMATED QUANTITY .....	20
I.	PROPOSAL PRICING .....	20
J.	DELIVERABLES.....	20
K.	PAYMENT SCHEDULE.....	20
L.	MOWING REQUIREMENTS .....	21
	<b>Form A Bidder Proposal Point of Contact.....</b>	<b>23</b>
	<b>REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES FORM .....</b>	<b>24</b>

## GLOSSARY OF TERMS

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

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

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

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

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

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

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

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

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

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

**Bidder:** A contractor who submits a proposal in response to a written Request for Proposal.

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

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

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

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

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

**Change Order:** Document that provides an addendum and/or 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.

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

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

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

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

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

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

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

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

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

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

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

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

**Evaluation Committee:** Individuals selected by the requesting agency for the evaluation of proposals (offers made in response to written Request for Proposals).

**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 Contractor", and "Installation by State", as found in the Request for Proposal, 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 Proposal:** An offer received after the Opening Date and Time.

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

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

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

**Non-Responsive Proposal:** Any proposal that does not comply with the requirements of the Request for Proposal.

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

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

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

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

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

**Proposal:** Bidder's response to a written Request for Proposal.

**Proposal Opening:** The process of opening correctly submitted offers at the time and place specified in the written Request for Proposal and in the presence of anyone who wished to attend.

**Protest/Grievance:** A complaint about a governmental action or decision related to a Request for Proposal or resultant contract, brought by a bidder who has submitted a proposal response by the opening date and time in connection with the award in question, to AS Materiel Division or another designated agency with the intention of achieving a remedial result.

**Release Date:** The date of public release of the written Request for Proposal to seek offers.

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

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

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

**Responsive Bidder:** A vendor who has submitted a proposal which conforms to all requirements of the Request for Proposal document.

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

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

**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 contractor enters a contract to perform a portion of the work awarded to the contractor.

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

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

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

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

**Vendor:** An individual or entity lawfully conducting business with the State.

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

**Work Day:** See Business Day.

## ACRONYM LIST

**ACH** – Automated Clearing House

**BAFO** – Best and Final Offer

**COI** – Certificate of Insurance

**DAS** – Department of Administrative Services

**NDOT** – Nebraska Department of Transportation

**RFP** – Request for Proposal

**ROW** – Right-of-Way

**SPB** – State Purchasing Bureau

INFORMATION ONLY

## I. PROCUREMENT PROCEDURE

### A. GENERAL INFORMATION

The Request for Proposal is designed to solicit proposals from a qualified bidder who will be responsible for providing Right-of-Way Mowing Services at a competitive and reasonable cost. Terms and Conditions, Project Description and Scope of Work, Proposal instructions, and Cost Proposal Requirements may be found in Sections II through V.

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

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

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

**RFP Number:** R407-24  
**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 Request for Proposal 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 Request for Proposal. The POC will issue any answers, clarifications, or amendments regarding this Request for Proposal 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 Request for Proposal.

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 RFP POC; and
3. Contact required for negotiation and execution of the final contract.

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

### C. SCHEDULE OF EVENTS

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



	<b>ACTIVITY</b>	<b>DATE/TIME</b>
1.	Release RFP	February 9, 2024
2.	Last day to submit written questions	February 16, 2024
3.	State responds to written questions through RFP "Addendum" and/or "Amendment" 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>	February 21, 2024
4.	Proposal Opening Location: Nebraska Department of Transportation 5001 So. 14 <sup>th</sup> Street, Bldg. #00101 Lincoln, NE 68512	February 28, 2024 2:00 PM Central Time
5.	Review for conformance to RFP requirements	February 29, 2024
6.	Evaluation period	March 1, 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>	March 5, 2024
8.	Contract finalization period	March 6-April 5, 2024
9.	Contract award	April 8, 2024
10.	Contractor start date	April 9, 2024

**D. WRITTEN QUESTIONS AND ANSWERS**

Questions regarding the meaning or interpretation of any Request for Proposal provision must be submitted in writing to the Nebraska Department of Transportation and clearly marked "RFP Number R407-24 ROW Mowing Services Questions". The POC is not obligated to respond to questions that are received late per the Schedule of Events.

