

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

REQUEST FOR PROPOSAL NUMBER	RELEASE DATE
RFP R231-24	August 6, 2024
OPENING DATE AND TIME	PROCUREMENT CONTACT
November 4, 2024, 2:00 p.m. Central Time	Brandy Henke

PLEASE READ CAREFULLY!

SCOPE OF SERVICE

The State of Nebraska (State), Department of Transportation is issuing this Request for Proposal (RFP) Number R231-24 for the purpose of selecting one or more qualified Contractors to provide build, own, and operate direct current fast charging (DCFC) stations at seven (7) locations along the I-80 corridor. The DCFC stations contracted via this RFP will be funded with National Electric Vehicle Infrastructure (NEVI) Formula Program funds and will be required to meet all requirements of this program for a minimum of five (5) years after becoming operational. A more detailed description can be found in Section **Error! Reference source not found.**I. 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 six (6) years commencing upon execution of the contract by the State and the Contractor (Parties). The Contract includes the option to renew for two (2) 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/procure-service-opp/>.

An Optional Pre-Proposal Conference will be held on September 19, 2024, at 10:00 AM CST as noted in the Schedule of Events.

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.

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 is 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.

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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.

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.

Candidate Site: A property proposed by a Contractor for the purpose of installing and maintaining NEVI compliant EVSE. A candidate site must be located within a one-mile roadway travel distance from an interstate highway interchange ramp terminal or be granted an exemption by NDOT and FHWA.

Change Order: Document that provides an addendum and/or amendments to an executed purchase order or contract.

Charge Network Provider: Electric vehicle charging station communications provider.

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. The party who is considered to be the primary source for providing the goods or services listed in the awarded contract and the party to whom reimbursement through NEVI Formula Program funds will be made upon completion of the contract and in accordance with the payment and reimbursement provisions therein.

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.

Nebraska Department of Transportation (NDOT): The term NDOT may refer to the Nebraska Department of Transportation and NDOT contractors or consultants, as determined by NDOT.

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

Notice of Acceptance: A notice of acceptance is a written notification sent by NDOT to the Contractor advising the acceptance of the installed EVSE. Operations and maintenance period will start on the date identified in the Notice of Acceptance.

Notice of Funding Opportunity (NOFO): All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Notice to Proceed: A Notice to Proceed (NTP) authorizes the Bidder to proceed with the work in the contract. NDOT will issue a Notice to Proceed following the execution of the final signed contract. Any work done prior to fully executed contract will not be reimbursed. Cost incurred between the execution of fully executed contract and NTP may not be reimbursed until after the NTP.

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

Oversight Costs: Direct costs, such as compensation of Contractor's employees for their time devoted and related directly to the performance of the construction of the project for which the federal aid was approved; cost of materials consumed for the Eligible Expenses; and pre-approved indirect costs.

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.

Period of Performance: For this grant, period of performance refers to the length of time during which a Bidder is obligated to provide Operations and Maintenance (O&M) services for the EV site. The period of performance for the contract is 5 years or 60 months. The begin and end for the period of performance will be identified in the Notice of Acceptance.

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. Additionally, the activities, improvements, structures, and services described in the contract, and as may be more detailed in any responses to the RFP, bid documents, or other documents submitted or approved by

NDOT for which NEVI Formula Program funds are obligated pursuant to 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.

Site: A location for the Project that has been approved by NDOT.

Site Contractor: The company and/or authorized representative of the company who has signed and is submitting the signed proposal response and who will be responsible, if subsequently identified as the Bidder, to ensure proper performance of the contract awarded. The site Contractor must be the organization that will own/operate the charging stations following installation.

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

AFC – Alternative Fuel Corridor

BAFO – Best and Final Offer

BIL – Bipartisan Infrastructure Law

COI – Certificate of Insurance

DAS – Department of Administrative Services

DER – Distributed Energy Resource

EV – Electric Vehicle

EVSE – Electric Vehicle Supply Equipment

FHWA - Federal Highway Administration

KPI – Key Performance Indicators

NEPA – National Environmental Protection Act

NEVI – National Electric Vehicle Infrastructure

NPRM – Notice of Proposed Rule Making

RFP – Request for Proposal

SPB – State Purchasing Bureau

I. PROCUREMENT PROCEDURE

A. GENERAL INFORMATION

The RFP is designed to solicit proposals from qualified bidders who will be responsible for installing and operating one or more electric vehicle charging stations that include direct current fast chargers (DCFC); proposals are sought for seven (7) locations along the I-80 corridor. Terms and Conditions, Project Description and Scope of Work, Proposal instructions, and Cost Proposal Requirements may be found in Sections II through VIII.

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. The point of contact (POC) for the procurement is as follows:

RFP Number: R231-24
Name: Brandy Henke
Agency: Nebraska Department of Transportation
Operations Division
Mailing Address: PO Box 94759
(USPS delivery) Lincoln, NE 68509-4759
Physical Address: 5001 S. 14th Street
(all other deliveries) Lincoln, NE 68512
Telephone: (402) 479-4328
E-Mail: 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.

ACTIVITY		DATE/TIME
1.	Release RFP	August 6, 2024
2.	Last day to submit written questions - <i>Round One</i>	August 23, 2024
3.	State responds to <i>Round One</i> written questions through RFP "Addendum" and/or "Amendment" to be posted to the Internet at: https://dot.nebraska.gov/business-center/business-opp/procure-service-opp/	August 30, 2024
4.	Optional Pre-Proposal Conference - Webex Meeting Join from the meeting link: https://sonvideo.webex.com/sonvideo/j.php?MTID=mda219c102ff65e9736761393dce2c6a0 Join by meeting number: Meeting number (access code): 2481 765 4358 Meeting password: 7RCp7m2a2MV Tap to join from a mobile device (attendees only): +1-408-418-9388.24817654358## United States Toll Join by phone: +1-408-418-9388 United States Toll Global call-in numbers Join from a video system or application: Dial 24817654358 @sonvideo.webex.com You can also dial 173.243.2.68 and enter your meeting number. If you are a hose, click here and login site to view host information. Need help? Go to https://help.webex.com	September 19, 2024 10:00 AM CST
5.	Last day to submit written questions - <i>Round Two</i>	September 20, 2024
6.	State responds to <i>Round Two</i> written questions through RFP "Addendum" and/or "Amendment" to be posted to the Internet at: https://dot.nebraska.gov/business-center/business-opp/procure-service-opp/	September 27, 2024
7.	Proposal Opening <i>IT IS THE BIDDER'S RESPONSIBILITY TO UPLOAD ELECTRONIC FILES BY OPENING DATE AND TIME. EXCEPTIONS WILL NOT BE MADE FOR TECHNOLOGY ISSUES.</i> ShareFile Electronic Proposal Submission Link: https://negov.sharefile.com/i/id9adc07a09949e79	November 4, 2024 2:00 PM CST
8.	Review for conformance to RFP requirements	November 4-6, 2024
9.	Evaluation period	November 7 - December 6, 2024
10.	"Oral Interviews/Presentations and/or Demonstrations" (if required)	TBD
11.	Post "Notification of Intent to Award" to Internet at: https://dot.nebraska.gov/business-center/business-opp/procure-service-opp/	TBD
12.	Contract finalization period	TBD
13.	Contract award	TBD
14.	Contractor start date	TBD

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 R231-24; NEVI Formula Program 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.

RFP Section Reference	RFP Page Number	Question

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

E. PRE-PROPOSAL CONFERENCE

A pre-proposal conference will be held per the Schedule of Events. Attendance at the pre-proposal conference is optional. Bidders will have an opportunity to ask questions at the conference to assist in the clarification and understanding of the Request for Proposal requirements. Questions that have a material impact on the Request for Proposal or process, and questions that are relevant to all bidders, will be answered in writing and posted at <https://dot.nebraska.gov/business-center/business-opp/procure-service-opp/>. An answer must be posted to be binding on the State. The State will attempt to provide verbal answers to questions that do not impact the Request for Proposal or process and are only of interest to an individual bidder during the conference. If a bidder feels it necessary to have a binding answer to a question that was answered verbally, the question should be submitted in writing per the Schedule of Events.

F. 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.

G. 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.

H. DEVIATIONS FROM THE REQUEST FOR PROPOSAL

The requirements contained in the Request for Proposal (Sections II thru VIII) 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 thru VIII must be clearly defined by the bidder in its proposal and, if accepted by the State, will become part of the contract. Any specifically defined deviations must not be in conflict with the basic nature of the 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.

I. PRICES & COST CLARIFICATION

Discount and Price provisions are discussed in Sections II.E and II.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.

J. SUBMISSION OF PROPOSALS

The State is only accepting electronic responses submitted in accordance with this RFP. The State will not accept proposals by mail, email, voice, or telephone, unless otherwise explicitly stated in writing by the State.

Pages may be consecutively numbered for the entire proposal or may be numbered consecutively within sections. Figures and tables should be numbered and referenced in the text by that number. They should be placed as close as possible to the referencing text. The Technical Proposal should not contain any reference to dollar amounts. However, information such as data concerning labor hours and categories, materials, subcontracts and so forth, shall be considered in the Technical Proposal so that the bidder's understanding of the scope of work may be evaluated. The Technical Proposal shall disclose the bidder's technical approach in as much detail as possible, including, but not limited to, the information required by the Technical Proposal instructions.

It is the bidder's responsibility to ensure the RFP is received electronically by the date and time indicated in the Schedule of Events. Proposals must be submitted via ShareFile 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 RFP to include addenda and/or amendments issued prior to the opening date. The website can be found here: <https://dot.nebraska.gov/business-center/business-opp/procure-service-opp/>.

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.

1. Bidders must submit responses via ShareFile using the proposal submission link.

Note to bidders: Not all browsers are compatible with ShareFile. Currently Chrome, Internet Explorer and Firefox are compatible. After the bidder clicks the proposal submission link, the bidder will be prompted to enter contact information including an e-mail address. By entering an e-mail address, the bidder should receive a confirmation email confirming the successful upload directly from ShareFile.

ShareFile link for uploading RFP response(s) provided in the RFP Schedule of Events, Section 0.

- a. The Technical, Cost Proposal and Proprietary information should be uploaded as separate and distinct files.
 - 1) If duplicated proposals are submitted, the State will retain only the most recently submitted response.
 - 2) If it is the bidder's intent to submit multiple proposals, the bidder must clearly identify the separate submissions.
 - 3) It is the bidder's responsibility to allow time for electronic uploading. All file uploads must be completed by the Opening date and time per the Schedule of Events. No late proposals will be accepted.

b. ELECTRONIC PROPOSAL FILE NAMES

The bidder should clearly identify the uploaded RFP proposal files. To assist in identification the bidder should use the following naming convention:

1) RFP R231-24 Company Name - Site Location

If multiple files are submitted for one RFP proposal, add number of files to file names:

- RFP R231-24 Company Name - Site Location File 1 of 2.
- RFP R231-24 Company Name - Site Location File 2 of 2.

