

State of Nebraska, Department of Environment and Energy
REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES

RETURN TO:
Nebraska Department
Of Environment and Energy
P.O. Box 98922
Lincoln, NE 68509-8922
Phone: (402) 471-2186

SOLICITATION NUMBER	RELEASE DATE
RFP-DEE-PRR-SPARC-2021	December 15, 2020
OPENING DATE AND TIME	PROCUREMENT CONTACT
March 2, 2021 2:00 p.m. Central Time	Stephanie Vap-Morrow

PLEASE READ CAREFULLY!
SCOPE OF SERVICE

The State of Nebraska (State), Department of Environment and Energy (NDEE), is issuing this Request for Proposal (RFP) Number DEE-PRR-SPARC-2021 for the purpose of selecting three or more qualified Contractors to provide environmental remediation services relating to releases of petroleum from underground and above storage tanks. A more detailed description can be found Section 1, Project Description and Scope of Work. 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 five (5) years commencing upon execution of the contract by the State and the Contractor (Parties). The Contract includes the option to renew for five (5) additional one (1) year periods upon mutual agreement of the Parties. The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Parties.

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

Written questions are due no later than 1:00 pm CST on January 6, 2021 and must be submitted via e-mail to stephanie.vap-morrow@nebraska.gov.

Proposals are due in no later than 1:00 pm, Friday, January 29, 2021.

A Pre-Proposal Conference will not be held.

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

1. **Submit one sealed original and five exact copies of the proposal along with a USB drive (thumb drive) containing an exact copy of the signed original to be received by the Nebraska Department of Environment and Energy by the date and time of the proposal due date as indicated above. No electronic, e-mail, fax, voice or telephone proposals will be accepted other than the required original copy on the USB.**
2. **This form "REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES" MUST be manually signed, in ink, and returned by the proposal opening date and time along with the Contractors proposal with copy's and any other requirements as specified in the Request for Proposal in order to be considered for award.**

IMPORTANT NOTICE: Pursuant to Neb. Rev. Stat. § 84-602.04, State contracts in effect as of January 1, 2014, and contracts entered into thereafter, must be posted to a public website. The resulting contract, the solicitation, and the successful contractor's proposal or response will be posted to a public website managed by DAS, which can be found at <http://statecontracts.nebraska.gov>.

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

These postings will include the entire proposal or response. Contractor must request that proprietary information be excluded from the posting. The contractor must identify the proprietary information, mark the proprietary information according to state law, and submit the proprietary information in a separate container or envelope marked conspicuously using an indelible method with the words "PROPRIETARY INFORMATION". The contractor must submit a detailed written document showing that the release of the proprietary information would give a business advantage to named business competitor(s) and explain how the named business competitor(s) will gain an actual business advantage by disclosure of information. The mere assertion that information is proprietary or that a speculative business advantage might be gained is not sufficient. (See Attorney General Opinion No. 92068, April 27, 1992) THE SUPPLIER MAY NOT ASSERT THAT THE ENTIRE PROPOSAL IS PROPRIETARY. The State will then determine, in its discretion, if the interests served by

nondisclosure outweighs any public purpose served by disclosure. (See Neb. Rev. Stat. § 84-712.05(3)) The Contractor will be notified of the agency's decision. Absent a State determination that information is proprietary, the State will consider all information a public record subject to release regardless of any assertion that the information is proprietary.

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

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

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

CONTRACTOR MUST COMPLETE THE FOLLOWING

By signing this Request for Proposal for Contractual Services form, the Contractor guarantees compliance with the provisions stated in this Request for Proposal, agrees to the terms and conditions unless otherwise agreed to (see Section III) and certifies that Contractor maintains a drug free work place environment.

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: Contractor hereby attests that Contractor is a Nebraska Contractor. "Nebraska Contractor" shall mean any submitter 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 RFP.

FIRM: _____

COMPLETE ADDRESS: _____

TELEPHONE NUMBER: _____ FAX NUMBER: _____

SIGNATURE: _____ **DATE:** _____

TYPED NAME & TITLE OF SIGNER: _____

TABLE OF CONTENTS

REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES	i
TABLE OF CONTENTS.....	iii
GLOSSARY OF TERMS.....	v
I. PROCUREMENT PROCEDURE	1
A. GENERAL INFORMATION.....	1
B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS	1
This area left blank.....	1
C. SCHEDULE OF EVENTS	2
D. WRITTEN QUESTIONS AND ANSWERS.....	3
E. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS (Statutory)	3
F. ETHICS IN PUBLIC CONTRACTING	3
G. DEVIATIONS FROM THE REQUEST FOR PROPOSAL	3
H. SUBMISSION OF PROPOSALS	3
I. PROPOSAL PREPARATION COSTS	4
J. FAILURE TO COMPLY WITH REQUEST FOR PROPOSAL	4
K. PROPOSAL CORRECTIONS.....	4
L. LATE PROPOSALS.....	4
M. PROPOSAL OPENING.....	5
N. EVALUATION COMMITTEE.....	5
O. EVALUATION OF PROPOSALS	5
P. ORAL INTERVIEWS/PRESENTATIONS AND/OR DEMONSTRATIONS	6
Q. REFERENCE AND CREDIT CHECKS	6
R. AWARD	6
S. REJECTION OF PROPOSALS	6
II. TERMS AND CONDITIONS	7
A. GENERAL.....	7
B. NOTIFICATION	8
C. GOVERNING LAW (Statutory)	8
D. BEGINNING OF WORK.....	8
E. AMENDMENT.....	9
F. CHANGE ORDERS OR SUBSTITUTIONS	9
G. NOTICE OF POTENTIAL CONTRACTOR BREACH	9
H. BREACH.....	10
I. NON-WAIVER OF BREACH.....	10
J. SEVERABILITY	10
K. INDEMNIFICATION	11
L. ATTORNEY'S FEES.....	12
M. ASSIGNMENT, SALE, OR MERGER.....	12
N. CONTRACTING WITH OTHER NEBRASKA POLITICAL SUB-DIVISIONS OF THE STATE OR ANOTHER STATE	12
O. FORCE MAJEURE	13
P. CONFIDENTIALITY	13
Q. EARLY TERMINATION	13
R. CONTRACT CLOSEOUT	14
III. CONTRACTOR DUTIES	16
A. INDEPENDENT CONTRACTOR / OBLIGATIONS.....	16
B. EMPLOYEE WORK ELIGIBILITY STATUS.....	17
C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Statutory).....	18
D. COOPERATION WITH OTHER CONTRACTORS	18
E. PERMITS, REGULATIONS, LAWS	18

F.	OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES	19
G.	INSURANCE REQUIREMENTS	19
H.	NOTICE OF POTENTIAL CONTRACTOR BREACH	21
I.	ANTITRUST	21
J.	CONFLICT OF INTEREST	21
K.	STATE PROPERTY	22
L.	SITE RULES AND REGULATIONS	22
M.	ADVERTISING	22
N.	NEBRASKA TECHNOLOGY ACCESS STANDARDS (Statutory)	23
O.	DISASTER RECOVERY/BACK UP PLAN	23
P.	DRUG POLICY	23
Q.	WARRANTY	23
R.	PROHIBITION AGAINST ADVANCE PAYMENT (Statutory)	24
S.	TAXES (Statutory)	24
U.	INVOICES	25
V.	INSPECTION AND APPROVAL	26
W.	PAYMENT (Statutory)	26
X.	LATE PAYMENT (Statutory)	27
Y.	SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Statutory)	27
Z.	Z. RIGHT TO AUDIT (First Paragraph is Statutory)	28
4.	PROJECT DESCRIPTION AND SCOPE OF WORK	28
A.	BACKGROUND	28
B.	SERVICES	28
C.	EMERGENCY RESPONSE	33
5.	PROPOSAL INSTRUCTIONS	33
A.	TECHNICAL PROPOSAL SUBMISSION	33
B.	EXPERIENCE AND RELIABILITY OF THE FIRM	33
C.	PROPOSED METHOD OF PERFORMANCE	34
	Form A Contractor Proposal Point of Contact	39
	Pro Forma Contract	40

GLOSSARY OF TERMS

Acceptance Test Procedure: Benchmarks and other performance criteria, developed by the State of Nebraska or other sources of testing standards, for measuring the effectiveness of products or services and the means used for testing such performance.

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

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

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

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

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

Amendment: A written correction or alteration to a document.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

identification of specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive.

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

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

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

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

Contract Period: The duration of the contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mandatory/Must: Required, compulsory, or obligatory.

May: Discretionary, permitted; used to express possibility.

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

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

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

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

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

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

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

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

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

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

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 solicitation and related expectations.

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

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

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

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

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

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

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

Material Division or another designated agency with the intention of achieving a remedial result.

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

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

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

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

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

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

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

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

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

Should: Expected; suggested, but not necessarily mandatory.

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

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

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

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

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

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

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

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

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

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

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

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

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

Vendor: Inclusive term for any Bidder or Contractor

Will: See Mandatory/Shall/Will/Must.

Work Day: See Business Day.

ACRONYM LIST

ARO – After Receipt of Order

ACH – Automated Clearing House

BAFO – Best and Final Offer

COI – Certificate of Insurance

CPU – Central Processing Unit

DAS – Department of Administrative Services

F.O.B. – Free on Board

NIGP – National Institute for Governmental Purchasing

PA – Participating Addendum

RFI – Request for Information

RFP – Request for Proposal

I. PROCUREMENT PROCEDURE

A. GENERAL INFORMATION

The solicitation is designed to solicit proposals from qualified Contractor who will be responsible for providing environmental assessment and remediation services relating to releases of petroleum from underground and above ground storage tanks. Terms and Conditions, Project Description and Scope of Work, Proposal instructions, and Pro-Forma Contract may be found at the end of Section 1.