Bidders should present, as questions, any assumptions upon which the bidder's proposal is or might be developed. Any proposal containing assumptions may be deemed non-responsive. Non-responsive proposals may be rejected by the State. Proposals will be evaluated without consideration of any known or unknown assumptions of a bidder. The contract will not incorporate any known or unknown assumptions of a 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**

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 proposals, 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 proposal on behalf of another Party or entity; and
5. Colluding with any person or entity to influence the bidding process, submit sham proposals, preclude bidding, fix pricing or costs, create an unfair advantage, subvert the proposal, or prejudice the State.

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

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

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

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

**H. PRICES & COST CLARIFICATION**

Discount and Price provisions are discussed in Section II. E. & F. The State reserves the right to review all aspects of cost for reasonableness and to request clarification of any proposal where the cost component indicates a significant and unsupported deviation from industry standards or in areas where detailed pricing is required.

**I. SUBMISSION OF PROPOSALS**

Bidders should submit one proposal marked on the first page: "ORIGINAL". If multiple proposals are submitted, the State will retain one copy marked "ORIGINAL" and destroy the other copies. The bidder is solely responsible for any variance between the copies submitted. Proposal responses should include the completed Form A, "Contractor Proposal Point of Contact". Proposals must reference the RFP number and be sent to the specified address. Please note that the address label should appear as specified in Section I B. on the face of each container or bidder's proposal response packet. If a recipient phone number is required for delivery purposes, 402-479-4356 should be used. The RFP number should be included in all correspondence.

The RFP and cost proposal bid sheet posted on the NDOT website are informational and for viewing only. Bidding Proposal forms including the State issued bid bond, bid envelope and bidding documents to be used for bidding purposes will be provided only 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 Forms” are available at: <https://dot.nebraska.gov/business-center/business-opp/pre-maint/>.** It is the bidder’s responsibility to ensure the solicitation is received in a sealed envelope or container and submitted by the date and time indicated in the Schedule of Events. Sealed proposals must be received in the Nebraska Department of Transportation by the date and time of the proposal opening per the Schedule of Events. No late proposals will be accepted.

It is the responsibility of the bidder to check the website for all information relevant to this Request for Proposal to include addenda and/or amendments issued prior to the opening date. Website address is as follows: <https://dot.nebraska.gov/business-center/business-opp/pre-maint/>.

The State shall not incur any liability for any costs incurred by bidders in replying to this solicitation, in the demonstrations and/or oral presentations, or in any other activity related to bidding on this solicitation

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

The “Request for Proposal for Contractual Services” form must be signed manually in ink or by DocuSign and returned by the proposal opening date and time along with the bidder’s Request for Proposal and any other requirements as stated in the Request for Proposal document in order for the bidder’s Request for Proposal response to be evaluated.

By signing the “Request for Proposal for Contractual Services” form, the bidder guarantees compliance with the provisions stated in this Request for Proposal.

#### **J. PROPOSAL GUARANTEE BID BOND**

Bidders shall submit a bid bond with their proposal. 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 (402) 479-4356 or by e-mail to [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 bid not to be read. The bid bond will be released upon execution of the awarded contract (See Exhibit 5: Contractor Prequalification).

**Option 1: The completed bid bond and bid shall be placed in separate sealed envelopes, attached to each other.** Any alterations, conditions, or limitations added to the Department’s bid bond form will be unacceptable and cause the bid 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 bid submittal to the Department that their “annual bid bond” applies to the submitted bid. If the “annual bid bond” is applicable the bidder shall indicate this in writing on the bid bond envelope. The envelope containing the bid 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.

#### **K. PROPOSAL PREPARATION COSTS**

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

#### **L. FAILURE TO COMPLY WITH REQUEST FOR PROPOSAL**

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

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

#### M. PROPOSAL CORRECTIONS

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

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

#### N. LATE PROPOSALS

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

#### O. PROPOSAL OPENING

The opening of proposals will be public, and the bidders will be announced. Proposals **WILL NOT** be available for viewing by those present at the proposal opening. Proposals will be posted to the Department of Transportation website once an Intent to Award has been posted to the website. Once proposals are opened, they become the property of the State of Nebraska and will not be returned.

#### P. REQUEST FOR PROPOSAL/PROPOSAL REQUIREMENTS

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

1. Original Request for Proposal for Contractual Services form signed manually in ink or by DocuSign;
2. Clarity and responsiveness of the proposal;
3. Bid Bond, executed on the Department of Transportation bid bond form; and
4. Completed State Cost Proposal Template.