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.

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 NDOT 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 REQUIREMENTS

Bidders shall submit the following requirements as part of a complete proposal. 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.

Failure to provide these requirements may provide cause to reject the proposal in its entirety in the event the Bidder does not cure deficiencies within fourteen (14) calendar days following receipt of notification from NDOT. 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. Completed Sections II thru VIII;
4. Completed NEVI Program Minimum Requirements (Attachment A, Form A.1)
5. Completed Corporate Overview (Attachment A, Form A.2)
6. Completed Requirements Matrices (Attachment A, Forms A.3 - A.6);
7. Completed State Cost Proposal Summary (Attachment A, Form A.7);
8. Completed Attachment B Utility Form (PDF);
9. Completed Attachment C NEPA Review Form (PDF);
10. Executed Site Host Agreement (PDF); and
11. Site Plan (PDF).

Q. EVALUATION COMMITTEE

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

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

R. EVALUATION OF PROPOSALS

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

1. NEVI Program Minimum Requirements (Attachment A, Form A.1)
2. Corporate Overview (Attachment A, Form A.2) may include, but is not limited to:
 - a. the ability, capacity, and skill of the bidder to deliver and implement the system or project that meets the requirements of the Request for Proposal;
 - b. the character, integrity, reputation, judgment, experience, and efficiency of the bidder;
 - c. whether the bidder can perform the contract within the specified time frame;
 - d. the bidder's historical or current performance; and
 - e. such other information that may be secured and that has a bearing on the decision to award the contract.

In evaluating the corporate overview, the State may consider, past experiences with the vendor, references, the State's record of the vendor which may include, but is not limited to Vendor Performance Notices, Vendor Improvement Requests, vendor performance reports, and any information related to the vendor's historical or current character, integrity, reputation, capability, or performance with the State or a third-party.

3. Requirements Matrices (Attachment A, Forms A.3 – A. 6); and
4. Cost Proposal Summary (Attachment A, Form A.7).

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.

S. ORAL INTERVIEWS/PRESENTATIONS AND/OR DEMONSTRATIONS

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

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

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

T. 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. BAFOs may be scored and ranked by the Evaluation Committee.

U. 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.

V. 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 Request for Proposal process, the State of Nebraska may take one or more of the following actions:

1. Amend the Request for Proposal,
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 Request for Proposal;
7. Elect to rebid the Request for Proposal;
8. Award single lines or multiple lines to one or more bidders; or,
9. Award one or more all-inclusive contracts.

The Request for Proposal 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/procure-service-opp/>.

Any protests must be filed by a bidder within ten (10) business days after the intent to award decision is posted to the Internet. Grievance and protest procedure is available on the Internet at: https://das.nebraska.gov/materiel/docs/pdf/ProtestGrievanceWithGuidance_08042021.pdf

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.

II. TERMS AND CONDITIONS

Bidders should complete Sections II thru VIII as part of their proposal. Bidder is expected to read the Terms and Conditions and should initial either accept, reject, or reject and provide alternative language for each clause. The bidder should also provide an explanation of why the bidder rejected the clause or rejected the clause and provided alternate language. By signing the 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

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

1. The contract resulting from this Request for Proposal shall incorporate the following documents:
 - a. Request for Proposal, including any attachments and addenda;
 - b. Amendments to the Request for Proposal;
 - c. Questions and Answers;
 - d. Bidder's properly submitted proposal, including any terms and conditions or agreements submitted by the bidder; and
 - e. Amendments and 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

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

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

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

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

C. BUYER'S REPRESENTATIVE

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

D. GOVERNING LAW (Nonnegotiable)

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

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

E. DISCOUNTS

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

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

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

Prices submitted on the cost proposal form shall remain fixed for the first year of the contract. Requests for an increase must be submitted in writing to the NDOT a minimum of 60 days prior to the requested effective date of the increase. Documentation shall be required by the State to support the price increase.

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

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

The bidder shall not commence any billable work until a valid contract has been fully executed by the State and the successful Contractor. The Contractor will be notified in writing when work may begin and will not be paid for any work completed prior to full contract execution.

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

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

The State and the Contractor, upon the written agreement, may make changes to the contract within the general scope of the 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

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

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

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

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

M. BREACH

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

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by 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

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

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

O. SEVERABILITY

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

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

P. INDEMNIFICATION

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

1. GENERAL

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

2. INTELLECTUAL PROPERTY

The Contractor agrees it will, at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to, the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the Contractor or its employees, Subcontractors, consultants, representatives, and agents; provided, however, the State gives the Contractor prompt notice in writing of the claim. The Contractor may not settle any infringement claim that will affect the State’s use of the Licensed Software without the State’s prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State’s use of any intellectual property for which the Contractor has indemnified the State, the Contractor shall, at the Contractor’s sole cost and expense, promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State’s behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State’s election, the actual or anticipated judgment may be treated as a breach of warranty by the Contractor, and the State may receive the remedies provided under this Request for Proposal.

3. PERSONNEL

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

4. SELF-INSURANCE

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

5. ALL REMEDIES AT LAW

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

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

Q. PERFORMANCE BOND

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

The Contractor will be required to supply a bond executed by a corporation authorized to contract surety in the State of Nebraska, payable to the State of Nebraska, which shall be valid for the life of the contract to include any renewal and/or extension periods. The amount of the bond must be the full value of the contract amount. The bond will guarantee that the Contractor will faithfully perform all requirements, terms and conditions of the contract. Failure to comply shall be grounds for forfeiture of the bond as liquidated damages. Amount of forfeiture will be determined by the agency based on loss to the State. The bond will be returned when the contract has been satisfactorily completed as solely determined by the State, after termination or expiration of the contract.

R. RETAINAGE

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

The State will withhold five percent (5%) of each payment due as retainage. Twenty percent (20%) of the retainage amount will be payable at the end of each year upon successful completion of the project obligations during the five (5) year operating and maintenance period. At the end of each year during the operating and maintenance period, the Contractor will invoice the State for the retainage. The State may reject each retainage invoice by identifying the specific reasons for such rejection in writing to the Contractor within forty-five (45) calendar days of receipt of the invoice. Otherwise, the operating and maintenance obligations will be deemed accepted, and the State will release the retainage in accordance with the contract payment terms. See Section VI.I for additional information regarding reimbursement and retainage.

S. LIQUIDATED DAMAGES

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

Failure to meet contract requirements for NEVI station uptime and/or timely and complete project data reporting during the five (5) year operating and maintenance period may result in an assessment of liquidate damages due the state. Such liquidated damages will be assessed against annual retainage payments (section R). See Section VI.J.4 for additional information regarding assessment of liquidated damages.

T. ASSIGNMENT, SALE, OR MERGER

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

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

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

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

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

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.

V. FORCE MAJEURE

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

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

W. CONFIDENTIALITY

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

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

It is incumbent upon the Parties to inform their officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable by 5 U.S.C. 552a (m)(1), provides that any officer or employee, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

X. EARLY TERMINATION

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

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract, 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.

Y. CONTRACT CLOSEOUT

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

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

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

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

III. CONTRACTOR DUTIES

A. INDEPENDENT CONTRACTOR / OBLIGATIONS

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

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

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

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

By-name personnel commitments made in the 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

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

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

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

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <https://das.nebraska.gov/materiel/docs/pdf/Individual%20or%20Sole%20Proprietor%20United%20States%20Attestation%20Form%20English%20and%20Spanish.pdf>
2. The completed United States Attestation Form should be submitted with the Request for Proposal 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 and 4-114.

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 all regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, 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

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

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

E. PERMITS, REGULATIONS, LAWS

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

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

F. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES

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

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

G. INSURANCE REQUIREMENTS

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

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

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

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

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.

REQUIRED INSURANCE COVERAGE	
COMMERCIAL GENERAL LIABILITY	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Medical Payments	\$10,000 any one person
Damage to Rented Premises (Fire)	\$300,000 each occurrence
Contractual	Included
Independent Contractors	Included
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>	
WORKER'S COMPENSATION	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
Voluntary Compensation	Statutory
COMMERCIAL AUTOMOBILE LIABILITY	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
UMBRELLA/EXCESS LIABILITY	
Over Primary Insurance	\$5,000,000 per occurrence
COMMERCIAL CRIME	
Crime/Employee Dishonesty Including 3rd Party Fidelity	\$1,000,000
CYBER LIABILITY	
Breach of Privacy, Security Breach, Denial of Service, Remediation, Fines and Penalties	\$5,000,000
CONTRACTOR'S POLLUTION LIABILITY	
Each Occurrence/Aggregate Limit	\$2,000,000
Includes Non-Owned Disposal Sites	
MANDATORY COI SUBROGATION WAIVER LANGUAGE	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
MANDATORY COI LIABILITY WAIVER LANGUAGE	
"Commercial General Liability & Commercial Automobile Liability policies shall name the State of Nebraska as an Additional Insured and the policies shall be primary and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory as additionally insured."	

3. EVIDENCE OF COVERAGE

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

Nebraska Department of Transportation
RFP #231-24
NDOT.ProcurementServices@nebraska.gov
PO Box 94759
Lincoln, NE 68509

These certificates or the cover sheet shall reference the RFP number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

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

4. DEVIATIONS

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

H. ANTITRUST

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

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

I. CONFLICT OF INTEREST

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

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

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

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

J. STATE PROPERTY

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

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

K. SITE RULES AND REGULATIONS

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

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

L. ADVERTISING

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

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

M. NEBRASKA TECHNOLOGY ACCESS STANDARDS (Nonnegotiable)

1. The State of Nebraska is committed to ensuring that all information and communication technology (ICT), developed, leased, or owned by the State of Nebraska, affords equivalent access to employees, program participants and members of the public with disabilities, as it affords to employees, program participants and members of the public who are not persons with disabilities.
2. By entering into this Contract, Contractor understands and agrees that if the Contractor is providing a product or service that contains ICT, as defined in subsection III.M.3 (below) and such ICT is intended to be directly interacted with by the user or is public facing, such ICT must provide equivalent access, or be modified during implementation to afford equivalent access, to employees, program participants, and members of the public who have and who do not have disabilities. The Contractor may comply with this section by complying with Section 508 of the Rehabilitation Act of 1973, as amended, and its implementing standards adopted and promulgated by the U.S. Access Board.
3. ICT means information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Contractor hereby agrees ICT includes computers and peripheral equipment, information kiosks and transaction machines, telecommunications equipment, customer premises equipment, multifunction office machines, software, applications, web sites, videos, and electronic documents. For the purposes of these assurances, ICT does not include ICT that is used exclusively by a contractor.