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

Three or more time and materials Contracts will be awarded as a result of this Request for Proposal.

B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS

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

Name: Stephanie Vap-Morrow
Agency: Nebraska Department of Environment and Energy
Address: P.O. Box 98922
Lincoln, NE 68509

Telephone: 402-471-7784

E-Mail: stephanie.vap-morrow@nebraska.gov

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

The following exceptions to these restrictions are permitted:

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

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

This area left blank.

C. SCHEDULE OF EVENTS

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

ACTIVITY		DATE/TIME
1.	Release Solicitation	December 15, 2020
2.	Last day to submit written questions	January 6, 2021
3.	State responds to written question(s) through Request for Proposal "Addendum" and/or "Amendment" to be posted to the internet at http://dee.ne.gov and http://das.nebraska.gov/materiel/purchasing.html	January 13, 2021
4.	Proposal due date. Location: Nebraska Department of Environment and Energy P.O. Box 98922 Lincoln, NE 68509	1:00 pm CST January 29, 2021
5.	Review for Mandatory Requirements Location: Nebraska Department of Environment and Energy 245 Fallbrook Blvd. Lincoln, NE 68521	February 2, 2021 1:30 pm CST
6.	Evaluation period	February 8, 2021 through March 8, 2021.
7.	Shortlist for interviews posted to the internet at http://dee.ne.gov and http://das.nebraska.gov/materiel/purchasing.html	March 11, 2021
8.	Shortlisted Contractor Interviews/Presentations Location: Nebraska Department of Environment and Energy 245 Fallbrook Blvd. Lincoln, NE 68521	Week of March 22, 2021
9.	Final Ranking of Interviewed Contractors posted to the internet at http://dee.ne.gov and http://das.nebraska.gov/materiel/purchasing.html	April 16, 2021
10.	Contractor finalization period	May of 2021
11.	Contract award	May/June of 2021
12.	Contractor start date	July 1, 2021

D. WRITTEN QUESTIONS AND ANSWERS

Questions regarding the meaning or interpretation of any solicitation provision must be submitted in writing to the NDEE by the Schedule of Events and clearly marked "RFP Number DEE-PRR-SPARC-2021 Questions". The POC is not obligated to respond to questions that are received late per the Schedule of Events.

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

It is preferred that questions be sent via e-mail to stephanie.vap-morrow@nebraska.gov, but may be delivered by hand or by U.S. Mail. It is recommended that Contractors submit questions using the following format.

Solicitation Section Reference	Solicitation Page Number	Question

Written answers will be posted at <http://dee.nebraska.gov> and <http://das.nebraska.gov/materiel/purchasing.html> per the Schedule of Events.

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

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

F. ETHICS IN PUBLIC CONTRACTING

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

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

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

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

G. DEVIATIONS FROM THE REQUEST FOR PROPOSAL

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

H. SUBMISSION OF PROPOSALS

Contractors should submit one proposal marked on the first page: "ORIGINAL" and five exact copies and in addition, the Contractor will submit on a USB drive (thumb drive) an exact copy of the original signed proposal. The State may retain the copy marked "ORIGINAL" and destroy the other copies after the Contract is awarded. The Contractor is solely responsible for any variance between the copies submitted. Proposal responses should include

the completed Form A, "Contractor Proposal Point of Contact". Proposals must reference the RFP number and be sent to the specified address. Please note that the address label should appear as specified in Section I B. on the face of each container or contractor's proposal response packet. If a recipient phone number is required for delivery purposes, 402-471-2186 should be used. The RFP number should be included in all correspondence. The State will not furnish packaging and sealing materials. It is the contractor's responsibility to ensure the solicitation is received in a sealed envelope or container and submitted by the date and time indicated in the Schedule of Events. Sealed proposals must be received by the NDEE by the date and time of the proposal opening per the Schedule of Events. No late proposals will be accepted.

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

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

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

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

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

The Technical and Cost Proposals should be packaged separately (loose-leaf binders are preferred) on standard 8 ½" by 11" paper, except that charts, diagrams and the like may be on fold-outs which, when folded, fit into the 8 ½" by 11" format. Pages may be consecutively numbered for the entire proposal, or may be numbered consecutively within sections. Figures and tables should be numbered 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 contractor's understanding of the scope of work may be evaluated. The Technical Proposal shall disclose the contractor's technical approach in as much detail as possible, including, but not limited to, the information required by the Technical Proposal instructions.

I. PROPOSAL PREPARATION COSTS

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

J. FAILURE TO COMPLY WITH REQUEST FOR PROPOSAL

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

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

K. PROPOSAL CORRECTIONS

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

L. LATE PROPOSALS

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

M. PROPOSAL OPENING

The opening of proposals will be not public and the submitting contractors will be announced on NDEE’s website. Proposals **WILL NOT** be available for viewing prior to intent to award announcement. Contractors may contact the State to schedule an appointment for viewing proposals after the Intent to Award has been posted to the website. Once proposals are opened, they become the property of NDEE and will not be returned.

N. EVALUATION COMMITTEE

Proposals are evaluated by members of an Evaluation Committee. The Evaluation Committee will consist of individuals selected at the discretion of the State. Names of the members of the Evaluation Committee will not be published prior to the Contractor interviews.

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

O. EVALUATION OF PROPOSALS

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

1. Corporate Overview should include but is not limited to:
 - a. The ability, capacity, and skill of the contractor to deliver and implement the system or project that meets the requirements of the solicitation;
 - b. The character, integrity, reputation, judgment, experience, and efficiency of the contractor;
 - c. Whether the contractor can perform the contract within the specified time frame;
 - d. The quality of Contractor performance on prior contracts;
 - e. Such other information that may be secured and that has a bearing on the decision to award the contract;
 - f. Technical Approach
 - g. Scope of Work
 - h. The Contractors past performance showing knowledge and experience in petroleum investigations and remediation.
 - i. Familiarity with Nebraska’s Regulation’s, including Title 118, 122, 126, (Chapter 18) 178, (Chapter’s 10 & 12) and NDEE’s Risk-Based Corrective Action (RBCA) at Petroleum Release Sites.

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

Resident disabled veterans means any person (a) who resides in the State of Nebraska, who served in the United States Armed Forces, including any reserve component or the National Guard, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), and who possesses a disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense and 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 above and the management and daily business operations of the business are controlled by one or more persons. Any contract entered into without compliance with this section shall be invalid.

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

2. Documentation from the United States Armed Forces confirming service;
3. Documentation of discharge or otherwise separated characterization of honorable or general (under honorable conditions);
4. 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
5. 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 and the management and daily business operations of the business are controlled by one or more persons described above.

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

P. ORAL INTERVIEWS/PRESENTATIONS AND/OR DEMONSTRATIONS

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

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

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

Q. REFERENCE AND CREDIT CHECKS

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

R. AWARD

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

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

S. 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.

II. TERMS AND CONDITIONS

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

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

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

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

A. GENERAL

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

The contract resulting from this solicitation shall incorporate the following documents:

1. Request for Proposal and Addenda;
2. Amendments to the solicitation;
3. Contractor's proposal (Solicitation and properly submitted documents);
4. The executed Contract and Addendum One to Contract, if applicable; and,
5. Amendments/Addendums to the Contract.
6. Request for Proposal Form.
7. Contract, including this Document.
8. Written questions and answers posted on the NDEE website.

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a future contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to the executed Contract with the most recent dated amendment having the highest priority, 2) executed Contract and any attached Addenda, 3) Amendments to solicitation and any Questions and Answers, 4) the original solicitation document and any Addenda, and 5) the Contractor's submitted Proposal.

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

B. NOTIFICATION

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

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

Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth below, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or five (5) calendar days following deposit in the mail.

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

C. GOVERNING LAW (Statutory)

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

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.

D. BEGINNING OF WORK

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

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

E. AMENDMENT

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

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

F. CHANGE ORDERS OR SUBSTITUTIONS

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

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

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

No change shall be implemented by the Contractor until approved by the State,

G. NOTICE OF POTENTIAL CONTRACTOR BREACH

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

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

H. BREACH

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

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party’s discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby. OR In case of breach by the Contractor, the State may, without unreasonable delay, make a good faith effort to make a reasonable purchase or contract to purchased goods in substitution of those due from the contractor. The State may recover from the Contractor as damages the difference between the costs of covering the breach. Notwithstanding any clause to the contrary, the State may also recover the contract price together with any incidental or consequential damages defined in UCC Section 2-715, but less expenses saved in consequence of Contractor’s breach.

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

I. NON-WAIVER OF BREACH

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

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

J. SEVERABILITY

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

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

K. INDEMNIFICATION

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

1. GENERAL

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

2. INTELLECTUAL PROPERTY (Optional)

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

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

3. PERSONNEL

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

4. SELF-INSURANCE

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

5. 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.

L. ATTORNEY'S FEES

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

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

M. ASSIGNMENT, SALE, OR MERGER

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

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

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

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

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

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

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

O. FORCE MAJEURE

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

Neither Party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the contract due to a natural or manmade event outside the control and not the fault of the affected Party ("Force Majeure Event"). The Party so affected shall immediately make a written request for relief to the other Party, and shall have the burden of proof to justify the request. The other Party may grant the relief requested; relief may not be unreasonably withheld. Labor disputes with the impacted Party's own employees will not be considered a Force Majeure Event.

P. CONFIDENTIALITY

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

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

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

Q. EARLY TERMINATION

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

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.
2. The State, in its sole discretion, may terminate the contract for any reason upon thirty (30) calendar 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 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;
 - a. Trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
 - b. Fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
 - c. 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;
 - d. A voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
 - e. Contractor intentionally discloses confidential information;
 - f. Contractor has or announces it will discontinue support of the deliverable; and,
 - g. In the event funding is no longer available.
 - h. For convenience.