#### Q. EVALUATION OF PROPOSALS

All proposals that are responsive to the solicitation will be evaluated. The State will conduct a fair, impartial, and comprehensive evaluation of all proposals in accordance with the criteria set forth below.

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

1. Cost Proposal

**Neb. Rev. Stat. §81-161 allows the quality of performance of previous contracts to be considered when evaluating responses to competitively bid solicitations in determining the lowest responsible bidder.** Information obtained from any Vendor Performance Report (See Terms & Conditions, Section H) may be used in evaluating responses to solicitations for goods and services to determine the best value for the State.

**Neb. Rev. Stat. § 73-107 allows for a preference for a resident disabled veteran or business located in a designated enterprise zone.** When a state contract is to be awarded to the lowest responsible 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 proposal in accordance with Neb. Rev. Stat. § 73-107 and has so indicated on the Request for Proposal cover page under "Contractor must complete the following" requesting priority/preference to be considered in the award of this contract, the following will need to be submitted by the contractor within ten (10) business days of request:

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

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

Evaluation criteria weighting will be released with the solicitation.

**R. BEST AND FINAL OFFER**

Each bidder should provide its best offer with their original proposal 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 or to not offer every bidder an opportunity to submit a BAFO. If requested by the State, the BAFO must be submitted on the BAFO Cost Proposal form 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 proposal response.

**S. REFERENCE AND CREDIT CHECKS**

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

**T. AWARD**

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

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

The 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,
6. State contract management requirements and/or costs; and,

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://dot.nebraska.gov/business-center/business-opp/pre-maint/>

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

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

**V. EMAIL SUBMISSIONS**

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

**W. REJECTION OF PROPOSALS**

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

**X. RESIDENT BIDDER**

Pursuant to Neb. Rev. Stat. §§ 73-101.01 & 73-101.02, a Resident Bidder shall be allowed a preference against a Non-resident Bidder from a state which gives or requires a preference to Bidders from that state. The preference shall be equal to the preference given or required by the state of the Nonresident Bidders. Where the lowest responsible bid from a resident Bidder is equal in all respects to one from a nonresident Bidder from a state which has no preference law, the resident Bidder shall be awarded the

contract. The provision of this preference shall not apply to any contract for any project upon which federal funds would be withheld because of the provisions of this preference.

INFORMATION ONLY

## II. TERMS AND CONDITIONS

Bidder is expected to read the Terms and Conditions. By signing the solicitation, bidder is agreeing to be legally bound by all the accepted terms and conditions. The State of Nebraska reserves the right to reject proposals that attempt to substitute the contractor's commercial contracts and/or documents for this solicitation. . By signing the Request for Proposal, bidder is agreeing to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the proposal. The State reserves the right to negotiate rejected or proposed alternative language. If the State and bidder fail to agree on the final Terms and Conditions, the State reserves the right to reject the proposal. The State of Nebraska is soliciting proposals in response to this Request for Proposal. The State of Nebraska reserves the right to reject proposals that attempt to substitute the bidder's commercial contracts and/or documents for this Request for Proposal.

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

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

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

### A. GENERAL

The contract resulting from this Request for Proposal shall incorporate the following documents:

1. Request for Proposal, including any attachments and addenda;
2. Amendments to the Request for Proposal;
3. Questions and Answers;
4. Bidder's properly submitted proposal, including any terms and conditions or agreements submitted by the bidder; and
5. Amendments/Addendums to the Contract.

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a future contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment or Addendum to the executed Contract with the most recent dated amendment or addendum having the highest priority, 2) Amendments to the Request for Proposal, 3) Questions and Answers, 4) the original Request for Proposal document and any Addenda or attachments, and 4) the Contractor's submitted Proposal, including any terms and conditions or agreements submitted by the that are accepted by the State.

For the avoidance of doubt, unless otherwise explicitly and specifically agreed to in writing by the State, the State's standard terms and conditions, as executed by the State and, shall always control over any terms and conditions or agreements submitted or included by the Contractor.