N. DISASTER RECOVERY/BACK UP PLAN

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

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

O. DRUG POLICY

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

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.

P. WARRANTY

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

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

Q. TIME IS OF THE ESSENCE

Time is of the essence with respect to Contractor's performance and deliverables pursuant to this 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 Request for Proposal. The Contractor may request a copy of the Nebraska Department of Revenue, Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13 for their records. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

C. INVOICES

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

Invoices for payments must be submitted by the Contractor to the agency requesting the services with sufficient detail to support payment. Invoices must include: 1) Contractor name and address, 2) Invoice number, 3) Invoice date, 4) Invoicing period (beginning and ending dates of services), 5) Contract number, 6) Project identification (project location and description, services provided), 7) Contact person, 8) Breakdown of Contractor's expenses i.e., Direct labor costs (hours worked multiplied by hourly rate), Labor fringe benefits and/or if appropriate, Indirect (overhead) costs, Direct non-labor costs, subcontractor/subconsultant expenses, and 9) Federal and local shares to match the federal amount breakdown of expenses. Invoices must be submitted on or before sixty (60) days following the notice of project completion. See Sections VI.H, VI.I, and VI.J for additional information regarding NEVI required matching and associated considerations.

Invoices shall be sent to: Curtis Nosal
 Nebraska Department of Transportation
curtis.nosal@nebraska.gov

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

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

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

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

E. PAYMENT (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.

V. REQUIRED FEDERAL CLAUSES

The following Federal clauses are made a part of this RFP and any resulting contract. In the event of a conflict between these clauses and the terms and conditions in the Request for Proposal, the Federal clauses shall supersede and take precedent.

By checking the box, the Contractor acknowledges they have read and agree to the following Federal Terms and Conditions:

YES

A. Buy America Build America (BABA)

<https://www.federalregister.gov/documents/2023/02/21/2023-03498/waiver-of-buy-america-requirements-for-electric-vehicle-chargers>

B. Davis Bacon Federal Wage Requirements

<https://www.employer.gov/federal-contractor-requirements/wage-requirements/>

C. The Americans with Disabilities Act (ADA)

<https://www.ada.gov/law-and-regs/regulations/>

D. The Architectural Barriers Act (ABA)

<https://www.access-board.gov/files/usab-evse-guide.pdf>

E. Title VI (Non-Discrimination) of the Civil Rights Act

<https://www.justice.gov/crt/fcs/TitleVI>

F. Title VIII (Fair Housing) of the Civil Rights Act

<https://www.justice.gov/crt/fair-housing-act-1>

G. The Uniform Relocation Assistance and Real Property Acquisition Act

<https://www.federalregister.gov/documents/2024/05/03/2024-08736/uniform-relocation-assistance-and-real-property-acquisition-for-federal-and-federally-assisted>

H. NEPA Requirements

<https://www.epa.gov/laws-regulations/laws-and-executive-orders>
<https://www.epa.gov/laws-regulations/regulations>

I. FHWA-1273 – Required Contract Provisions for Federal-Aid Construction Contracts

<https://www.fhwa.dot.gov/construction/cqit/form1273.cfm>

J. Federal Acquisition Regulation 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

<https://www.federalregister.gov/documents/2019/08/13/2019-17201/federal-acquisition-regulation-prohibition-on-contracting-for-certain-telecommunications-and-video>

K. 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

<https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1>

L. 23 CFR 655 – Traffic Operations

<https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-655>

M. 23 CFR 750 – Highway Beautification

<https://www.ecfr.gov/current/title-23/chapter-I/subchapter-H/part-750>

N. Clean Air Act 42 USC 7401

<https://www.epa.gov/clean-air-act-overview/clean-air-act-text>

O. Federal Water Pollution Control Act, as amended, 33 USC 1252

<https://uscode.house.gov/view.xhtml?path=/prelim@title33/chapter26&edition=prelim>

VI. PROJECT DESCRIPTION AND SCOPE OF WORK

The bidder's proposal shall be subject to the following information in response to this Request for Proposal.

A. PROJECT OVERVIEW

The Nebraska Department of Transportation (NDOT) is seeking proposals from experienced Contractors to build, own, and operate direct current fast charging (DCFC) stations at seven (7) locations along the I-80 corridor. I-80 is designated as an Alternative Fuel Corridor (AFC), part of a national network of highway corridors designated by USDOT (following nomination by state DOTs) for priority implementation of expanded plug-in electric vehicle (EV) charging and hydrogen, propane, and natural gas fueling. The DCFC stations contracted via this RFP will be funded with National Electric Vehicle Infrastructure (NEVI) Formula Program funds and will be required to meet all requirements of this program for a minimum of five (5) years after they become operational.

B. PROJECT BACKGROUND

On November 15, 2021, the President signed the Bipartisan Infrastructure Law (BIL), which included a new funding program for electric vehicle (EV) infrastructure. The National Electric Vehicle Infrastructure (NEVI) Formula Program authorized under Paragraph 2 allocates \$5 billion in formula funding and an additional \$2.5 billion in enhancements to a range of discretionary grant programs. These funds are to expand the EV charging stations already established and to host new charging infrastructure. Through the formula element of the program, Nebraska will have access to \$30.2 million over the five-year program span, or approximately \$6 million per year.

The Nebraska State Plan for Electric Vehicle Infrastructure Deployment (NDOT NEVI Plan) lays a foundation for the State to support greater EV travel opportunities and the economic activities encouraged by establishing EV charging stations statewide. The plan encourages the expanded use of EVs by providing drivers greater peace of mind knowing they will have access to charging stations outside their homes or places of work.

The initial focus of program funding will be filling gaps in existing charging opportunities along the I-80 AFC from east of Pine Bluff, Wyoming to the Missouri River at the Iowa border. To meet NEVI requirements to have a NEVI-compliant charging station at least every 50 miles along the corridor, seven (7) new stations will be required in specific locations as outlined below. In addition to I-80, designated AFCs in Nebraska that may be the focus or future efforts include:

1. US 6 from US 6/N-31 (204th Street) to the Missouri River
2. US 6/N-31 from I-80 at Exit 432 to US 6 (West Dodge Expressway)

C. PROGRAM REQUIREMENTS

Contractors must follow all FHWA NEVI Formula Program requirements. This includes requirements in the following documents:

- [FHWA National Electric Vehicle Infrastructure \(NEVI\) Formula Program Guidance \(pdf\)](#)
- [National Electric Vehicle Infrastructure \(NEVI\) Formula Program Q&A - Resources - NEVI - Environment - FHWA \(dot.gov\)](#)
- [Federal Register: NEVI Standards and Requirements – Final Rule \(website\)](#)

Any requirements specific to this RFP are to be considered in addition to the FHWA requirements and must be adhered to by all Contractors. A full list of requirements that must be agreed to when applying, are included in **Attachment A – NEVI Program Matrices**.

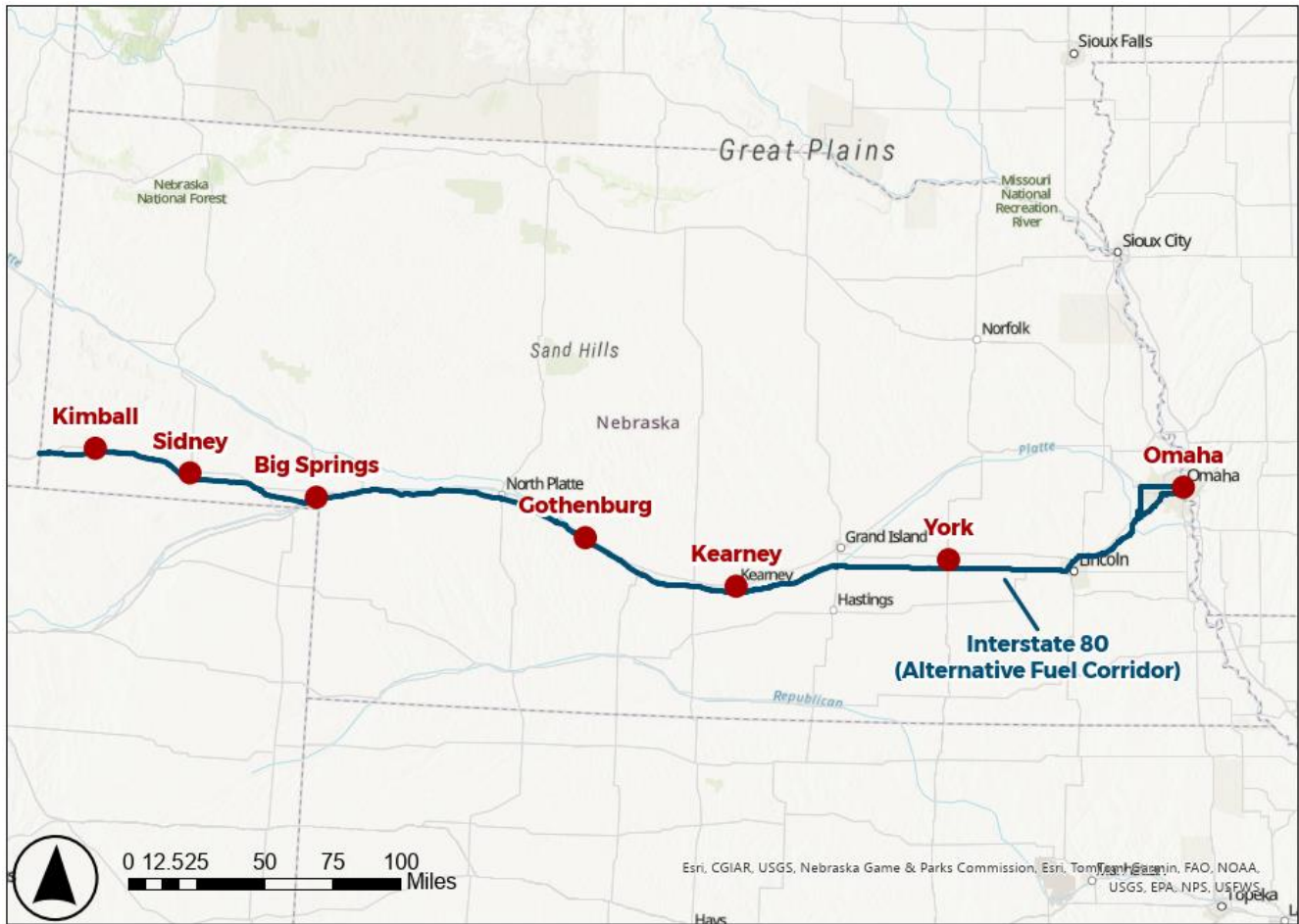
D. PROGRAM STRUCTURE

The federal plan for NEVI-funded electric vehicle charging sites includes a phased approach over the five (5) year funding cycle. The first phase (this RFP) will focus on fully building out charging infrastructure at seven (7) locations along I-80, as shown in Figure 1 and Table 1 which will fill charging gaps along this corridor. Funds will not be spent on other sites (next phases) until the I-80 AFC is fully built out per federal guidelines, with a charging station at least every 50 miles along the corridor.