R. CONTRACT CLOSEOUT

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

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

1. Transfer all completed or partially completed deliverables to the State;
2. Transfer ownership and title to all completed or partially completed deliverables to the State;
3. Return to the State all information and data, unless the Contractor is permitted to keep the information or data by contract or rule of law. Contractor may retain one copy of any information or data as required to comply with applicable work product documentation standards or as are automatically retained in the course of Contractor's routine back up procedures;
4. Cooperate with any successor 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.

8. Certain task assignments to be accomplished under contracts awarded by this solicitation utilize funds from EPA Grants funding. As such, the recipients and sub-recipients of federal funds must comply with the applicable EPA General Terms and Conditions. For further information on these federal fund responsibilities, go to the EPA repository for the general terms and conditions which are updated on an annual basis and can be found at the following website. Use the "Terms & Conditions" tab, then select the link for the general terms and conditions posted for the applicable/current year(s). The web address is: <https://www.epa.gov/grants/uniform-requirements-managing-grants-apply-all-federal-executive-agencies>.

S. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND INELIGIBILITY

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

9. The contractor, by signature to this RFP, and proposal certifies that the contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). The contractor also agrees to include the above requirements in any and all subcontracts into which it enters. The contractor shall immediately notify the Department if, during the term of this contract, contractor becomes debarred. The Department may immediately terminate this contract by providing contractor written notice if contractor becomes debarred during the term of this contract.
10. Contractor, by signature to this RFP, certifies that contractor has not had a contract with the State of Nebraska terminated early by the State of Nebraska. If contractor has had a contract terminated early by the State of Nebraska, contractor must provide the contract number, along with an explanation of why the contract was terminated early. Prior early termination may be cause for rejecting the proposal.

T. AMERICANS WITH DISABILITIES ACT

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

The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act.

U. SOCIOECONOMIC CONSIDERATIONS

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

While this procurement is not set aside for others exclusively from such firms, NDEE encourages the participation of prospective contractors and subcontractors that qualify as minority-business enterprises (MBEs), women-owned business enterprises (WBEs), small-business enterprises (SBEs), and small-disadvantaged businesses (SDBs). The contractor agrees to comply with rules governing "Fair Share" of federal funds in accordance with the affirmative steps outlined in 40 CFR 30.44, or 40 CFR 33.240, or 40 CFR 35.6580, or Section 129 of Public Law 100-590, whichever is applicable. The contractor agrees to include in its proposal and require all of its subcontractors to include in their proposal for subcontracts, a "Fair Share." "Fair Share" Percentages: Supplies, 5% MBE, 12% WBE, Equipment, 6% MBE, 11% WBE; Services, 5% MBE, 11% WBE, and Construction, 6% MBE, 8% WBE. The contractor must take affirmative steps to assure that MBEs, WBEs, SBEs, and SDBs are used when possible as sources of services and supplies. Documentation must be included with the proposal detailing efforts to utilize these types of businesses

Affirmative steps shall include the following:

1. Identifying qualified MBEs, WBEs, SBEs, and SDBs on solicitation lists;
2. Assuring that MBEs, WBEs, SBEs, and SDBs are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of MBEs, WBEs, SBEs, and SDBs;
4. Establishing delivery schedules, where the requirements of the work permits and encourages participation by MBEs, WBEs, SBEs, and SDBs;
5. Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce, as appropriate; and
6. If the contractor awards sub-agreements, requiring the subcontractor to take the affirmative steps as described above.

III. CONTRACTOR DUTIES

A. INDEPENDENT CONTRACTOR / OBLIGATIONS

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

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

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

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

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

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

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

1. Any and all pay, benefits, and employment taxes and/or other payroll withholding;
2. Any and all vehicles used by the Contractor's employees, including all insurance required by state law;
3. Damages incurred by Contractor's employees within the scope of their duties under the contract;
4. Maintaining Workers' Compensation and health insurance that complies with state and federal law and submitting any reports on such insurance to the extent required by governing law;
5. Determining the hours to be worked and the duties to be performed by the Contractor's employees; and,

- 6. All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Contractor, its officers, agents, or subcontractors or subcontractor's employees)

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

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

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

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

B. EMPLOYEE WORK ELIGIBILITY STATUS

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

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

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

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

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

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

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

D. COOPERATION WITH OTHER CONTRACTORS

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

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

E. PERMITS, REGULATIONS, LAWS

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

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

F. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES

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

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

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

G. INSURANCE REQUIREMENTS

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

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

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

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

In the event that any policy written on a claims-made basis terminates or is canceled during the term of the contract or within (five) (5) years of termination or expiration of the contract, the contractor shall obtain an extended discovery or reporting period, or a new insurance policy, providing coverage required by this contract for the term of the contract and (one) (1) year following termination or expiration of the contract.

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

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

1. WORKERS' COMPENSATION INSURANCE

The Contractor shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contactors' employees to be engaged in work on the project under this contract and, in case any such work is sublet, the Contractor shall require the Subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease.

The policy shall include a waiver of subrogation in favor of the State. The COI shall contain the mandatory COI subrogation waiver language found hereinafter. The amounts of such insurance shall not be less than the limits stated hereinafter. For employees working in the State of Nebraska, the policy must be written by an entity authorized by the State of Nebraska Department of Insurance to write Workers' Compensation and Employer's Liability Insurance for Nebraska employees.

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.

INSURANCE COVERAGE AMOUNTS REQUIRED

WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY	
Coverage A	Statutory-State of Nebraska
Coverage B	Statutory-State of Nebraska
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee
COMMERCIAL GENERAL LIABILITY	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 any one person
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Fire Damage	\$50,000 any one fire
Medical Payments	\$5,000 any one person
COMMERCIAL AUTOMOBILE LIABILITY	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
UMBRELLA/EXCESS LIABILITY	
Over Primary Insurance	\$5,000,000 per occurrence
SUBROGATION WAIVER	
"Waiver of Subrogation on the Worker's Compensation in favor of the State of Nebraska."	
LIABILITY WAIVER	
"The State of Nebraska, Certificate holder, is an additionally insured, primary & noncontributory on the General Liability."	
AUTOMOTIVE LIABILITY	\$1,000,000 per occurrence, any auto

3. EVIDENCE OF COVERAGE

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

Nebraska Department of Environment and Energy
 Phil Hargis
 P.O. Box 98922
 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. NOTICE OF POTENTIAL CONTRACTOR BREACH

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

If Contractor breaches the contract or anticipates breaching the contract the Contractor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, and may include a request for a waiver of the breach if so desired. The State may, at its discretion, temporarily or permanently waive the breach. By granting a temporary 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

I. ANTITRUST

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

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

J. CONFLICT OF INTEREST

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

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

Bidder further certifies that bidder will not employ any individual known by bidder to have a conflict of interest nor shall bidder take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or

degree with the performance of its contractual obligations hereunder or which creates an actual or appearance of conflict of interest.

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

K. STATE PROPERTY

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

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

L. SITE RULES AND REGULATIONS

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

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

M. ADVERTISING

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

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

N. NEBRASKA TECHNOLOGY ACCESS STANDARDS (Statutory)

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

O. DISASTER RECOVERY/BACK UP PLAN

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

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

P. DRUG POLICY

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

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

Q. WARRANTY

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

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

R. PROHIBITION AGAINST ADVANCE PAYMENT (Statutory)

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

Neb. Rev. Stat. §§81-2403 states, No 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.

S. TAXES (Statutory)

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

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

T. TASK ASSIGNMENTS

The contractor shall perform work, assigned under the contract, only as directed in a Task Assignment, and in accordance with the terms and conditions stipulated within the contract. The contractor shall provide services on an "as needed, if needed basis," as determined by the NDEE. NDEE shall assume no responsibility and no liability for costs incurred by the contractor for work performed prior to, without the issuance, or above the ceiling price of a Task Assignment.

Upon issuance of a Task Assignment, the contractor shall prepare and submit a work plan and cost estimate to the NDEE Project Manager to perform work described in the Task Assignment. NDEE is obligated to pay the costs of preparing the work plan and cost estimate. Upon receipt, the work plan shall become the property of NDEE. NDEE shall have the right to use or adopt ideas contained in the work plan. Selection or rejection of the work plan will not affect this right. Depending on the scope and complexity of the work described in a Task Assignment, NDEE reserves the right to competitively bid a Task Assignment to all contractors under contract. NDEE is not obligated to pay the costs of preparing the work plan and cost estimate in response to a competitively bid Task Assignment.

NDEE may accept or reject the contractor's work plan and cost estimate as submitted or enter into negotiations with the contractor. Upon agreement on the work plan and cost estimate, NDEE will issue a Task Assignment with an associated ceiling price and schedule for completion of work. Upon receipt of a Task Assignment, the contractor shall commence work as specified therein. NDEE may consider not issuing additional Task Assignments to a contractor based on the contractor's performance in meeting the approved ceiling price and schedule for completion of work in a Task Assignment.

In the event of a need for urgent action, NDEE may require the contractor to begin work immediately prior to finalization of a Task Assignment. Written authorization shall be issued by the NDEE Contract Administrator.

In the event a Task Assignment issued during the Term of the Contract is not completed within that period, NDEE may amend the contract to extend the term to allow completion of the Task Assignment. All terms, conditions and provisions of the original Contract shall remain the same and apply during any extension period unless otherwise also amended concurrently.

If the contractor determines that the work plan and cost estimate needs to be modified, the contractor shall, prior to incurring costs exceeding the ceiling price, submit a written request to the NDEE Contract Administrator

specifying the needed modification, the reason for such modifications, and any anticipated change in the ceiling price. Upon agreement on the requested modifications, NDEE will issue a Task Assignment Amendment with an associated new ceiling price. Upon receipt of a Task Assignment Amendment, the contractor shall commence work as specified therein. If agreement is not made on the requested modifications, then NDEE is not obligated to pay for costs above the original ceiling price.