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 administrator 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. DISCOUNTS**

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

**F. PRICES**

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

Prices submitted on the cost proposal form shall remain fixed and valid commencing on the opening date of the proposal and for the first year of the contract period. After the initial first year contract period, any request for an increase must be submitted in writing to the Nebraska Department of Transportation a minimum of 30 days prior to proposed effective date of increase and must show cause and be accompanied by supporting documentation. Further documentation may be required by the State, to authenticate the increase. Failure to supply any requested supporting documentation may be grounds to cancel the contract. The State further reserves the right to deny any requested price increase(s), cancel the contract and re-bid if determined to be in the best interest of the State. No price increases are to be billed to the Nebraska Department of Transportation prior to written amendment of the contract by the parties. The State will be given full proportionate benefit of any decrease for the term of the contract.

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

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

**G. 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 bidder. The Contractor will be notified in writing when work may begin.

The State may, at any time and without advance notice, require the Contractor 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 Contractor 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 Contractor with written notice that such performance or deliverables may resume, in whole or in part.

**H. AMENDMENT**

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

**I. CHANGE ORDERS OR SUBSTITUTIONS**

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

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

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



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

**J. 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 Request for Proposal 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 ("Vendor Performance Notice"). The State may also document the Vendor's performance in a report, which may or may not be provided to the vendor ("Vendor Improvement Request"). The Vendor shall respond to any Vendor Performance Notice or Vendor Improvement Request in accordance with such notice or request. At the sole discretion of the State, such Vendor Performance Notices and Vendor Improvement Requests 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.

**K. CORRECTIVE ACTION PLAN**

If Contractor is failing to meet the Scope of Work, in whole or in part, the State may require the Contractor to complete a corrective action plan ("CAP"). The State will identify issues with the Contractor's performance and will set a deadline for the CAP to be provided. The Contractor must provide a written response to each identified issue and what steps the Contractor will take to resolve each issue, including the timeline(s) for resolution. If the Contractor fails to adequately provide the CAP in accordance with this section, fails to adequately resolve the issues described in the CAP, or fails to resolve the issues described in the CAP by the relevant deadline, the State may withhold payments and exercise any legal remedy available.

**L. NOTICE OF POTENTIAL CONTRACTOR BREACH**

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

**M. 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 to the contractor's point of contact with acknowledgement from the contractor, Certified Mail - Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

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

**N. 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.

**O. 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.

**P. INDEMNIFICATION**

**1. GENERAL**

The Contractor agrees to defend, indemnify, and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all third party claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State for personal injury, death, or property loss or damage, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, Subcontractors, consultants, representatives, and agents, resulting from this contract, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

**2. PERSONNEL**

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

**3. SELF-INSURANCE**

The State of Nebraska is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this agreement, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 – 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

**4. ALL REMEDIES AT LAW**

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

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.

**Q. 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.

**R. PERFORMANCE BOND**

The selected contractor shall be required to furnish within 30 days after the award, a performance bond in the sum equal to the full amount of the contract. ***The performance bond must be executed on the form furnished by the Department. Performance bonds must be executed by a corporation authorized to contract surety in the State of Nebraska.*** This requirement shall apply to any extensions and/or renewal periods (See Exhibit 5: Contractor Prequalification).

**S. ASSIGNMENT, SALE, OR MERGER**

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

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

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

The Contractor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. § 81-145(3), to use this contract. The terms and conditions, including price, of the contract may not be amended. The State shall not be contractually obligated or liable for any contract entered into pursuant to this clause. A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

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

**U. 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.

**V. 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.

#### **W. EARLY TERMINATION**

The contract may be terminated as follows:

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

#### **X. CONTRACT CLOSEOUT**

Upon contract closeout for any reason the Contractor shall within 30 days, unless stated otherwise herein:

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

Nothing in this Section should be construed to require the Contractor to surrender intellectual property, real or personal property, or information or data owned by the Contractor for which the State has no legal claim.

### III. CONTRACTOR DUTIES

#### A. INDEPENDENT CONTRACTOR / OBLIGATIONS

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

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

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

By-name personnel commitments made in the bidder's proposal shall not be changed without the prior written approval of the State. Replacement of these personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

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

With respect to its employees, the Contractor agrees to be solely responsible for the following:

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

If the Contractor intends to utilize any subcontractor, the subcontractor's level of effort, tasks, and time allocation should be clearly defined in the bidder's proposal. The Contractor shall agree that it will not utilize any subcontractors not specifically included in its proposal in the performance of the contract without the prior written authorization of the State.