This RFP is requesting proposals for installation and operation of seven (7) new privately owned and operated DCFC stations at the locations shown in Figure 1 and Listed in Table 1. Each station must include at least four (4) DCFC ports that support output voltages between 250- and 920-volts DC and which have a continuous power delivery rating of at least 150 kW and supply power according to an EV's power delivery request up to 150 kW, simultaneously from each port at the site. Each port must be equipped with an SAE CCS 1 connector and may be equipped with other connector types as well, including connectors compliant with the North American Charging Standard (NACS). All sites must be publicly accessible for charging 24 hours a day, 7 days a week, 365 days a year and at least one (1) port must be an ADA accessible space.

Additional required features include the ability of customers to pay for charging via multiple methods including major credit or debit cards; real-time display of pricing information; and 24/7 customer support. Successful bidders must agree to keep funded stations in service for a minimum of five (5) years, with continuing obligations to NDOT during the operations and maintenance period, including ensuring at least ninety-seven percent (97%) up time for each port, and regular reporting of station operating data according to schedules and in the format specified by NDOT.

Figure 1. Approximate Proposed DCFC Locations



Error! Reference source not found.1 lists the specific locations for which NDOT is requesting proposals to install new DCFC stations, moving in a west-to-east direction along I-80. Per NEVI requirements, all proposed DCFC stations must be one (1) mile or less from the exit from I-80, measured from the end of the associated exit ramp to the entrance to the DCFC station site. NDOT will not evaluate any proposals for sites at I-80 exits not listed in Table 1, or for sites more than one (1) mile from the end of the exit ramp for listed exits. Proposals can be submitted for a station at any of the listed exits; however, Bidders shall submit separate proposals for each location if bidding multiple sites. **Proposals will be evaluated per location with the award going to the highest scoring proposal for each location; NDOT intends to award only one (1) contract per location.**

For additional information about required and preferred site attributes see the Candidate Site Requirements Matrix provided in **Attachment A – NEVI Program Matrices.**

Table 1. Proposed Infrastructure Deployments – I-80 Station Locations

Location Number	City/Town	Route	Location	Local Exit(s)	Utility Territories
1	Kimball	I-80	US 71	20, 22	Kimball Power District or High West Energy
2	Sidney	I-80	US 385	59	Sidney Public Power District/ Wheatbelt Public Power District
3	Big Springs	I-80	N-258	107	Big Springs (NPPD)
4	Gothenburg	I-80	N-47	211	Gothenburg PPD
5	Kearney	I-80	Kearney N-44	272, 275	Kearney NPPD
6	York	I-80	US 81	353	York (NPPD)
7	Omaha	I-80	TBD	432, 439, 440, 442, 445	OPPD

Remaining gaps along other AFCs will be funded in future RFP’s. Additional funding will be available in the future to achieve other goals of the program as identified in the NDOT NEVI Plan. All site selection is at the sole discretion of NDOT.

E. PROJECT INFORMATION

1. Total Funding Available

The NDOT NEVI grant program is a reimbursement grant program. NDOT has, in compliance with NEVI requirements, committed to funding up to eighty percent (80%) of eligible costs for awarded projects. Contractors are required to provide a minimum twenty percent (20%) match of the eligible costs from non-federal sources.

2. Availability of Funding

Grant funding obligation occurs when a selected Contractor and NDOT enter into a written contract after the Contractor has satisfied all applicable requirements and is selected by NDOT. Any costs incurred prior to a fully executed contract are not eligible for reimbursement. NDOT NEVI grant program funds must be used within a two (2) year period of Notice to Proceed (NTP) unless an extension is granted by NDOT. NDOT recognizes that factors outside of the Contractor's control may result in some projects requiring an extension. NDOT retains the right to prioritize projects for selection that are most likely to achieve an efficient timeline and/or AFC build-out requirements.

3. Start Dates and Period of Performance

NDOT expects to obligate NEVI grant program award funding as flexibly and expeditiously as possible after contract award. Once the contract is signed and all required documentation is completed, a notice to proceed will be given by NDOT. A Notice of Acceptance will be issued by NDOT following the successful installation, testing, and certification of the site and receipt of written certification by Bidder that the project was completed in strict accordance with final design plans submitted by bidder and approved by NDOT. The operations and maintenance performance period will start on the date the Notice of Acceptance is issued and continue for the remainder of the contract period. All funds (except the retainage) will be paid within two (2) months once a final invoice is received after notice of acceptance.

4. Award Size and Anticipated Quantity

NDOT expects to award up to seven (7) contracts with the available funding to the highest scoring proposal for each site with one (1) for each of the sites Shown in Table 1. For each site funding will be provided for up to eighty percent (80%) of eligible project costs, with no minimum or maximum award size per site. NDOT reserves the right to make more or fewer awards and reserves the discretion to alter maximum award sizes upon receiving the full pool of proposals and assessing the needs of the program in relation to the priorities. NDOT also reserves the right not to award the full funding amount requested by a Contractor.

F. MINORITY BUSINESSES

The Contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible, including the following affirmative steps. These requirements do not impose an obligation on Contractor to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirement only imposes an obligation on the Contractor to carry out and document the six (6) affirmative steps identified below. These requirements do not preclude the Contractor to undertake additional steps to involve small and minority businesses and women's business enterprises.

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises. This does not authorize breaking down a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g., "project splitting");
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. If subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this subparagraph.

G. ELIGIBILITY INFORMATION

1. Eligible Entities

In general, most entities are eligible to receive NEVI funds. Contractors must be registered with the Nebraska Secretary of State and be in good standing. The Contractor's proposal shall meet the Federal requirements for participation in the NEVI Formula Program, along with the understanding that the Contractor is solely responsible for proper interpretation of said requirements. The Contractor must maintain personnel with the necessary knowledge and experience with the EVSE and the Federal Formula Program to ensure that the Contractor stays in compliance with all the Federal Formula Program requirements through construction and for the term of all on-going maintenance and operations obligations herein.

2. Eligible Projects

NEVI Formula Program funds are restricted to projects directly related to EV charging infrastructure that is open to the public or to authorized commercial motor vehicle operators from more than one (1) company. Initially, funding under this program is directed to designated AFCs for electric vehicles to build out the national network, particularly along the Interstate Highway System. Refer to **Error! Reference source not found.**¹ for eligible interchanges and eligible project locations.

H. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) SUBRECIPIENT DATA SHEET

By checking the box, the Contractor acknowledges they have read and agree to the following Federal Terms and Conditions:

YES

Failure to provide accurate information for the Bidder named as a party to this agreement or to read and agree to the following Federal Terms and Conditions will cause the inability of the NDOT to process this agreement and result in delay or loss of funds to the Bidder. The Bidder's documentation will be considered incomplete until such time that Subgrantee provides accurate FFATA information.

1. Registration and Identification Information

The Bidder must maintain a current full registration that permits their entity registration to appear in a public search in the System for Award Management or SAM (www.SAM.gov) at all times during which they have active federal awards funded pursuant to this agreement. A Unique Entity Identifier (UEI) is issued upon registration in SAM.gov. Subgrantee must provide its UEI, to the NDOT along with the signed agreement.

2. Primary Location

Bidder must provide to the NDOT the primary location of performance under the award, including the City, State, and zip+4. If performance is to occur in multiple locations, then Bidder must list the location where the most amount of the award is to be expended pursuant to this agreement.

3. Compensation of Officers

Bidder must provide the NDOT the names and total compensation of the five (5) most highly compensated officers of the entity if:

a. the entity in the preceding fiscal year received:

- 1) Eighty percent (80%) or more of its annual gross revenues in Federal awards; and
- 2) \$30,000,000 or more in annual gross revenues from Federal awards; and

b. the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. See FFATA § 2(b)(1).

If the Bidder does not meet the conditions listed above, then it must specifically affirm to the NDOT that the requirements of this clause are inapplicable to the Bidder. Bidder must provide information responding to this question along with Bidder's return of the signed agreement. The NDOT will not process this agreement until such time that Bidder provides such information responding to this question.

I. ELIGIBLE AND INELIGIBLE COST

Contractors may apply for up to eighty percent (80%) federal cost share of the eligible costs, with a minimum required match of twenty percent (20%) from non-federal sources. Contractor may provide a greater than twenty percent (20%) funding match in support of their proposal. Eligible costs to be included in the cost share and match are defined in this section. The eligible and ineligible costs listed in this section are preliminary. Final eligible and ineligible costs may change to conform to Federal regulations and FHWA directives.

In addition to satisfying this minimum matching funds contribution requirement (or otherwise ensuring the matching funds requirement is met), the Contractor is responsible for ensuring that funds are available for any and all costs incurred in completion of the Project that exceed the amount estimated in their proposal, that any and all such costs are paid, and that the Project is completed.

NDOT will not reimburse Contractor for any costs incurred prior to award of a contract under this RFP, for any costs determined by NDOT to be ineligible project costs, or for those incurred in excess of the original or amended proposal cost. Contractor will only be reimbursed for verified actual costs as required by the NEVI requirements and confirmed by the NDOT. Contractor is solely responsible for all such costs with no reimbursement under the contract.

Contractor acknowledges that the funding provided is obtained by NDOT from the federal government. The Contractor further acknowledges that the construction, maintenance, operation, and reporting requirements of this project are material terms of the resulting contract.

1. Eligible Costs

Eligible costs are those costs directly related to charging electric vehicles. To be considered directly related to charging of vehicles, items must be a necessary component in the EV charging station, be a necessary component to connect the EV charging station to the electricity source (or to supply power from the electricity source), provide eligible signage to direct EVs to the charging station, or provide information to EV users about use of the charging station. This includes costs of new public EV charging stations, as well as costs of upgrades to existing public EV charging stations to make them compliant with minimum NEVI standards. Eligible costs may include:

- a. Costs for pre-construction work like environmental documents and studies, preliminary engineering, and related work.
- b. Construction costs (as defined under 23 U.S.C. 101(a)(4)) directly related to EV charging station including necessary paving and curbs for parking positions adjacent to installed EVSE.
- c. Costs for planning, permitting, acquisition, and installation of on-site distributed energy resource (DER) equipment.