If NDEE determines that the Task Assignment needs to be modified, NDEE shall issue a Task Assignment Amendment to the contractor specifying the needed modification. The contractor shall then revise the work plan and cost estimate accordingly. Upon agreement on the requested modifications, NDEE will issue a Task Assignment Amendment with an associated ceiling price. Upon receipt of a Task Assignment Amendment, the contractor shall commence work as specified therein.

U. INVOICES

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

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

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

Invoices for payments must be submitted monthly by the contractor to the agency requesting the services with sufficient detail to support payment. The terms and conditions included in the contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

The Contractor shall be paid upon submission of an original and properly certified invoice with supporting documentation and billing summary chart. Each Task Assignment shall be accounted for separately and be billed under a separate invoice(s). Invoices for each Task Assignment shall be submitted monthly. However, if the monthly expenditures for a Task Assignment are less than \$500.00, the Contractor shall not submit an invoice and instead, carry that month's bills over to the following month until the total invoice amount to be claimed reaches or exceeds \$500.00. To facilitate processing and payment, each invoice must reference the NDEE Contract number and the applicable Task Assignment number.

Invoices shall be supported by an itemized statement of costs claimed to have been incurred by the Contractor during the period covered by the invoice and shall include copies of vouchers, invoices, or other evidence of actual payment for other direct charges. If a personal car is used, a mileage log must be submitted. Meal receipts are not required as long as the meal costs are within the allowable federal per diem rate for the project location. Alcoholic beverages are not reimbursable and must be subtracted and clearly annotated on receipts and invoices as not a valid charge.

A Billing Summary chart must also be included with each invoice with the following columns: (1) Task Description (with the project tasks listed as line items below that heading), (2) Agreed Upon Cost Per Task, (3) Amount Billed on Previous Invoices, by task, (4) Amount Billed on Current Invoice, by task, (5) Total Amount Billed to Date, by task, and (6) Percent of Task Completed (with approximate percentage of progress listed for each of the line-item tasks). At the bottom of the Budget Summary chart, the Totals for each of the columns must be tallied and shown. The Retainage Amount of the total ceiling price of the Task Assignment shall be computed and shown by taking 10% of the total amount summed under the Agreed Upon Cost Per Task column.

Printed and/or attached to each invoice shall be the following certification which shall be manually signed by an authorized representative of the Contractor: "I certify that the above bill is correct; that the amounts claimed represent fair charges against the Nebraska Department of Environment and Energy; and that reimbursement has not and will not be received from any other source, public or private."

V. INSPECTION AND APPROVAL

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

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

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

W. PAYMENT (Statutory)

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

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

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.

All requests for payment shall be processed and paid within forty-five (45) calendar days of receipt of an invoice for services completed and accepted by the agency. When an invoice submitted is filled out incorrectly or when there is any defect or impropriety in an invoice submitted, the agency shall notify the Contractor in writing prior to the date on which the payment is due. This notice shall contain a description of the defect or impropriety and any additional information deemed necessary to enable the Contractor to correct the invoice. Upon receiving a properly corrected invoice, the agency shall pay the corrected charges within forty-five (45) calendar days of receipt of the corrected invoice.

The State may require the contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any services provided by the contractor prior to the Effective Date, and the contractor hereby waives any claim or cause of action for any such services.

The Contractor shall perform the work called for in each Task Assignment issued under this Contract on a Time and Materials basis. The Contractor shall receive compensation, as specified herein, for services and work performed up to the ceiling price established for each Task Assignment. NDEE shall not be obligated to pay the Contractor any amount incurred in excess of the ceiling price of each Task Assignment

Labor costs will be computed by multiplying the applicable charge rate for the employee in question by the actual direct labor hours worked. The charge rate for each employee performing work under this Contract shall be based on the approved hourly rates to be established before finalizing the Contract, as part of the Contract Charge Rates negotiations process. Fractional parts of any hour shall be payable on a prorated basis.

The cost of subcontracts that are authorized pursuant to the requirements and restrictions for subcontractors contained in the RFP, shall be reimbursable costs which are established and approved as part of the project work plan and cost estimate approval process, before subcontractors perform work or are otherwise authorized to incur any expenditures chargeable to the project.

Direct cost items and services are defined as those materials which enter directly into the end product or which are used or consumed directly in connection with the furnishing of such product. Allowable costs of direct materials, supplies, services, etc., shall be determined by NDEE. The Contractor shall be reimbursed for direct cost items and services purchased for the Contract, in accordance with approved project work plan and cost estimates that are calculated using NDEE approved Contractor Charge Rates which will become part of the Contract.

The Contractor shall, to the extent of its ability, procure materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, and take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. Credit shall be given to NDEE for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap when the amount of such scrap is appreciable, commissions, and other amounts which have accrued to the benefit of the Contractor, or would have so accrued except for the fault or neglect of the Contractor. Such benefits lost, through no fault or neglect on the part of the Contractor, or lost through fault of NDEE, shall not be deducted from gross costs.

X. LATE PAYMENT (Statutory)

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

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).

Y. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Statutory)

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

The State's obligation to pay amounts due on the Contract for a fiscal years following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

Z. Z. RIGHT TO AUDIT (First Paragraph is Statutory)

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

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

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. If a previously undisclosed overpayment exceeds one-half of one percent to three (3) percent (0.5% to 3%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within ninety (90) days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

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

4. PROJECT DESCRIPTION AND SCOPE OF WORK

A. BACKGROUND

The Nebraska Department of Environmental and Energy (NDEE) operates a program dealing with the remediation of petroleum releases. The purpose of the program is to clean up petroleum releases from underground storage tanks, above ground storage tanks, and other sources. In general the State may use Contractors for the investigation and remediation of petroleum releases where the responsible party is unknown, recalcitrant, or insolvent, or in circumstances where an emergency exists that requires immediate action to protect human health, safety, and the environment. Funds to pay Contractors under this Contract come from the Petroleum Release Remedial Action Cash Fund (State money), the Leaking Underground Storage Tank Grants between the State and the U.S. Environmental Protection Agency (Federal money), and other resources.

Sites that meet the above criteria are prioritized and placed on a list. The priority list currently consists of approximately 350 sites. NDEE intends to investigate and/or remediate as many of these sites as possible in order of priority, within the financial and staffing constraints of the agency.

This scope of work describes the general type of work the Contractor shall be capable of performing in order to achieve the above stated objective.

B. SERVICES

The Contractor shall have the capability to provide the following services:

1. Tier 1 Site Assessment

The Contractor shall perform initial site assessments to gather information necessary to make a risk-based corrective action evaluation of the petroleum release. The results of the site assessment must be presented in written report format. The report shall contain at a minimum:

- a. Site diagram (to scale)
 - Locations of major surface structures (buildings, streets, etc.)
 - Location of contaminant source (tank, piping, dispensers, facility, etc.)
 - Location of test borings, wells, probes holes, etc.
 - Outline of the lateral extent of the free product plume.
 - Location and elevation of site Benchmark
 - Symbol indicating inferred direction of ground water flow
 - Identification and location of points of exposure (wells, basements, etc.)
 - Subsurface utilities
- b. Test Boring Logs
 - Soil and/or rock type described using the Unified Soils Classification System
 - Depth and thickness of lithological units
 - Depth to water at time of drilling (referenced to surface elevation)
 - Depth to water after water level stabilization (referenced to surface elevation)
 - Surface elevation (referenced to site Benchmark)
 - Ground water elevation
 - Contaminated soil and water intervals (as determined by analytical results and field measurements).
- c. Monitoring Well Construction Details
 - Schematic diagram
 - Construction and materials.
 - Screened, cased, grouted, gravel packed intervals
 - Screened slot size
 - Screen type
 - Filter pack type and gradation
 - Top of casing and ground level elevations (referenced to site Benchmark)
- d. Required State and Local Forms
 - NPDES Permits including Construction permits (storm water)
 - Certificate of well driller
 - Well registration
 - Contaminated Soils Disposal Form
 - City Right-of-Way
 - DOT Right-of-Way
 - Landfill disposal (Part B)
- e. Laboratory and Field Analyses of Ground Water Sampling
 - Results presented in tabular form in report text
 - Specify parameter, test method, equipment, and test or equipment detection limits.
 - Chain-of-Custody record
- f. Narrative of field Activities and Discussion of Results

2. Tier 2 Site Assessment

The Contractor shall perform detailed site assessments that determine surface and subsurface characteristics of the release site, identify the source(s) of the release, and identify potential and actual points of exposure of the released contaminant. The results of the detailed site assessments must be presented in written report format:

- a. Site Diagram
 - Information required for site diagram of initial site characterization
 - Locations, depth below ground level, and elevations of subsurface structures (basements, utilities, etc.)
 - Configuration of the surface of the water table
 - Isopach map of free product thickness
 - Isocon map of dissolved product concentration