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

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

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

#### B. EMPLOYEE WORK ELIGIBILITY STATUS

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Transportation website at <http://dot.nebraska.gov/media/2802/ndot289.pdf>
2. The completed United States Attestation Form should be submitted with the solicitation response.
3. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
4. The Contractor understands and agrees that lawful presence in the United States is required, and the Contractor may be disqualified, or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

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

The Contractor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State of Nebraska, and their Subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §§ 48-1101 to 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all Subcontracts for goods and services to be covered by any contract resulting from this Request for Proposal.

**D. COOPERATION WITH OTHER CONTRACTORS**

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

**E. PERMITS, REGULATIONS, LAWS**

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

**F. INSURANCE REQUIREMENTS**

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

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

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

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

If by the terms of any insurance a mandatory deductible is required, or if the Contractor elects to increase the mandatory deductible amount, the Contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

Notwithstanding any other clause in this Contract, the State may recover up to the liability limits of the insurance policies required herein.

**1. WORKERS' COMPENSATION INSURANCE**

The Contractor shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contractors' employees to be engaged in work on the project under this contract and, in case any such work is sublet, the Contractor shall require the Subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. **The policy shall include a waiver of subrogation in favor of the State. The COI shall contain the mandatory COI subrogation waiver language found hereinafter.** The amounts of such insurance shall not be less than the limits stated hereinafter. For employees working in the State of Nebraska, the policy must be written by an entity authorized by the State of Nebraska Department of Insurance to write Workers' Compensation and Employer's Liability Insurance for Nebraska employees.

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

The Contractor shall take out and maintain during the life of this contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Contractor and any Subcontractor performing work covered by this contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this contract, whether such operation be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an **occurrence basis**, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury, and Contractual Liability coverage. **The policy shall include the State, and others as required by the contract documents, as Additional Insured(s). This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory. The COI shall contain the mandatory COI liability waiver language found hereinafter.** The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned, and Hired vehicles.

<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
Contractual	Included
Independent Contractors	Included
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>	
<b>WORKER'S COMPENSATION</b>	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
Voluntary Compensation	Statutory
<b>COMMERCIAL AUTOMOBILE LIABILITY</b>	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
Motor Carrier Act Endorsement	Where Applicable
<b>UMBRELLA/EXCESS LIABILITY</b>	
Over Primary Insurance	\$5,000,000 per occurrence
<b>CONTRACTOR'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 Contractor 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  
 Operations Division  
 Attn: Dana Smith  
 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 RFP number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

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

**4. DEVIATIONS**

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

**G. ANTITRUST**

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

**H. CONFLICT OF INTEREST**

By submitting a proposal, bidder certifies that no relationship exists between the bidder and any person or entity which either is, or gives the appearance of, a conflict of interest related to this Request for Proposal or project.

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

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

**I. STATE PROPERTY**

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

**J. SITE RULES AND REGULATIONS**

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

**K. ADVERTISING**

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

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

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

**M. DRUG POLICY**

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

**N. WARRANTY**

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

**O. TIME IS OF THE ESSENCE**

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

## IV. PAYMENT

### 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 Contractor may request a copy of the Nebraska Department of Revenue, Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13 for their records. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

### C. INVOICES

Invoices for payments must be submitted by the Contractor to the Area Maintenance Superintendent requesting the services with sufficient detail to support payment. NDOT contact information shall be provided upon the commencement of the contract. The payment schedule is tied to specific dates and the completion and acceptance of related deliverables. Invoices submitted for payment shall include the contract number under which the work has been performed, the highway numbers, nearest mile post number and total acres mowed. NDOT will render payment after receiving and certifying that the invoicing is correct and the mowing cycle work area has been completed, inspected, and approved by the Department.

The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract. **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 Contractor or Subcontractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

### E. PAYMENT (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 Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any goods and services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

### F. LATE PAYMENT (Nonnegotiable)

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

### G. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (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 Contractor written notice thirty (30) calendar days prior to the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

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

The State shall have the right to audit the Contractor's performance of this contract upon a thirty (30) days' written notice. Contractor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable the State to audit the contract. (Neb. Rev. Stat. § 84-304 et seq.) The State may audit, and the Contractor shall maintain, the Information during the term of the contract and for a period of five (5) years after the completion of this contract or until all issues or litigation are resolved, whichever is later. The Contractor shall make the Information available to the State at Contractor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Contractor so elects, the Contractor may provide electronic or paper copies of the Information. The State reserves the right to examine, make copies of, and take notes on any Information relevant to this contract, regardless of the form or the Information, how it is stored, or who possesses the Information. Under no circumstance will the Contractor be required to create or maintain documents not kept in the ordinary course of contractor's business operations, nor will contractor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to contractor.