- d. Costs to acquire and install on-site electric service equipment (e.g., power meter, transformer, switch gear).
- e. Costs of minor grid updates (work necessary to connect a charging station to the electric grid distribution network like extending power lines or upgrading existing power lines).
- f. Costs to install signage, safety lighting and protection at site.
- g. Costs for workforce development activities.
- h. Costs to procure and install, repair, upgrade, and/or replace existing EV charging equipment to meet the latest version of the NEVI minimum standards and requirements.
- i. Costs to procure, setup, and install EVSE related hardware and software, including cost of extended warranties up to five (5) years.
- j. Costs to upgrade existing EV charging stations to meet ADA requirements.
- k. Costs to install canopies over charging locations.
- l. Costs for battery energy storage systems integrated with EVSE to manage electricity demand charges.
- m. Costs to purchase and install proprietary adapters, and/or to install additional charging cords and connectors (in addition to the required CCS connectors) to allow vehicles equipped with North American Charging Standard (NACS) charge ports to charge at the installed EVSE.

2. **Ineligible Costs**

- a. Costs incurred prior to a fully executed contract.
- b. Costs not directly related to charging of vehicles.
- c. Costs associated with developing site amenities not directly related to EV charging activities.
- d. Costs for purchase or rental of real estate.
- e. Costs for construction or general maintenance of building and parking facilities (if not directly related to charging of vehicles).
- f. Project equipment costs associated solely with installing DC fast charging ports beyond the four (4) required ports are not eligible costs. Such costs could include power cabinets and charging units that do not also support one (1) or more of the four (4) required ports. Charging units with maximum power output ratings less than 150 kW to each charging port are not eligible for reimbursement.
- g. Fixed operations and maintenance costs during the five (5) year operations and maintenance period, which are to be funded by the Contractor, including:
 - 1) Charging equipment lease fees (if Contractor chooses lease option for charging equipment rather than purchase option).
 - 2) Cellular network fees, internet service fees, or similar fees.
 - 3) Hardware and software maintenance and repair costs, including service agreements with third-party contractors and charging equipment manufacturers or warrantors.
- h. Variable operations and maintenance costs, including costs for electricity, insurance, and other recurrent business costs such as staffing.
- i. Costs of major grid upgrades (longer line extension or upgrades, improvements to offsite power generation, bulk power transmission, or substations).
- j. Costs of photovoltaic (PV) solar arrays, even if dedicated to supply power to the EVSE.
- k. Utility service upgrade costs covered by the utility.
- l. Costs covered by programs or tariff rules of the electric utilities.
- m. Costs for processes to comply with otherwise applicable legal requirements.
- n. Costs for studies or research projects.

J. **NEVI FORMULA PROGRAM FUNDS REIMBURSEMENT**

Payment of NEVI Formula Program funds will not be made as advances to the Contractor, but rather, will only be made, after-the fact-of Eligible Expenses having been incurred. Eligible Expenses (and ineligible expenses) for reimbursement are defined and detailed in **Item I Eligible and Ineligible Cost** above with additional reimbursement requirements provided in **Item K** below. Requests for reimbursement of expenses incurred which are outside the limitations contained in this RFP will not be paid.

The minimum matching funds required by the Act must be documented by the Contractor as having been already contributed to the project, as a condition of the NDOT reimbursing requested NEVI Formula Program funds. The minimum matching funds requirement applies to, and will be assessed as to sufficiency, at the time of every request for NEVI Formula Program funds. The minimum amount of matching funds (in money) required is equal to twenty percent (20%) of the total eligible costs of the Project. Under no circumstances may the amount of matching funds be less than twenty percent (20%) of the total eligible cost of the Project. Only certain types of expenses will count towards the matching funds requirement as detailed in **Item G Eligibility Information** and **Item I Eligible and Ineligible Cost**.

The NEVI Formula Programs Funds will be paid in a series of individual reimbursements following the submittal of invoices as otherwise required. For each payment to the Contractor, the State will retain five percent (5%) of the total NEVI Formula Funds awarded. The retained funds shall be distributed as described below. The reimbursement schedule is as follows:

1. Initial Reimbursement

Contractor may submit an invoice for reimbursement following the completion of final design and procurement of EVSE equipment for the project following all 2 CFR 200 proof of purchase requirements.

2. Final Reimbursement

Contractor may submit a final invoice for reimbursement following substantial completion as determined by NDOT.

3. Release of Retainage

The five percent (5%) of retained NEVI Formula Funds shall be paid in installments as described in this section.

- a. Contractor qualifies for a payment of retained NEVI Formula Funds, less any assessed Liquidated Damages, if, and only if, the Contractor has met all obligations for maintenance, operation, and reporting described in the contract and required by applicable law in the calendar year preceding the eligible date for payment. Contractor may be eligible for a payment of retained funds, if, and only if, any substantial or material breaches of the contract are timely and adequately remedied as otherwise described in the contract.
- b. Retained NEVI Formula Funds shall be paid as expressed below. The expressed percentages indicate the percentage of total retained NEVI Formula Funds.
 - 1) First Retained Payment - twenty percent (20%) - One (1) calendar year following the date of the substantial completion of the construction and installation of EVSE infrastructure and equipment as defined in the project;
 - 2) Second Retained Payment - twenty percent (20%) - Two (2) calendar years following the date of the substantial completion of the construction and installation of EVSE infrastructure and equipment as defined in the project;
 - 3) Third Retained Payment - twenty percent (20%) - Three (3) calendar years following the date of the substantial completion of the construction and installation of EVSE infrastructure and equipment as defined in the project;
 - 4) Fourth Retained Payment - twenty percent (20%) - Four (4) calendar years following the date of the substantial completion of the construction and installation of EVSE infrastructure and equipment as defined in the project;
 - 5) Fifth Retained Payment - twenty percent (20%) - Five (5) calendar years following the date of the substantial completion of the construction and installation of EVSE infrastructure and equipment as defined in the project;
- c. Contractor must file an invoice requesting payment of retained NEVI Formula Funds following the processes described for other invoices and reimbursements in the contract and as required by 2 CFR 200.
- d. Contractor invoices for payment of retained NEVI Formula Funds must occur within sixty (60) days of the date of that the Contractor becomes otherwise eligible as described in this section.

4. Liquidated Damages

Liquidated Damages (LD) may be assessed against payments for Release of Retainage during the Operational Period for failure of Contractor to comply with (1) EVSE Requirements related to uptime, and (2) Reporting requirements included in the contract, which align with, and will facilitate NDOT's compliance with NEVI Requirements for reporting.

a. EVSE Uptime

If in any year the average annual uptime (rolling twelve (12) month average) for a charging port drops below the ninety-seven percent (97%) threshold established as part of the NEVI Requirements, NDOT will assess LDs against the next payment for Release of Retainage. Damages are not assessed as a penalty, but as a reasonable estimate of and substitute for the damages sustained, which are recognized as incapable of precise measurement. For every one percent (1%) that the average annual uptime falls below ninety-seven percent (97%) for the year, NDOT will assess LDs of \$100 per port. For example, if two (2) ports achieve > ninety-seven percent (97%) up time, but one (1) port achieves 96% and one (1) achieves 93%, total LDs for the year would be \$500 ((1 x \$100) + (4 x \$100) = \$500). For this calculation actual annual average up time (twelve (12) month rolling average) for each port will be rounded up or down to the nearest whole percentage value. Note that for the purposes of the average annual uptime (rolling twelve (12) month average) calculation, such calculations will not commence until thirty (30) days after Final Completion to provide the Contractor with time to address any initial ramp-up issues.

- b. Charging port uptime will be calculated in accordance with the equation included in the National Electric Vehicle Infrastructure Standards and Requirements (23 CFR Part 680.116(b)(3)). For charging stations that employ BESS to reduce the utility connection below 150 kW/port, failure to provide the amount of power requested by a vehicle (up to 150 kW) due to BESS depletion will be considered an outage for the purpose of calculating uptime. Note that the uptime calculation excludes the number of outage hours not under the control of the Developer, provided that the Developer can demonstrate that the charging port would otherwise be operational. These excluded outage hours include: electric utility service interruptions, failure to charge or meet the EV charging customer's expectation for power delivery due to the fault of the vehicle, scheduled maintenance, vandalism, or natural disasters.

c. NEVI Reporting

If the Contractor fails to timely and comprehensively meet the quarterly and annual reporting requirements related to operations and use of EVSE Stations that are included in the Contract per NEVI Requirements, NDOT will impose LDs of \$25 per day for every day past the obligated due date until NDOT receives a complete report with all required data elements. These LDs will be assessed against the next invoice submitted for Release of Retainage after the due date of the quarterly or annual report.

The final settlement between the NDOT and the Contractor will be made after final funding review and approval by the NDOT and after an audit, if deemed necessary, has been performed to determine eligible actual costs.

If deemed necessary, an audit will be performed by the NDOT to determine whether the actual costs incurred for the Project are eligible for reimbursement with federal funds. The Parties understand that the audit may require an adjustment of the reimbursement made under the contract. The Contractor agrees to reimburse the NDOT for any overpayments identified in the audit review, and the NDOT agrees to reimburse the Contractor for underpayments when appropriate.

If the Contractor's calculated share is more than the amount of matching funds previously credited to the Contractor, the NDOT will bill the Contractor for the difference. The Contractor agrees to pay the amount due the NDOT within thirty (30) days of receipt of invoice.

K. REIMBURSEMENT REQUIREMENTS

Contractor may be reimbursed with federal funds for eighty percent (80%) of the actual and eligible incurred costs. Costs will not be reviewed for reimbursement until:

1. The NDOT has obtained federal funds obligation.
2. Contractor obtains the approval of NDOT prior to the purchase of any specialized equipment over \$5,000.00. Specialized equipment is equipment not ordinarily used or required in the regular administration or planning operations of the Contractor. Such equipment must be required for and used primarily for Eligible Expenses of the project. The cost of this specialized equipment must be deemed reasonable as determined by the NDOT and with proper prior approval by NDOT.
3. Contractor agrees to certify that items of equipment included in direct costs have been excluded from the indirect costs.
4. Contractor follows all procurement procedures and requirements as detailed in 2 CFR 200.