- Cross-section diagrams that illustrate subsurface conditions. Cross sections should illustrate the extent of contamination, soil/rock type, lithological boundaries, water table, free product thickness, and subsurface structures.
- b. Large Scale Map
 - Location of all water wells within 2000 feet of the site.
 - Topography
 - Regional ground water flow
 - c. Aquifer Parameters
 - Materials, thickness, hydraulic conductivity, transmissivity, storage coefficient, porosity, secondary permeability structures
 - Aquifer test results, test method, data, plots, calculated and estimated test parameters
 - d. Water Usage
 - Water well owners' names and addresses within 2000 feet of the site
 - Well usage
 - Water quality
 - Potential for use
3. Remedial Action Alternative
- If requested, the Contractor shall, after NDEE establishes cleanup levels for a site, investigate remedial action alternatives that will meet the cleanup levels established. Contractor shall prepare a report containing schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate clearly the considerations involved and the alternative solutions or methods available. Minimum information to be presented on the recommended remedial action shall include discussion of:
- a. Each cleanup methodology to include advantages and disadvantages
 - b. Availability of materials
 - c. Availability of competent construction Contractors
 - d. Necessary permits, fees, bonding requirements and easements
 - e. Operation and maintenance requirements
 - f. Methods of disposal and/or treatment of recovered fuel, generated wastewater, and waste.
 - g. Probable costs including construction costs, contingencies, charges for professionals and consultants, allowances for the cost of land and rights-of-way, and operation and maintenance
 - h. Cost-effectiveness to include comparison on a present worth and annual worth basis
 - i. Operation time necessary to achieve required results
4. Cleanup System Design
- The Contractor shall prepare and submit a design report for the cleanup alternative selected by NDEE. The report shall include the information required for the alternative report and in addition the following:
- a. Final design criteria
 - b. Plans
 - c. Specifications
 - d. Work safety requirements
 - e. QA/QC inspection procedures of construction activities
 - f. Equivalent substitutions of specified "brand name" materials
5. Subcontracting
- The Contractor shall subcontract work elements beyond its own capabilities in order to meet the performance requirements set forth in a Task Assignment. State Contractors must require subcontractors to meet all State and Federal regulatory requirements including but not limited to debarment, DBE, Attestation.
6. Bidding and Award of Construction Contracts
- The Contractor shall solicit and award construction contracts. The Contractor shall prepare contract agreement forms, general and supplementary conditions, bid forms, invitations and instructions to Contractors, and other related proposal documents. The Contractor shall be responsible for evaluating bids or proposals and in assembling and awarding contracts.

7. Oversight of Construction - Contracts

The Contractor shall inspect construction progress. The Contractor shall determine that construction procedures and products conform with plans and specifications and shall advise NDEE of observations and noted discrepancies. The Contractor shall monitor the progress of the work and perform tests necessary to determine the quality of the executed work.

8. Site Health and Safety (SHS) Plan

The Contractor shall prepare and submit to the NDEE a site-specific Site Health and Safety (SHS) plan for its workers and subcontractors. The contents of the SHS plan shall be in accordance with Standards of the Occupational Safety and Health Administration 29 CFR (1994 edition), Part 1910. The Contractor shall assume the sole responsibility of ensuring that its workers and subcontractors adhere to the plan. The Contractor shall require all personnel to read and sign an agreement indicating compliance with the plan prior to commencing work. The Contractor shall submit the plan to the NDEE prior to beginning work at the site.

9. Quality Assurance and Quality Control (QA/QC)

The Contractor shall demonstrate a QA/QC program to insure that all work is carried out in accordance with established and acceptable standards of practice and that the work executed is fully documented. The Contractor shall collect environmental data pursuant to the Department's most recent QA/QC document, Quality Assurance Project Plan for State-Lead Petroleum Remedial Activities, as approved by designated representatives of both the Department and Contractor.

10. Field Log Book

The Contractor shall document all field activities in a hardbound logbook. Entries into the logbook will, at a minimum, be made on a daily basis when in the field. The Contractor shall modify record keeping procedures as required by NDEE.

11. Progress Reports

The Contractor shall prepare progress reports that describe both the technical and financial status of the work. The technical section shall consist of a narrative describing work performed, upcoming work, problems encountered and resolutions made, and suggested changes to the work progress. Reports will be submitted in a format and frequency that is acceptable to NDEE.

12. Meetings

The Contractor shall make available its key personnel to NDEE for meetings as deemed necessary by NDEE to discuss or coordinate any aspect of the work or proposed work.

13. Records Search

As required by NDEE, the Contractor shall research and review records related to work efforts and prepare a report of findings. Records to be researched include historical and/or government documents related to property and land transactions and technical documents and data.

14. Consulting

The Contractor shall provide professional consulting services. Consulting services shall include, but not be limited to, providing recommendations regarding engineering design, construction methods, remediation technology, health and safety measures, cost accounting and analyses, and regulatory affairs. When required, the Contractor shall prepare special reports presenting their recommendations and/or associated research.

15. Sampling

The Contractor shall provide sampling of air, soil, and/or water (surface and ground water) for field and/or laboratory analysis.

16. Analytical Services

The Contractor shall provide field and laboratory analysis for petroleum products.

a. Field analysis capability shall be sufficient to identify and quantify levels of petroleum products. Analytical instruments could include any one of the following:

- Photoionization detector
- Organic vapor analyzer
- Gas chromatograph
- Flame ionization detector

b. In addition, the Contractor shall have in its possession a combustible gas indicator calibrated for petroleum product detection during performance of the field work.

- c. Laboratory analytical capability shall be limited to methodologies approved by NDEE. Laboratories used must be in accredited with NELAC.
17. Soil Gas Surveys
The Contractor shall perform active soil gas surveys. Equipment shall be capable of obtaining vertical profiles and have a minimum depth capability of 50 feet. The Contractor shall prepare and submit results in a format acceptable to NDEE.
18. Test Hole Drilling
The Contractor shall drill test holes for the purpose of determining site stratigraphy, soil and ground water sampling, and contaminant detection. The Contractor shall be capable of solid and hollow stem auguring and mud rotary drilling to a depth of 100 feet. The Contractor shall properly dispose of all drilling fluids, soil cuttings, and other suspected contaminated drilling materials. The Contractor shall abandon test holes and/or monitoring wells in accordance with applicable local and state regulations and laws.
19. Well Installation
The Contractor shall install monitoring, recovery and vapor extraction wells capable of producing quality, representative formation samples and meeting performance standards of the monitoring and/or remediation system designed wells.
20. Excavating
The Contractor shall be capable of digging, trenching, and excavating buried structures and materials. The Contractor shall replace excavated materials and properly dispose of contaminated materials.
21. Petroleum Product Collection
The Contractor shall collect, store, transport and dispose of recovered petroleum product. At a minimum, Contractor shall:
- Remove product from surface and ground water and from the land surface
 - Pump, store, and treat contaminated ground water
 - Contain and/or divert flowing product
22. Site Restoration
The Contractor shall repair or replace material damaged during the remediation of a release and restore as near as possible the damaged environment to pre-release conditions. At a minimum, the Contractor shall replace or repair all materials or property removed or damaged during work such as:
- Regrade surface configuration
 - Replace soil
 - Replace damaged concrete, asphalt or other synthetic surface cover
 - Reseed or replant vegetation
23. Site Security
The Contractor shall provide security to the release site to protect the public and the work site. The security level shall be sufficient to reasonably protect personal property and persons from damage or harm.
24. Dispose, Reuse, or Recycle
The Contractor shall be responsible for the proper and legal disposal, reuse, or recycling of all contaminated materials generated through the performance of work under a Task Assignment.
25. Alternate Drinking Water Supply
The Contractor shall supply temporary drinking water to the affected community and individuals as directed by NDEE. The Contractor shall supply permanent drinking water by constructing new wells or installing water lines as directed by NDEE.
26. Temporary Housing
The Contractor shall provide temporary housing to evacuees, as directed by NDEE.

C. EMERGENCY RESPONSE

The Contractor shall meet the following special requirements related to providing services when an urgent need is identified by NDEE.

1. Notification of Needed Service

The Contractor shall maintain a 24-hour, seven days per week on-call system to allow NDEE immediate access to the Contractor's services. The on-call status shall include weekends, holidays, and after hours.

2. Response Personnel

When requested by NDEE, the Contractor shall have their Project Manager at the release site within 12 hours from receipt of notification by the Contractor for the need of Contractor's services.

3. Response Time - Emergency services, equipment, materials, support staff

When requested by NDEE, the Contractor shall have the capacity of assembling on site within 12 hours, all equipment, material, and support staff necessary to perform the following services listed in this Scope of Work:

4. Emergency Capabilities

- Project management
- Consulting
- Sampling
- Analytical services
- Drilling
- Well installation
- Contaminated soil excavating and disposal
- Remediation
- Vapor mitigation in confined spaces
- Permitting
- Petroleum product collection

5. Response Time - Analytical

The Contractor shall provide a minimum of 72-hour emergency analytical turnaround time for analytical services in emergency situations, as determined by NDEE. Turnaround time shall mean the time from initial sample collection until analytical results are made available.

5. PROPOSAL INSTRUCTIONS

Proposals are due by the date and time shown in the Schedule of Events. Content requirements for the Technical Proposal are presented separately in the following subdivisions; format and order **This section documents the mandatory requirements that must be met by the Contractor in preparing the Technical Proposal. The Contractor should identify the subdivisions of "Project Description and Scope of Work" clearly in their proposals. Failure to respond to a specific requirement may be the basis for elimination from consideration during the State's comparative evaluation.**

A. TECHNICAL PROPOSAL SUBMISSION

The Technical Proposal shall consist of five (5) sections:

1. Request for Proposal For Contractual Services form, signed in ink;
2. Corporate Overview;
3. Technical Approach.
4. Architect, Engineer Questionnaire Form 330.
5. EPA Debarment Form 5700-49

B. EXPERIENCE AND RELIABILITY OF THE FIRM

Experience and reliability of the Contractor's organization is considered in the evaluation process. Therefore, the Contractor is advised to submit any information, which documents successful and reliable experience in past performances, especially those performances related to the requirements of the Scope of Work.

The proposal must contain the information on the Contractor as well as on any subcontractors or consultants to be used. The Contractor shall provide a summary matrix listing the Contractor's previous projects similar to this Request for Proposal in size, scope and complexity during the last five years.