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. If a previously undisclosed overpayment exceeds one-half of one percent (.5%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for



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

INFORMATION ONLY

## V. PROJECT DESCRIPTION AND SCOPE OF WORK

The bidder should provide the following information in response to this Request for Proposal.

### A. PROJECT OVERVIEW

The State of Nebraska Dept. of Transportation (NDOT), District 3 is requesting proposals for the provision of Right-of-Way (ROW) Mowing Services for Area 310, the Columbus, Albion and Humphrey area. ROW Mowing Services shall include machine rotary mowing and trimming 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.

### B. SCOPE OF WORK

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

### C. MOWING PROCEDURES

The work as specified in this request for proposal shall be performed during the mowing season of May 1 through October 31. A mowing cycle shall consist of one complete mowing of the areas designated in the Mowing Schedule (Exhibit 1). The total estimated acreages are based on three (3) mowing cycles for the Columbus, Albion and Humphrey area (See Exhibit 2 - District 3, Area 310 Map) during the mowing season and **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 contains necessary information such as highway and reference post numbers, designated acreage, etc., in order 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 Mowing Schedule (Exhibit 1) but that are within the District Superintendent's area at the "Optional" bid price per acre and per mile as provided by the Contractor on the Cost Proposal/Bid Sheet.

**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.

- First mowing cycle: between May 1 and June 7 (15 foot cut)
- Second mowing cycle: between June 25 and August 15 (15 foot cut)
- Third mowing cycle: between September 1 and October 30 (30 foot cut)

**Notification to Begin Work/Time Frame:** The Area Maintenance Superintendent will verbally notify the contractor when to begin each mowing cycle. The contractor must begin work within three (3) days after notification and complete each mowing cycle within four (4) weeks after receiving notification to begin. 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.

**Inclement Weather/Road Construction:** In the event that 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.

**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. 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 @ <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 30 feet from the edge of the pavement. The equipment shall be parked or stored so that it will not cause sight distance problems with the traveling public.

All mowing operators shall wear a safety vest while performing activities within 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 at all times. 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 HIGHWAY PROPERTY**

The contractor shall carry out operations in such a manner so as 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 within 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 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.

**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.

**F. CONSERVATION CONDITIONS / ENVIRONMENTAL COMMITMENT**

The conservation conditions and environmental commitment requirements are outlined and defined in Exhibit 3 titled "Environmental Commitment" 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, 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 and miles are based on three (3) mowing cycles per Maintenance Superintendent Area during the mowing season and 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., in order 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 Mowing Schedule (Exhibit 1) but that are within the District Superintendent's area at the "Optional" bid price per acre and mile 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 and per mile as specified in this RFP.
- 2) Optional bid price shall be per acre and per mile as specified in this RFP.

**J. DELIVERABLES**

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

**K. PAYMENT SCHEDULE**

Invoices for payments must be submitted by the Contractor to the District requesting the services with sufficient detail to support payment. Invoices submitted for payment shall include the contract number under which the work has been performed and shall include the highway number, nearest mile post number, and total acres mowed. The contractor's invoice shall be submitted to the Area Maintenance Superintendent for approval. Payment will not be made until the mowing cycle work area has been completed, inspected, and approved by NDOT.

NDOT will render payment after receiving and certifying that invoicing is correct. No invoice will be approved unless the associated deliverables have been approved.