The Contractor must submit for reimbursement the total actual costs expended that are eligible for NEVI Formula Program funds up to the percent requested in the bid not to exceed the total bid amount. The NDOT will review the costs submitted and determine what costs are eligible for reimbursement. NDOT will reimburse the Contractor for the Federal share of the eligible actual costs. Contractor shall retain detailed cost records supporting all invoices for five (5) years after the final project closeout by NDOT. Contractor shall submit those records to the NDOT upon request.

Contractor is required to submit their reimbursement requests of actual costs via email to the Nebraska NEVI Formula Program Coordinator, **Curtis Nosal** (Curtis.Nosal@Nebraska.gov), or such other email address as may be designated by the NDOT. The requests will be reviewed by the NDOT to determine compliance with the requirements of the Act, the Application Guidelines, and the contract. Upon satisfactory compliance, payments may be authorized by the NDOT and, upon authorization, will be processed through the NDOT's office in Lincoln, Nebraska. All reimbursement requests (invoice, progress report, required NDOT Forms, supporting material) must be submitted electronically through the NDOT's invoice workflow system OnBase, for review, approval, and payment. The user guide for the OnBase system along with training videos can be found at <http://dot.nebraska.gov/business-center/consultant/onbase-help/>

A progress report must accompany the reimbursement request and must include the following:

1. Comparison of actual performance with established goals
2. Progress in meeting schedules
3. Comparison of budgeted (approved) amounts and actual costs incurred.
4. Cost overruns and underruns
5. Approved planning program revisions
6. Other pertinent supporting data.

Breakdown of subcontractors/subconsultants expenses must be noted as paid and signed by appropriate representative.

The NDOT will perform an initial check to verify that all necessary documentation is accurate and complete. The NDOT will reimburse Contractor for the Eligible Expenses and will make a reasonable effort to pay the Contractor within forty-five (45) days of the NDOT's receipt of Contractor's reimbursement request.

The criteria contained in **Item I. Eligible and Ineligible Cost** will be applied to determine whether the costs incurred by the Contractor are allowable under the contract, including any subcontractor/subconsultant agreements.

After receipt and acceptance by the NDOT of the required documentation detailed above and in **2 CFR 200**, the Contractor may submit requests for reimbursement of Eligible Expenses incurred in carrying out the project.

The Contractor will submit requests for reimbursement no more frequently than one (1) time per month, unless this limitation is waived by the NDOT in writing, in a particular instance.

The NDOT will not process a request for reimbursement that is less than \$10,000, unless such request is the final request made by the Contractor under the contract.

The final settlement between the NDOT and the Contractor will be made after final funding review and approval by the NDOT and after an audit, if deemed necessary, has been performed to determine eligible actual costs.

The Contractor will account for Project expenses in a manner consistent with generally accepted accounting principles, including maintenance of records as required by 2 CFR 200. All Project expenses will be supported by documentation evidencing such expenditures. In addition to maintaining records required to be consistent with generally accepted accounting principles, the Contractor will keep such other records as the NDOT may specifically require for compliance with the NEVI Formula Program. The

other records required by the NDOT include but are not limited to the following: the Application, the contract, any contract amendments, requests for reimbursement along with supporting documentation of expenses incurred, and correspondence pertaining to this NEVI Formula Program grant award.

The records will be retained for at least five (5) years after expiration of the contract. If any claim, litigation, or audit is started before the expiration of the five (5) year period, the records must be retained until all claims, litigation, or audit findings are resolved.

L. ELECTRIC VEHICLE SUPPLY EQUIPMENT (EVSE) SPECIFICATIONS

These specifications are for EVSE that are compliant with the NEVI Formula Program. NDOT reserves the right to add additional requirements specified in future FHWA NEVI guidance documents, subject to the conditions of the contract. These specifications do not direct the proper methods for installation of the equipment. The installer of the equipment must provide the proper infrastructure and power source up to the location of the EVSE.

NDOT will consider various makes and models of EVSE equipment used to supply electricity to electric vehicles. The EVSE covered under these specifications are limited to Direct Current Fast Charging (DCFC). Any items other than EVSE, including but not limited to network capabilities, preventive maintenance agreements, and stand-alone credit card terminals for public use chargers are to be included separately from these specifications.

The Contractor shall meet with the following EVSE requirements:

1. Minimum NEVI Requirements

- a. Electricians working to install or maintain EVSE shall be EVITP certified or shall have graduated from or have a certificate from a DOT registered apprenticeship program.
 - b. EV charging infrastructure includes at least four (4) charging ports.
 - c. Each of the four (4) charging ports is equipped with an SAE Combined Charging System (CCS 1) connector.
 - d. Each of the four (4) charging ports support output voltages between 250- and 920-volts DC.
 - e. Each of the four (4) charging ports supports a continuous power delivery rating of at least 150 kW and will supply power according to an EV's power delivery request up to at least 150 kW, continuously and simultaneously with the other three (3) ports.
 - f. At least one (1) charging port is ADA accessible, and all EVSE are ADA compliant.
 - g. Charging is available at all four (4) ports 24 hours a day, 365 days a year.
 - h. A non-federal match of at least twenty percent (20%) of eligible project costs is provided by other sources.
 - i. Charging customers will have multiple payment options that do not require paying a membership fee, and which include the option for contactless payment with major credit and debit cards, and either a toll-free number or SMS option to initiate charging and submit payment. Contractor shall list a phone number prominently near the chargers for use by those having any difficulty using the chargers.
 - j. 24/7 customer support will be available to help charging customers.
 - k. EVSE owner will ensure that all four (4) charging ports remain in operation for a minimum of five (5) years after station is operational.
 - l. During five (5) year operating period EVSE owner will maintain all ports to achieve at least 97% annual average uptime for each port.
 - m. During the five (5) year operating period EVSE owner will provide to NDOT quarterly and annual reports as specified in the contract. (Refer to NEVI Standards and Requirements (23 CFR 680.112) for data collection and reporting requirements.)
 - n. Contractor acknowledges they have read and agree to all Federal Terms and Conditions (see Section V).
 - o. EVSE shall be certified by an Occupational Safety and Health Administration Nationally Recognized Testing laboratory to the appropriate UL standards.
 - p. EVSE shall conform to the latest Open Charge Point Protocol (OCPP2.0.1) to communicate with a network.
 - q. EV-to-charger communications must conform to ISO 15118 standards or equivalent.
 - r. Price for charging (\$/kWh) must be displayed prior to initiating a charge and shall not change during a charging session.
 - s. Distance of site from nearest exit from I-80 is 1.0 miles or less as measured from the end of the off-ramp to the site entrance. Sites further than one (1) mile from the AFC are not compliant and proposals will not be evaluated.
 - t. Provide a letter signed by the Site Host expressing a commitment to host the EVSE at the location identified in the Applicant Site Schematic for a minimum of five (5) years from when the EVSE is accepted by NDOT.
 - u. Provide completed Attachment C - NEPA Review Form for review by the NDOT NEPA Review Team.
2. All pay equipment (i.e., credit card terminals) integrated with the EVSE equipment must possess the capabilities to ensure credit card transactions are compliant with the latest Payment Card Industry Data Security Standard (PCI DSS). Installers of equipment under these specifications must use commercially reasonable security standards to protect sensitive and/or confidential data both in transit and at rest. All pay equipment must be operational at start-up.
 3. Manufacturers and/or suppliers under these specifications must provide warranties covering a minimum of five (5) years for all chargers and equipment from the time of notice of acceptance.
 4. Suppliers must provide complete specifications and installation guides for all chargers and equipment. This information must also include any infrastructure required for the installation of a charger, including placement of bollards and curb stops.

Installation guides are intended for construction or personal safety requirements related to installation to not cause injury, damage the equipment, or void the warranty.

5. Electrical Safety

- a. In case of emergency, EVSE shall have the ability to stop the flow of power away from the charging unit through a remote disconnect or breaker shunt device. Reference SAE J2990, local code requirements and fire department personnel.
- b. EVSE shall have over-current protection rated for application.
- c. EVSE shall be equipped with design to shut off the flow of electric power to reduce the risk of electric shock in case of a ground or other fault such as a Charge Circuit Interrupting Device (CCID) or Ground Fault Circuit Interrupter (GFCI). See Underwriters Lab 2231 as reference.

6. Networking

- a. EVSE shall be network-ready to allow for management of charging operations.
- b. EVSE hardware shall be operable by a different network service provider without modification necessary from the original vendor.
- c. EVSE shall be capable of connecting to a network via a secure hardwired, wireless, or cellular network.
- d. EVSE shall be accessible by NDOT upon request for inspection, testing, etc.
- e. EVSE shall be able to communicate through a secure network with electric utilities, other energy providers, and local energy management systems.

7. Load Management/Demand Response

- a. Installers must coordinate with the local utility provider to confirm that expected power demand will remain within the capacity of the designed electrical system. Power management may be used to achieve reasonable power loads but shall not go below 150-kW threshold.
- b. The network communications, controls, and back-office support service shall have the ability to monitor energy usage (kWh) and energy demand (kW) of the EVSE.
- c. Communications must meet the latest Open Charge Point Interface protocols or equivalent. Reference latest testing process as provided by Open Charge Point Alliance.

8. Customer Payment Options

- a. As applicable, the network infrastructure shall be PCI compliant in order to execute financial transactions with EV drivers safely and securely. Network provider shall have PCI DSS certification.
- b. Infrastructure shall have a point-of-sale and supporting network that uses an open protocol to allow subscribers of other EV charging system networks to access the EVSE.

9. Screen Displays

- a. Displays shall be LCD, LED or equivalent or better, user friendly, easy to operate, daylight and night viewable, and UV-protected with human-machine interface capability.
- b. Display must show cost (\$), time limitations, power, charging, charging complete, remote control, system status, faults, and service.

10. Appearance

- a. Any form of graphics including branding, logos, and/or art, included on or in the vicinity of the charging stations within the public ROW are subject to the rules and regulations as directed by NDOT. NDOT reserves the right to provide a reasonably sized visual identifier to be placed on the equipment that received NEVI funding from NDOT. Should vendors seek to use additional NDOT branding, they must coordinate that with NDOT's Communications Office.