The proposal must provide the following information related to not more than five and no less than three recently completed contracts, which are considered identical or similar to the requirements of the RFP during the last five years:

1. Name, address, and telephone number of contracting organization and a contact person who may be contacted for verification of all data submitted.
2. Dates of contract.
3. A brief, written description of the specific prior services performed and requirements.
4. The scheduled and actual completion times.
5. The Contractor's responsibilities.

C. PROPOSED METHOD OF PERFORMANCE

Proposals will be evaluated based on the Contractor's distinctive plan for performing the requirements of the RFP. It is not sufficient for the Contractor to repeat the exact RFP language or to present a paraphrased version, as an original idea for a technical approach. The Contractor shall present a written narrative, which demonstrates the method, or manner in which the Contractor proposes to satisfy the requirements of the scope of work. The language of the narrative must be straightforward and limited to facts, solutions and problems, and plans of proposed action. The statement of work for the contemplated Contract is enclosed with this RFP. NDEE reserves the right to excerpt all or any portion of the successful technical proposal for use as final contract language in the event conditions so warrant.

The Contractor must provide an organizational chart showing the staffing and lines of authority for the personnel to be used. The relationship of the Project Manager to the management and to support personnel must be clearly illustrated.

D. TECHNICAL PROPOSAL

The Technical Proposal shall condense and highlight the contents of the solution being proposed by the Contractor in such a way as to provide the Evaluation Committee with a broad understanding of the Contractor's experience and expertise.

Contractors must present their understanding of the problems being addressed by implementing the objectives and intended results of the project, and the scope of work. Contractors shall summarize how their Technical Proposal meets the requirements of the Request for Proposal, and why they are best qualified to perform the work required herein.

1. CORPORATE OVERVIEW

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

a. CONTRACTOR IDENTIFICATION AND INFORMATION

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

b. FINANCIAL STATEMENTS

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

If the contractor is not a publicly held corporation, either the reports and statements required of a publicly held corporation, or a description of the organization, including size, longevity, client base, areas of specialization and expertise, and any other pertinent information, should be submitted in such a manner that proposal evaluators may reasonably formulate a determination about the stability and financial strength of the organization. Additionally, a non-publicly held firm should provide a banking reference.

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

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

c. **CHANGE OF OWNERSHIP**

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

d. **OFFICE LOCATION**

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

e. **RELATIONSHIPS WITH THE STATE**

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

f. **CONTRACTOR'S EMPLOYEE RELATIONS TO STATE**

If any Party named in the contractor's proposal response is or was an employee of the State within the past five (5) months, identify the individual(s) by name, State agency with whom employed, job title or position held with the State, and separation date. If no such relationship exists or has existed, so declare.

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

g. **CONTRACT PERFORMANCE**

If the contractor or any proposed Subcontractor has had a contract terminated for default during the past ten (10) years, all such instances must be described as required below. Termination for default is defined as a notice to stop performance delivery due to the contractor's non-performance or poor performance, and the issue was either not litigated due to inaction on the part of the contractor or litigated and such litigation determined the contractor to be in default.

It is mandatory that the contractor submit full details of all termination for default experienced during the past ten (10) years, including the other Party's name, address, and telephone number. The response to this section must present the contractor's position on the matter. The State will evaluate the facts and will score the contractor's proposal accordingly. If no such termination for default has been experienced by the contractor in the past ten (10) years, so declare.

If at any time during the past ten (10) years, the contractor has had a contract terminated for convenience, non-performance, non-allocation of funds, or any other reason, describe fully all circumstances surrounding such termination, including the name and address of the other contracting Party.

h. **SUMMARY OF CONTRACTOR'S CORPORATE EXPERIENCE**

The contractor should provide a summary matrix listing the contractor's previous projects similar to this solicitation in size, scope, and complexity. The State will use no more than five (5) narrative project descriptions submitted by the contractor during its evaluation of the proposal.

The contractor should also address the following:

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

2. **SUMMARY OF CONTRACTOR'S PROPOSED PERSONNEL/MANAGEMENT APPROACH**
The contractor should present a detailed description of its proposed approach to the management of the project.

The contractor should identify the specific professionals who will work on the State's project if their company is awarded the contract resulting from this solicitation. The names and titles of the team proposed for assignment to the State project should be identified in full, with a description of the team leadership, interface and support functions, and reporting relationships. The primary work assigned to each person should also be identified.

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

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

It having been determined that the employees whose names appear in the contract documents, or persons approved by NDEE as persons of substantially equal abilities and qualifications, are necessary for the successful performance of this Contract, the Contractor agrees to assign such employees or persons to the performance of the work under this Contract and shall not reassign or remove any of them without the consent of NDEE. Whenever, for any reason, one or more of the aforementioned employees is unavailable for assignment for work under the Contract, the Contractor shall, with the approval of NDEE, replace such employee with an employee of substantially equal abilities and qualifications.

3. **CONTRACT ADMINISTRATOR**

The Contractor shall designate a **Contract Administrator** for this contract. The Contract Administrator shall be the single point of contact with NDEE regarding contractual matters. Specific responsibilities of the Contract Administrator shall include, but not be limited to, the following:

- a. Providing all support staff, facilities, administrative capabilities, and all other resources as needed to ensure the successful and efficient accomplishment of Task Assignments issued under this Contract.
- b. Receiving, acknowledging, and implementing all Tasks Assignments.
- c. Designating a Project Manager for each Task Assignment.
- d. Providing overall supervision and administrative support to the Project Manager.
- e. Reporting and correcting all problems encountered in performing Task Assignments or in the administration of this Contract whether noted by the Contractor or as noted by NDEE.
- f. Preparing and submitting all reports, data, or other deliverables required in Task Assignments.
- g. Implementing a system to provide NDEE communications access to the Contractor twenty-four hours per day, seven days per week.

4. **PROJECT MANAGER**

The **Project Manager** designated by the Contract Administrator shall be fully dedicated to the assignment until its completion. Specific responsibilities of the Project Manager shall include, but not be limited to, the following:

- a. Maintaining close communication and coordination with NDEE and the Contract Administrator regarding performance of a Task Assignment.
- b. Conducting on-site reconnaissance to develop detailed proposals.
- c. Providing administrative support, supervision, and management of personnel equipment, materials, and subcontractors assigned to the Task Assignment. Personnel and subcontractors shall remain fully dedicated to the assignment and not be removed until its completion unless authorized or required by NDEE.
- d. Taking immediate corrective action when performance is not acceptable to NDEE.
- e. Ensuring that quality assurance, quality control, site health and safety, and any other performance related controls are adhered to during the performance of the work.

The Contractor must also have on staff the following two professionals:

5. **PROFESSIONAL ENGINEER**

The Contractor must have a Nebraska licensed **Professional Engineer** on staff that shall be assigned to prepare or approve all design documents, plans, and specifications for the project. Reciprocity from another State with Nebraska is acceptable if approved by the Nebraska Board of Engineers. The engineer shall have expertise in hydrogeology and the design of treatment facilities for treating petroleum contaminated soil and ground water.

6. **PROFESSIONAL GEOLOGIST**

A Nebraska licensed **Professional Geologist** shall be on staff and assigned to direct Geology related field activities and prepare or approve geological reports. The Geologist must hold a Certified Professional Geologist (CPG) license in the State of Nebraska. Reciprocity from another State with Nebraska is acceptable if approved by the Nebraska Board of Geologists.

7. **SUBCONTRACTORS**

If the Contractor intends to subcontract any part of its performance hereunder, the Contractor must provide:

- a. name, address and telephone number of the subcontractor(s);
- b. specific tasks for each subcontractor(s);
- c. percentage of performance hours intended for each subcontract; and
- d. total percentage of subcontractor(s) performance hours.

8. **INSPECTIONS OF WORK**

NDEE shall at all times have access to the work and to all workshops and places where work is being prepared or from where materials or machinery are being obtained for the work, and the

Contractor shall afford every facility for, and every assistance in, obtaining the right to such access.

9. PERMITS AND RESPONSIBILITIES

The Contractor shall secure, pay, and sign for all permits, licenses, and governmental fees necessary for the proper execution and completion of the work.

The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the work.

The Contractor shall be responsible for all damages and shall indemnify and save NDEE harmless from and against all additional cost, damages, and liability which may arise out of the failure of the Contractor to secure and pay for any such licenses and permits or to comply fully with any and all applicable laws, ordinances, rules, and regulations.

10. TRAVEL EXPENSES

The Contractor shall use the same guidelines for travel reimbursement expenses as the State of Nebraska. The Contractor must keep meal receipts, but is not required to provide the state with meal receipts. The Contractor shall keep a daily record of all meal costs and record the amount the employee spent for housing and meals.

11. DISPOSABLE ITEMS

The Contractor shall not purchase disposable items for use in the field when non disposable items are available. This type of item would include, but is not limited to, cameras. It is not NDEE's intent to further add disposable items to Nebraska's landfills. Exceptions to this requirement are items used where QA/QC is of concern such as sampling and personal safety items.

12. NEWS RELEASES

News releases pertaining to this procurement or any part of the proposal shall not be made without the prior approval of the NDEE. Violation of this paragraph may be grounds for disqualification of Contractor's proposal.

13. COMPETITIVE BIDDING REQUIREMENTS

The Contractor is required by State law to engage in a process of competitive bidding for single items of equipment or for subcontracted activities that exceed \$50,000 in value. To ensure contract payment under this contract, the bids must meet the following minimum criteria:

- a. A minimum of three bids must be obtained.
- b. Bids must be for comparable items.
- c. Bids must be obtained from Contractors who can demonstrate adequate experience, equipment and personnel to accomplish the scope of the bid items.