#### L. **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 and trimming is defined as the mowing/cutting of vegetation around obstructions such as guardrail posts, light poles, delineator's, culvert ends and sign bases. Acceptable equipment for trimming are: smaller mowers, weed eaters, string trimmers, push mowers, or by hand scythes (See Exhibit 4 NDOT Mowing Details & Safety). **All trimming shall be performed simultaneously with each mowing operation during the same timeframe as the assigned mowing cycle. Trimming must be completed within five (5) working days of the completed mowing cycle.**

**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.

#### 1. **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. In the event that the area mowed is considered unacceptable, 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: Mow out complete median.
- d. Outside shoulders: Mow out to 15 feet from along the surfaced shoulders. Mowing may be required beyond 15 feet for sight distance at farmsteads, intersections, and rural businesses. In the event this additional mowing is required, use smooth sweeping curves to blend in with the topography and the other mowing.
- e. Mow out all drives, and county / highway intersections to the property line to maintain sight distance where vehicles entering or leaving the highways view is obstructed. Mow along the radius of the drive to the row line (See Exhibit 4).
- f. Town and intersection mow outs: Mow a minimum of 30 feet wide along ½ mile length of each intersection leg at towns and intersections as specified in Exhibit 1 Mowing Schedule.
- g. Fence line: Mow out a minimum of 10 feet, and a maximum of 15 feet along the ROW fence line (Final mowing only).
- h. Mow out within a distance of 12" from any culvert or any other obstructions.
- i. Mow out within a distance of 12" from all trees & shrub beds (12" maximum from outside branches if tractor will not clear the branches).
- j. Mow out within 12" distance from signs & poles.
- k. Care is to be taken to prevent damage to delineators, sign posts, trees and structures.
- l. Mow out within a distance of 12" distance from washouts.
- m. Do not mow wetland areas (See Exhibit 3 - Environmental Commitments).

During the mowing operation, if the grass 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.

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.

2. **COMMUNITY INTERCHANGE MOWING (If Applicable)**

**Method of Measurement:** Per Acre

**Equipment:** Machine Rotary Mowers

- a. Mow out the interchanges and ramps from fence to fence including quadrants.

3. **TRIMMING**

**Method of Measurement:** Per Acre

**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 shall be performed simultaneously with each mowing operation during the same timeframe as the assigned mowing cycle. Trimming must be completed within five (5) working days of the completed mowing cycle.**

4. **ADDITIONAL MOWING CYCLES**

**Method of Measurement:** Per Acre

**Equipment:** Rotary mowers

Additional mowing cycles 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. Wet Season Growth (Additional cut).
- b. Weedy areas
- c. **Total Mow-out** areas where additional mowing is needed for aesthetics.
- d. **Snow Control Mowing** – The final mowing may extend beyond the 15-foot zone for snow control in those areas that require an extra mowing.

**Form A**  
**Bidder Proposal Point of Contact**  
**Request for Proposal Number R407-24**

Form A should be completed and submitted with each response to this Request for Proposal. This is intended to provide the State with information on the bidder's name and address, and the specific person(s) who are responsible for preparation of the bidder's response.

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

Each bidder should also designate a specific contact person who will be responsible for responding to the State if any clarifications of the bidder's response should become necessary. This will also be the person who the State contacts to set up a presentation/demonstration, if required.

Communication with the State Contact Information	
Bidder Name:	
Bidder Address:	
Contact Person & Title:	
E-mail Address:	
Telephone Number (Office):	
Telephone Number (Cellular):	
Fax Number:	

## REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES FORM

### BIDDER MUST COMPLETE THE FOLLOWING

By signing this Request for Proposal for Contractual Services form, the bidder guarantees compliance with the procedures stated in this Request for Proposal and agrees to the terms and conditions unless otherwise indicated in writing, certifies that contractor maintains a drug free workplace, 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 Contractors. This information is for statistical purposes only and will not be considered for contract award purposes.

\_\_\_\_\_ NEBRASKA CONTRACTOR AFFIDAVIT: Bidder hereby attests that bidder is a Nebraska Contractor. "Nebraska Contractor" shall mean any bidder who has maintained a bona fide place of business and at least one employee within this state for at least the six (6) months immediately preceding the posting date of this Solicitation.

\_\_\_\_\_ I hereby certify that I am a Resident disabled veteran or business located in a designated enterprise zone in accordance with Neb. Rev. Stat. § 73-107 and wish to have preference, if applicable, considered in the award of this contract.

\_\_\_\_\_ I hereby certify that I am a blind person licensed by the Commission for the Blind & Visually Impaired in accordance with Neb. Rev. Stat. § 71-8611 and wish to have preference considered in the award of this contract.

### FORM MUST BE SIGNED MANUALLY IN INK OR BY DOCUSIGN

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