11. Misc. Minimum Requirements

- a. EVSE shall include security design features to remain tamper-resistant and vandalism resistant, such as tamper-resistant screws, anti-vandalism hardware, locked enclosures, and graffiti-resistant coating or paint. Vandal resistance is intended mostly relative to the touch screen, but the overall goal is to limit damage to vital parts of the equipment as it can sometimes be difficult to get a quick turnaround on parts such as card readers and other items.
- b. EVSE shall be capable of operating in an ambient temperature range of minus 22 to 122 degrees Fahrenheit with a relative humidity of up to ninety percent (90%).
- c. EVSE shall be able to withstand extreme weather conditions including minor flooding, heavy rains, high winds, snow and ice, and is protected from malfunctions due to condensation.
- d. Cabinets and above ground structures (including canopies) shall be designed and constructed to be compliant with the state building code, which is by reference the 2018 Edition of the International Building Code.
- e. EVSE and any external accessories (if applicable) shall have outdoor-rated enclosure – NEMA 3R or greater.
- f. EVSE shall have the ability to measure demand and energy delivered at an accuracy per national standards.

M. MAINTENANCE AND OPERATION

The following sections outline NEVI maintenance and operation requirements as detailed in the following documents:

- [FHWA National Electric Vehicle Infrastructure \(NEVI\) Formula Program Guidance \(pdf\)](#)
- [FHWA NEVI Program Frequently Asked Questions \(pdf\)](#)

- [Federal Register: NEVI Standards and Requirements – Final Rule \(website\)](#)

1. Equipment Ownership

Upon completion of construction, installation, and written acceptance by NDOT of fully operational EVSE (including power and data service) the Contractor shall own or lease the EVSE equipment. Contractor(s) shall ensure there is a separate and distinct utility meter for the EVSE system.

2. Five-Year Operations and Maintenance Obligation

The Contractor shall ensure the operation and maintenance of the EVSE at the site for a period of at least five (5) years from the date of substantial completion as determined by the NDOT, at its sole cost and expense as required by the NEVI Standards and Requirements. During this period Contractor shall ensure that all charging ports maintain a minimum of 97 percent annual average up time, shall provide all required reports to NDOT, and shall ensure that the station meets all other minimum NEVI requirements.

During this period NDOT may notify the Contractor if it has reason to believe that any NEVI requirements are not being met and require the Contractor to develop an action plan to bring the station back into compliance with NEVI requirements; Contractor shall implement the action plan. If Contractor fails to timely bring the station back into NEVI compliance NDOT reserves the right to retain a contractor of its own choosing to make necessary repairs or corrections at Contractor's expense.

Notwithstanding anything to the contrary contained in this RFP (including its terms and conditions and applicable appendices) or the contract, if the Contractor is in default of any NEVI requirements, NDOT may terminate the contract, and if the default occurs within five (5) years following the payment of any invoices require the Contractor to repay to NDOT the amount of financial assistance provided, prorated for the portion of the remaining five (5) years.

3. Transfer During the Performance Period

If the Contractor sells the site, closes the business, or otherwise is unable to fulfill the five (5) year obligation for operation and maintenance of the charging station, the Contractor must either work with NDOT to assign a new operator at the site or pay back project funds prorated for the portion of the remaining five (5) years.

4. Uptime Requirement

Throughout the full five (5) year operations and maintenance period Contractor shall ensure that all charging ports maintain a minimum of 97% percent annual average up time. Uptime shall be self-monitored by the Contractor and reported to NDOT quarterly, on a rolling twelve (12) month average basis.

For the purposes of this requirement up time will be measured in accordance with the equation included in the National Electric Vehicle Infrastructure Standards and Requirements (23 CFR Part 680.116(b)(3)). Per this equation the calculation of up time excludes the number of outage hours not under the control of the Developer, provided that the Developer can demonstrate that the charging port would otherwise have been operational. These excluded outage hours include: electric utility service interruptions, failure to charge or meet the EV charging customer's expectation for power delivery due to the fault of the vehicle, scheduled maintenance, vandalism, or natural disasters.

5. Contractor Failure

If the NDOT determines that the Contractor has failed to maintain the improvements as described in the contract and according to the law and applicable rules and regulations, obligations in the contract, the NDOT shall notify the Contractor in writing of the failure. The Contractor shall correct any non-disputed deficiencies or failures as soon as possible, and provide the NDOT with notice of the correction, including a description of the correction sufficient to satisfy the NDOT that the correction has occurred, within five (5) business days of the completion of the correction. If the Contractor disputes any of the NDOT's findings in its notice, the Contractor shall notify the NDOT within ten (10) business day of the dispute. The parties shall meet to discuss any disputed findings as soon as possible. All corrections required by the NDOT shall be considered maintenance under the contract and the cost and expense for the correction shall be as described in § 4.1 of the contract.

If the Contractor fails to correct the failures identified by the NDOT or fails to provide a notice of a dispute within ten (10) business days, the NDOT may, at its discretion, correct the failure and bill the Contractor for the costs to correct the failure, hold the Contractor in material breach and exercise its rights under any bond, or take any other action provided by law or the contract to ensure compliance with the requirements of the NEVI Formula Program.

If the Contractor does not complete the project, the NDOT may immediately terminate the contract, and may require all payments of NEVI Formula Program funds made to the Contractor to be immediately due for repayment to the NDOT.

N. TESTING REQUIREMENTS

Contractor shall conduct standard factory testing and post-installation system testing for each charging unit to verify functionality of the EVSE, as well as access and/or integration into the NDOT or other prescribed data sharing system. Factory test results shall be provided for each unit as verified by the Contractor's quality assurance or test manager. Similar test results for the installed system shall be provided with the test manager's approval. NDOT will also have the right to test the EVSE and any data sharing connections (NDOT systems and/or Contractor provided portal). For data sharing, NDOT will participate in the testing through verification of receipt of the specified data. For the charging unit, NDOT or its representative may run on-site testing at its own expense.

O. CUSTOMER SERVICE SUPPORT

Contractor shall provide customer service support 24 hours per day, 7 days a week. Customer service shall provide support and responses to inquiries and comments from EVSE users who are using or attempting to use the EVSE charging equipment. The Contractor shall submit a plan detailing how such service shall be provided which is accessible by all users. NDOT will provide key performance indicators (KPI) for monitoring and to ensure quality performance.

All customer service requirements noted in the NEVI Standards and Requirements, linked below.

- [FHWA National Electric Vehicle Infrastructure \(NEVI\) Formula Program Guidance \(pdf\)](#)
- [FHWA NEVI Program Frequently Asked Questions \(pdf\)](#)
- [Federal Register: NEVI Standards and Requirements – Final Rule \(website\)](#)

P. PRIVACY AND CYBERSECURITY

Contractor shall be responsible for cybersecurity as it relates to owning, operating, maintaining, and data sharing for the EVSE. Contractor shall own and be responsible for all data generated by the chargers at the site. Any data provided to State by Contractor is potentially subject to disclosure, (and may be disclosed by State when State determines it to be appropriate) 7127i71n accordance with Nebraska's Public Records Act found at Neb. Rev. Stat. Section 84-712 et seq. Contractor shall participate in a privacy impact assessment with NDOT, including their Data Governance and Security team. Contractor shall share the following:

1. How cybersecurity will be assessed throughout the contract term,
2. Results of third-party cybersecurity testing (not proprietary information that would make the overall system vulnerable),
3. How system updates will affect end users, and
4. Proposed protocols for notifying NDOT of any security breach.

Contractor shall develop a Data Management Plan that identifies the location of the data and security processes and systems governing it while under the Contractor's control. The Data Management Plan shall incorporate this information and guidance on risk assessments for personnel involved with the charging network, including contractors and service providers. Contractor shall submit the Data Management Plan to NDOT for approval. Contractor shall comply with local, state, or federal laws as they relate to cybersecurity and privacy. Contractor shall provide an updated Data Management Plan annually along with the annual report for approval by NDOT. Contractor shall specifically identify the need for the changes and changes to the Data management Plan as part of the annual updates. Contractor can update and submit the Data Management Plan more frequently, if required.

Contractor shall also certify that all component parts of the installed electric vehicle charging station which are capable of storing data, transmitting information via internet connection, or remotely controlling the operation of the electric vehicle charging station were not produced, manufactured, or assembled by a restricted entity. See Nebraska Legislative Bill 1317, section 69 for the definition of a restricted entity (<https://nebraskalegislature.gov/FloorDocs/108/PDF/Final/LB1317.pdf>)

Q. PERMITTING & THIRD-PARTY AGREEMENTS

The Contractor must complete and provide **Attachment C – NEPA Review Form** for review and evaluation by the NDOT NEPA Review team. If subsequent post-award review by the NDOT NEPA Team determines that an Environmental Assessment (EA) or Environmental Impact Study (EIS) is required, the proposal will be disqualified.

NDOT will obtain environmental clearances for the site work related to EV installation as required by the National Environmental Protection Act (NEPA). Contractor shall be responsible for all permitting responsibilities and third-party agreements for the site. Any amendments to the obtained NEPA clearances shall be the responsibility of the Contractor.

R. RIGHTS TO INVENTIONS

If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FHWA is ultimately notified.

Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FHWA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FHWA.

S. REPORTING REQUIREMENTS

The Contractor shall prepare and submit to the NDOT (in a form and manner acceptable to the NDOT), reports as required by NEVI and containing such information as is required by any federal rules and regulations, policies, or applicable law to ensure that the Project remains eligible for NEVI Formula Program funds. Contractor shall obtain and maintain all necessary equipment, infrastructure, and improvements to ensure its ability to fulfill this obligation.

All reports must be submitted by the Contractor to the Federal EV-ChART platform per 23 CFR 680.112. This platform provides for monitoring and reporting on site performance with additional information available below.

- Electric Vehicle Charging Analytics and Reporting Tool (EV-ChART) - <https://driveelectric.gov/evchart>
- EV-ChART Data Format and Preparation Guidance Webinar - <https://driveelectric.gov/webinars/ev-chart>
- EV-ChART Data Format and Preparation Guidance - <https://driveelectric.gov/files/ev-chart-data-guidance.pdf>
- EV-ChART Data Input Template - <https://driveelectric.gov/files/ev-chart-data-input-template.xlsx>

The Contractor shall maintain records and documentation of the project for at least five (5) years after termination/expiration of this contract, including but not limited to: books kept in accordance with generally accepted accounting principles, detailed records of expenditures, contractors/subcontractors and uses of all funds paid in conjunction with this contract as well as final design plans, as-built plans, and structural material certifications. The Contractor shall make such documentation available to the NDOT to copy or review upon request, within a reasonable time period, and in particular in a manner sufficient to allow the NDOT to comply with internal or external audit requirements.

In the event the Contractor does not fulfill its commitments to collect required data or fulfill required reporting, the NDOT may immediately terminate this contract, and may require all payments of NEVI Formula Program funds made to the Contractor to be immediately due for repayment to the NDOT whether or not the contract has naturally expired.