The Contractor is required to accept the lowest responsible bid. However, in cases in which the lowest Contractor was not selected, a justification of the decision must be provided to the Department's Project Manager. Records documenting the competitive bidding process performed during the term of the Contract must be retained four years after termination of the Contract.

This space left blank.

Form A
Contractor Proposal Point of Contact
Request for Proposal Number RFP-PRR-SPARC-2021

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

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

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

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

Pro Forma Contract

CONTRACT

**Contract No. DEE-PRR-SPARC-2021-xx
Between the
NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY
And
Contractor Name Here
Regarding
Environmental Engineering Services
NDEE Reference #xxxxxxx**

This Contract is made and entered into by and between the Nebraska Department of Environment and Energy (NDEE) and Company Name Here. Consultants whose principle offices are located at Address Here, NE

NOW, THEREFORE, the parties do hereby agree to the following terms and conditions:

I. CONTRACT TERM AND AWARD AMOUNT

The Term of this Contract shall commence on July 1, 2021 and shall expire on June 30, 2026. NDEE shall have the right, at its sole option, to extend the term of the Contract for five separate, one-year periods, or any portion thereof. Option periods shall be effective and initiated by formal amendments to this Contract. All terms, conditions, and provisions of this original Contract shall remain the same and apply during the option periods. The total amount of this Contract, to be awarded during the Term of the Contract, shall not exceed twenty million dollars (\$20,000,000.00)

II. WORK DESCRIPTION

The NDEE uses State and Federal money to perform investigations and cleanup of petroleum releases from Underground Storage Tanks (USTs), Above Ground Storage Tanks (ASTs), and other sources. Contractors will conduct site investigations, remediation of transportation spills, remediation equipment transportation and relocation, records review, report and plan preparation, remediation system design, construction, operation and maintenance, technical document reviews, and program development activities. The Contractor must also be prepared to provide emergency response services for releases of petroleum that threaten the safety of lives and property.

III. CONTRACT DOCUMENTS

This Contract shall incorporate the documents listed below. In the event of an inconsistency between provisions of the Contract documents, the inconsistency shall be resolved by giving precedence in the following order:

- A. Contract Award, including attachments (this document);
- B. Contract Amendments with the latest dated amendment having the highest priority;
- C. Contractor's Proposal;
- D. Request for Proposal addenda or amendments, to include written questions and NDEE answers, with the latest amendment having the highest priority;
- E. Request for Proposal and amendments; and
- F. Request for Proposal Form.

IV. FINANCIAL ADMINISTRATION

Type of Contract

This is a Time and Materials Contract. The approved Contractor Charge Rates are contained in Appendix A. Work will be assigned and administered utilizing a Task Assignment process as described in Section IV.B of this Contract. Payment and invoices will be administered as described in Section IV.C of this Contract.

A. Task Assignment Process

1. The Contractor shall perform work assigned under this Contract only as directed in a Task Assignment, and in accordance with the terms and conditions stipulated within this Contract. The Contractor shall provide services on an “as needed, if needed basis,” as determined by the NDEE. NDEE shall assume no responsibility and no liability for costs incurred by the Contractor for work performed prior to, without the issuance, or above the ceiling price of a Task Assignment. Before issuance of a Task Assignment, the Contractor shall prepare and submit a work plan and cost proposal to the NDEE Contract Administrator to perform work described in the Task Assignment. NDEE is obligated to pay the costs of preparing the work plan and cost proposal. Upon receipt, the work plan shall become the property of NDEE. NDEE shall have the right to use, adopt or modify ideas contained in the work plan. Selection or rejection of the work plan will not affect this right.
2. NDEE may accept or reject the Contractor’s work plan and cost estimate as submitted or enter into negotiations with the Contractor. Upon agreement on the work plan and cost estimate, NDEE will issue a Task Assignment with an associated ceiling price and schedule for completion of work. Upon receipt of a Task Assignment, the Contractor shall commence work as specified therein. NDEE may consider to not issue additional Task Assignments to a Contractor based on the Contractor’s performance in meeting the approved ceiling price and schedule for completion of work in a Task Assignment.

In the event of a need for urgent action, NDEE may require the Contractor to begin work immediately prior to finalization of a Task Assignment. Written authorization in the form of a Task Assignment and/or Emergency Authorization declared by the Director shall follow from the NDEE Contract Administrator.

3. In the event a Task Assignment issued during the Term of this Contract is not completed within that period, NDEE and the Contractor may amend this Contract to extend the Term to allow completion of the Task Assignment. All terms, conditions, and provisions of the Contract shall remain the same and apply during any extension period.
4. If the Contractor determines that the work plan and cost estimate needs to be modified, the Contractor shall, prior to incurring costs exceeding the ceiling price, submit a written request to the NDEE Contract Administrator specifying the needed modification, the reason for such modification, and any anticipated change in the ceiling price. Upon agreement on the requested modifications, NDEE will issue a Task Assignment Amendment with an associated ceiling price. Upon receipt of a Task Assignment Amendment, the Contractor shall commence work as specified therein. If agreement is not made on the requested modifications, NDEE is not obligated to pay for costs above the ceiling price.
5. If NDEE determines that the Task Assignment needs to be modified, NDEE shall issue a Task Assignment Amendment to the Contractor specifying the needed modification. The Contractor shall then revise the work plan and cost estimate accordingly. Upon agreement on the requested modifications, NDEE will issue a Task Assignment Amendment with an associated ceiling price change. Upon receipt of a Task Assignment Amendment, the Contractor shall commence work as specified therein.

B. Payment and Invoices

1. The Contractor shall perform the work called for in each Task Assignment issued under this Contract on a Time and Materials basis. The Contractor shall receive compensation, as specified herein, for services and work performed up to the ceiling price established for each Task Assignment. NDEE shall not be obligated to pay the Contractor any amount incurred in excess of the ceiling price of each Task Assignment.
2. Labor costs will be computed by multiplying the applicable charge rate for the employee in question by the actual direct labor hours worked. The charge rate for each employee performing work under this Contract shall be based on the approved hourly rates contained in Appendix A, Contractor Charge Rates. Fractional parts of any hour shall be payable on a prorated basis.
3. The cost of subcontracts that are authorized pursuant to the requirements and restrictions contained in the RFP shall be reimbursable costs in accordance with Appendix A, Contractor Charge Rates.
4. Direct cost items and services are defined as those materials which enter directly into the end product or which are used or consumed directly in connection with the furnishing of such product. Allowable costs of direct materials, supplies, services, etc., shall be determined by NDEE. The Contractor shall be reimbursed for direct cost items and services purchased for the Contract, in accordance with Appendix A, Contractor Charge Rates.
5. The Contractor shall, to the extent of its ability, procure materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, and take all cash and trade discounts, rebates,

allowances, credits, salvage, commissions, and other benefits. Credit shall be given to NDEE for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap when the amount of such scrap is appreciable, commissions, and other amounts which have accrued to the benefit of the Contractor, or would have so accrued except for the fault or neglect of the Contractor. Such benefits lost, through no fault or neglect on the part of the Contractor, or lost through fault of NDEE, shall not be deducted from gross costs.

6. The Contractor shall be paid upon submission of an original and properly certified invoice with supporting documentation and billing summary chart. Each Task Assignment shall be accounted for separately and be billed under a separate invoice. Invoices for each Task Assignment shall be submitted no more than once each month and if monthly expenditures exceed \$500.00. If the monthly expenditures for each Task Assignment are less than \$500.00, the Contractor shall carry that month's bills over to the following month until the total invoice amount to be claimed reaches or exceeds \$500.00 unless the invoice submitted under \$500.00 is the Final Invoice. The Contractor is not required to carry over costs for more than six months consecutively. To facilitate processing and payment, each invoice must reference the NDEE Contract number, IIS number, Project Number, Site Spill Number, Federal or State Funding and the Task Assignment number.

Invoices shall be supported by an itemized statement of costs claimed to have been incurred by the Contractor during the period covered by the invoice and shall include copies of vouchers, invoices, receipts, or other evidence of actual payment for other direct charges. If a personal car is used, a mileage log must be submitted. Meal receipts are not required as long as the total daily meal costs are within the allowable federal per diem rate for the project location. Meal receipts are to be kept on file by the Contractor for the duration of the Contract. Motel charges are to be kept by the Contractor for the duration of the Contract and copies are to be submitted with the Contractor monthly invoices.

7. The State may withhold ten percent (10%) of the total ceiling price of each Task Assignment, as retainage. The entire retainage amount will be payable upon successful completion of the work described in the Task Assignment. Upon completion of the work described in the Task Assignment, the contractor will invoice the State for any outstanding work and for the retainage, up to the actual cost. The State may reject the final invoice by identifying the specific reasons for such rejection in accordance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408). Otherwise, the work described in the Task Assignment will be deemed accepted and the State will release the final payment and retainage in accordance with the Contract payment terms. The Contractor shall identify the final invoice by affixing in a prominent place the words "FINAL INVOICE." The State will require the Contractor to accept payment by electronic means such as ACH deposit.
8. A Billing Summary chart must be noted on each invoice with the following columns: (1) Task Description (with the project tasks listed as line items below that heading), (2) Agreed Upon Cost Per Task, (3) Amount Billed on Previous Invoices, by task, (4) Amount Billed on Current Invoice, by task, (5) Total Amount Billed to date and by task, and (6) Percent of Task Completed (with approximate percentage of progress listed for each of the line-item tasks). At the bottom of the Budget Summary chart, the totals for each of the columns must be tallied and shown. The Retainage Amount of the total ceiling price of the Task Assignment shall be computed and shown by taking 10% of the total amount summed under the Agreed Upon Cost Per Task column.
9. Printed and/or attached to each invoice shall be the following certification which shall be manually signed by an authorized representative of the Contractor: "I certify that the above bill is correct; that the amounts claimed represent fair charges against the Nebraska Department of Environment and Energy; and that reimbursement has not and will not be received from any other source, public or private."
10. All requests for reimbursement of costs incurred by the Contractor shall be reviewed within ten (10) working days of their receipt by the NDEE. If costs are deemed ineligible, the Contractor shall be notified by the NDEE within ten (10) working days of the receipt of the request. Within forty-five (45) working days after the receipt of a properly documented reimbursement request, the State of Nebraska shall transmit payment to the Contractor, the amount of the eligible cost. The NDEE shall not be held responsible for delays in payment, due to causes beyond its control.
11. Payment to the Contractor shall be contingent upon required annual MBE/WBE reports and any other required reports submitted to NDEE.