T. POST AWARD ACTIONS

1. Conditional Award

Following determination of the highest ranked candidate site for each corridor group and any additional discussions NDOT deems necessary, NDOT will contingently award contracts to selected Contractors.

The award will be contingent upon two (2) factors, the completion of the appropriate environmental review and the submission of an executed Site Host Agreement.

When the NEPA process is completed and the site host agreement complies with NDOT policies and requirements, NDOT and the Contractor will execute the contract. Upon selection for preliminary award, there are several other required documents that are outlined in **Attachments A through C**.

2. Environmental Review

NDOT will facilitate the NEPA environmental review process utilizing information provided by the Contractor using **Attachment C – NEPA Review Form**. The Contractor must agree to provide all required information and participate in the NEPA review process as requested by the NDOT.

3. Site Host Agreement

The Contractor and the property owner must execute a Site Host Agreement (if the property owner is different than the Contractor) that provides Contractor with a real property interest or other contractual right to install and operate EVSE on the site for a minimum of five (5) years. Contingent contracts or fully executed letters of interest are sufficient to secure a real property interest prior to award.

4. Contract

After the Contractor conditionally accepts the conditional award and the contingencies are satisfied, the Contractor will receive and execute a contract. If the Contractor fails to return a signed contract, NDOT may rescind the award and use the funds to award grants to others.

5. Notice to Proceed

Following full execution of the contract, NDOT will issue the initial Notice to Proceed (NTP) after all conditional requirements have been satisfied as determined by the NDOT. A secondary NTP may be issued for construction before activities begin.

6. Subsequent Award after Non-Selection

If one or more awards are declined or rescinded, NDOT may make a grant offer to a Contractor initially notified that an award would not be made. Notice and acceptance of a subsequent award shall be in accordance with this RFP.

U. REQUIRED PROJECT DELIVERABLES

The following list provides required project deliverables as part of the successful completion of the NEVI Program deployment.

1. **Worker Protection and Investment Certification Form(s)** – Certification of compliance with applicable Nebraska state labor and workforce safety laws – additional forms are required for all subcontractors.
2. **Written Statement on Proprietary Information and Confidentiality (optional)** – Identify any proprietary information and/or confidential trade secrets that should not be made available to the public.
3. **Site Design** – Site schematic, design, and construction plans.
4. **Operations and Maintenance Plan** – Five-year plan to operate and maintain the facility for use by the public with at least 97% uptime – includes O&M contract if applicable.

5. **Data Management Plan** – Plan to manage EV charging related data including a privacy impact assessment.
6. **Networking Agreement** – Five-year plan to provide for networking connectivity for the charging site.
7. **Safety Management Plan** – Plan to address safety on the site including risks and mitigation strategies.
8. **Customer Service Plan** – Plan to allow charging customers to get 24/7 assistance.

V. AUTHORIZATION OF PROJECT PUBLICITY AND INFORMATION SHARING

Prior to announcing or referring to the project or project activities in news releases, press conferences, or other media, the Contractor will inform the NDOT, and if requested by the NDOT, include an acknowledgement or reference to the funding made available for the Project under the contract.

The Contractor agrees to allow the NDOT to issue news releases, and otherwise share information and/or make announcements about the project. NDOT is not required to obtain any approval, written or otherwise, from the Contractor prior to releasing information.

VII. PROPOSAL INSTRUCTIONS

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

Proposals are due by the date and time shown in the Schedule of Events. Content requirements for the Technical and Cost Proposal are presented separately in the following subdivisions: format and order:

A. PROPOSAL SUBMISSION

1. CORPORATE OVERVIEW

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

a. BIDDER IDENTIFICATION AND INFORMATION

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

b. FINANCIAL STATEMENTS

The bidder should provide financial statements applicable to the firm. If publicly held, the bidder should provide a copy of the corporation's most recent audited financial reports and statements, and the name, address, and telephone number of the fiscally responsible representative of the bidder's financial or banking organization.

If the bidder is not a publicly held corporation, either the reports and statements required of a publicly held corporation, or a description of the organization, including size, longevity, client base, areas of specialization and expertise, and any other pertinent information, should be submitted in such a manner that proposal evaluators may reasonably formulate a determination about the stability and financial strength of the organization. Describe the general financial structure and capabilities of the Proposer and document 1) who will assume ownership of the project, receive financial benefits, and pay for operations, maintenance, and repairs; 2) any funding commitments or financing in place today and any funding sources available in the future to support the project; and 3) how the Proposer plans to manage cash flow during the project period. Additionally, a non-publicly held firm should provide a banking reference.

The bidder must disclose any and all judgments, pending or expected litigation, or other real or potential financial reversals, which might materially affect the viability or stability of the organization, or state that no such condition is known to exist.

The State may elect to use a third party to conduct credit checks as part of the corporate overview evaluation.

c. CHANGE OF OWNERSHIP

If any change in ownership or control of the company is anticipated during the twelve (12) months following the proposal due date, the bidder should describe the circumstances of such change and indicate when the change will likely occur. Any change of ownership to an awarded bidder(s) will require notification to the State.

d. OFFICE LOCATION

The bidder's office location responsible for performance pursuant to an award of a contract with the State of Nebraska should be identified.

e. RELATIONSHIPS WITH THE STATE

The bidder should describe any dealings with the State over the previous five (5) years. If the organization, its predecessor, or any Party named in the bidder's proposal response has contracted with the State, the bidder should identify the contract number(s) and/or any other information available to identify such contract(s). If no such contracts exist, so declare.

f. BIDDER'S EMPLOYEE RELATIONS TO STATE

If any Party named in the bidder's proposal response is or was an employee of the State within the past thirty-six (36) months, identify the individual(s) by name, State agency with whom employed, job title or position held with the State, and separation date. If no such relationship exists or has existed, so declare.

If any employee of any agency of the State of Nebraska is employed by the bidder or is a subcontractor to the bidder, as of the due date for proposal submission, identify all such persons by name, position held with the bidder, and position held with the State (including job title and agency). Describe the responsibilities of such persons within the proposing organization. If, after review of this information by the State, it is determined that a conflict of interest exists or may exist, the bidder may be disqualified from further consideration in this proposal. If no such relationship exists, so declare.

g. CONTRACT PERFORMANCE

If the bidder or any proposed subcontractor has had a contract terminated for default during the past five (5) years, all such instances must be described as required below. Termination for default is defined as a notice to stop performance delivery due to the bidder's non-performance or poor performance, and the issue was either not litigated due to inaction on the part of the bidder or litigated and such litigation determined the bidder to be in default.

It is mandatory that the bidder submit full details of all termination for default experienced during the past five (5) years, including the other Party's name, address, and telephone number. The response to this section must present the bidder's position on the matter. The State will evaluate the facts and will score the bidder's proposal accordingly. If no such termination for default has been experienced by the bidder in the past five (5) years, so declare.

If at any time during the past five (5) years, the bidder has had a contract terminated for convenience, non-performance, non-allocation of funds, or any other reason, describe fully all circumstances surrounding such termination, including the name and address of the other contracting Party.

h. SUMMARY OF BIDDER'S CORPORATE EXPERIENCE

The Bidder should provide a summary matrix listing five (5) of the Bidder's previous projects substantially similar to this Request for Proposal in size, scope, and complexity. Bidder should limit the list to projects installed over the last five (5) years for any DCFC EVSE stations that are substantially similar to the NEVI EVSE requirements; do not include installations of Level 2 chargers. Nebraska installations should be listed first followed by other installations in the United States.

The bidder should address the following:

- 1) Provide narrative descriptions to highlight the similarities between the bidder's experience and this Request for Proposal. These descriptions should include:
 - a) The time period of the project,
 - b) The scheduled and actual completion dates,
 - c) Number of DCFC EVSE ports installed and nominal charge rate (kW) of each,
 - d) The bidder's responsibilities,
 - e) For reference purposes, a customer name (including the name of a contact person, a current telephone number, a facsimile number, and e-mail address); and
 - f) Each project description should identify whether the work was performed as the prime Contractor or as a subcontractor. If a bidder performed as the prime Contractor, the description should provide the originally scheduled completion date and budget, as well as the actual (or currently planned) completion date and actual (or currently planned) budget.
- 2) Bidder and Subcontractor(s) experience should be listed separately. Narrative descriptions submitted for Subcontractors should be specifically identified as subcontractor projects.
- 3) If the work was performed as a subcontractor, the narrative description should identify the same information as requested for the bidders above. In addition, subcontractors should identify what share of contract costs, project responsibilities, and time period were performed as a subcontractor.

i. SUMMARY OF BIDDER'S PROPOSED PERSONNEL/MANAGEMENT APPROACH

The bidder should present a detailed description of its proposed approach to the management of the project.

The bidder should identify the specific professionals who will work on the State's project if their company is awarded the contract resulting from this Request for Proposal. The names and titles of the team proposed for assignment to the State project should be identified in full, with a description of the team leadership, interface and support functions, and reporting relationships. The primary work assigned to each person should also be identified. At a minimum, identify the following: project owner, site host, EVSE supplier, EVSE installer/contractor, operator, maintainer, utility provider, subcontractors (if known), consultant (if any), and Charging Network Operator. If a single entity is performing multiple of these roles, please list all the roles from the preceding list that the entity will perform. In addition, identify any partnership and/or site agreements that are in place or planned to support the project. See **Attachment A** for associated form to provide this information.

The bidder should provide resumes for all key personnel proposed by the bidder to work on the project. The State will consider the resumes as a key indicator of the bidder's understanding of the skill mixes required to carry out the requirements of the Request for Proposal in addition to assessing the experience of specific individuals.

Resumes should not be longer than two (2) pages. Resumes should include, at a minimum, academic background and degrees, professional certifications, understanding of the process, description of experience with similar projects, and at least three (3) references (name, address, and telephone number) who can attest to the competence and skill level of the individual. Any changes in proposed personnel shall only be implemented after written approval from the State.

j. SUBCONTRACTORS

If the bidder intends to subcontract any part of its performance hereunder, the bidder should provide:

- 1) name, address, and telephone number of the subcontractor(s),
- 2) specific tasks for each subcontractor(s),
- 3) percentage of performance hours intended for each subcontract; and
- 4) total percentage of subcontractor(s) performance hours.

2. TECHNICAL APPROACH

The technical approach section of the Technical Proposal should consist of the following subsections:

- a. Understanding of the project requirements;
- b. Project planning and management;
- c. Design and permitting;

- d.** Site preparation and construction;
- e.** Cybersecurity management;
- f.** Timeline;
- g.** Operation and maintenance plan; and
- h.** Warranty.

Form A
Bidder Proposal Point of Contact
Request for Proposal Number R231-24

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:	