V. CONTRACT SPECIFIC REQUIREMENTS

- A. The Contractor agrees to provide environmental engineering services including site assessments, groundwater monitoring evaluations, remediation treatment system design, installation, operation and maintenance, technical document reviews, remediation of transportation spills, remediation equipment transportation and relocation, and program development activities and other items contained in the Request for Proposal (RFP) and the Contractor's Proposal.

- B.** The Contractor agrees and understands that this Contract shall not be construed as an exclusive arrangement and that other contracts for the same types of services may exist.
- C.** A registered Professional Geologist in the State of Nebraska shall be assigned to direct field activities and prepare or approve technical reports related to the practice of Geology. A licensed professional engineer in the State of Nebraska shall be assigned to review all engineering design documents, plans and specifications. The engineer or subordinates shall have experience with the design of remediation/treatment systems for soil and groundwater contamination.
- D.** The contractor shall comply with Title 178 – Environmental Health, Chapter 10 - Regulations Governing Licensure of Water Well and Pump Installation Contractors and Certification of Water Well Drilling and Pump Installation Supervisors, and Water Well Monitoring and Natural Resources Ground Water Technicians, Chapter 11 - Continuing Education and Fees, Chapter 12 - Water Well Construction, Pump Installation and Water Well Decommissioning Standards, Chapter 13 - The Water Well Standards and Contractors' Licensing Board.
- E.** The Contractor shall prepare and submit to NDEE a Generic Health and Safety Plan (HSP) for its workers and subcontractors related to the performance of site assessment and remediation activities. The Contractor shall also prepare and submit to NDEE a site-specific HSP appendix to the Generic HSP for each site assessment project, as part of the work plan prepared in accordance with the Task Assignment process described in Section IV.B. The contents of the Generic HSP and site-specific HSP appendix shall be in accordance with Standards of the Occupational Safety and Health Administration 29 CFR, Part 1910. The Contractor shall assume the sole responsibility of ensuring that its workers and subcontractors adhere to the plans. The Contractor shall require all personnel to read and sign an agreement indicating compliance with the plans prior to commencing work. The Contractor shall submit the Generic HSP along with its Standard Operating Procedure (SOPs) related to the collection of environmental samples to NDEE as part of the signed generic QAPP. Site-specific HSP appendices shall be submitted with each work plan specific to a site. Contractors that have previously submitted a Generic HSP to NDEE do not need to re-submit unless modifications to the Generic HSP have occurred.
- F.** The Contractor shall follow NDEE's Generic Quality Assurance Project Plan (QAPP) for the State-lead Petroleum Assessment and Remediation Contract activities, when performing site assessment work under this contract. The Contractor shall prepare and submit to NDEE a site-specific QAPP addendum for each site assessment project, as part of the work plan prepared in accordance with the Task Assignment process described in Section IV.B., to ensure that all work is carried out in accordance with established and acceptable standards of practice and that the work executed is fully documented. The site-specific QAPP addendums shall be prepared in accordance with NDEE's Generic QAPP and EPA Requirements for Quality Assurance Project Plans, EPA QA/R-5. The Contractor must submit the site-specific QAPP addendums for NDEE review and approval prior to beginning work at a site. The Contractor shall also submit all forms to be used that will document the work to be executed. During execution of the work, the Contractor's personnel shall strictly adhere to the Generic QAPP and site-specific QAPP addendums.
- G.** The Contractor shall document all site assessment field activities on a daily basis and include copies of the field notes in submitted reports. The Contractor shall modify record keeping procedures as required by NDEE. Photographic documentation is also required for site assessment activities and shall be included in submitted reports.
- H.** The Contractor shall make available its key personnel to NDEE for meetings as deemed necessary by NDEE to discuss or coordinate any aspect of the work or proposed work.
- I.** The Contractor shall repair or replace material damaged during site assessment activities and restore as near as possible the damaged environment to pre-assessment conditions. At a minimum, the Contractor shall perform the following:
1. Grading of surface;
 2. Replacement of soil;
 3. Replacement of damaged concrete, asphalt or other surface cover;
 4. Reseeding or replanting of vegetation, and;
 5. Repair of any damaged utilities
- J.** The Contractor shall provide security to the site to protect the public and the work effort. The security level shall be sufficient to reasonably protect personal property and persons from harm or damage.
- K.** The Contractor shall notify the Project Manager of the start date for any overexcavation, chemical treatment or Geoprobe work.
- L.** The Contractor shall be responsible for the proper and legal disposal of all contaminated materials generated through the performance of work under a task assignment. Sample analysis, transportation and temporary storage shall be considered elements of disposal.

M. The Contractor shall meet the following time requirements related to performance of work under this Contract:

1. Completion of work specified in a Task Assignment by the Task Assignment completion date;
2. Site assessment reports shall be submitted to NDEE within sixty (60) days of completion of field work and within thirty (30) days of receiving data from fixed laboratories, or as mutually agreed on;
3. Special Reports: All other reports or data shall be submitted as determined necessary by NDEE and indicated in the Task Assignment.

VI. CONDITIONS

Federal Grant Conditions

A. General Terms and Conditions

The recipient agrees to comply with the current EPA general terms and conditions. These terms and conditions are in addition to the assurances and certifications made as part of the award and the terms, conditions, or restrictions cited throughout the award. The EPA repository for the general terms and conditions by year (Grant Conditions) can be found at: <http://www.epa.gov/ogd/tc.htm>

B. Amendments

This Contract may be amended in writing at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law or requirements of the EPA or NDEE.

C. Forfeiture, Repayment and Delays in Disbursement of Funds

Violation of any conditions of this Contract by the Contractor or failure of the Contractor to complete and maintain the project in the manner described, including any amendments thereto which have been properly approved, shall result in the forfeiture of any funds not disbursed. In addition, if for any reason the project is not completed as described, including any amendments thereto that have been or are hereafter approved by the NDEE, the NDEE may recover from the Contractor any or all funds disbursed.

D. Remedies Not Exclusive

The use by either the Contractor or the NDEE of any remedy specified herein for the enforcement of this Contract is not exclusive and shall not deprive the party from using such remedy, or limit the application of any other remedy provided by law.

E. Assignment

No assignment or transfer of this Contract or any part hereof, rights hereunder, or interest herein by the Contractor shall be valid unless and until it is approved by the NDEE and made subject to such reasonable terms and conditions as the NDEE may impose.

F. Waiver of Rights

The Contractor or NDEE may from time to time waive any of their rights under this Contract. However, any waiver of rights with respect to a default of any condition of this Contract shall not be deemed to be a waiver with respect to any other default.

G. Applicable Rules and Regulations

Both parties shall abide by all applicable rules and regulations of the NDEE, including any that may be adopted subsequent to the effective date of this Contract, except those that would invalidate or be inconsistent with the provisions of this Contract.

H. Inspection of Books, Records and Reports

The duly authorized representative of either party shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this Contract or related matters during regular office hours. Each party shall maintain and make available for such inspection accurate records of all its costs, disbursements and receipts with respect to its activities under this Contract. A single audit is required if \$500,000 or more is provided by federal funding in any one year period through this Contract. Copies of the single audit report shall be sent to NDEE.

I. Independent Contractor

The Contractor is and shall perform as an independent contractor and as such shall have and maintain exclusive control over all of its employees, agents and operations. Neither the Contractor nor any person employed by the Contractor shall act, propose to act or be deemed the NDEE's agent, representative or employee. The Contractor assumes full and exclusive responsibility for the payment of all premiums, contributions, payroll taxes and other taxes now or hereafter required by any law or regulation and agrees to comply with all applicable laws, regulations and orders relating to social security, unemployment compensation, OSHA, affirmative action, equal employment opportunity and other laws, regulations and orders of like nature.

State Grant Conditions

The following grant conditions shall be complied with by all recipients of federal grant funds. The Contractor agrees to comply with all the following provisions, rules, and regulations (copies can be obtained from NDEE):

A. Nondiscrimination

The Nebraska Fair Employment Practice Act prohibits contractors to the State of Nebraska and their subcontractors from discriminating against any employee, or applicant for employment in the performance of such contracts, with respect to hire, tenure, terms, conditions or privileges of employment because of race, color, religion, sex, disability or national origin. The Contractor's signature is a guarantee of compliance with the Nebraska Fair Practice Act, and breach of this provision shall be regarded as a material breach of this Contract. The Contractor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Contract.

B. Publication Rights

All parties shall have publication and reproduction rights for all reports and materials, which are produced as a result of this Contract.

C. Termination

This Contract may be terminated in whole or in part, in writing, by either party in the event of failure by the other party to fulfill its obligations under this Contract, through no fault of the terminating party, provided that no termination may be affected unless the other party is given:

1. Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate; and
2. An opportunity for consultation with the terminating party prior to termination.

If the termination is for the convenience of NDEE, the Contractor shall be compensated for all services performed up to the termination date and any signed subcontractor contract obligations not to exceed 90 days after the termination.

D. Change of Ownership and Key Personnel

If any change in ownership or control of the company is anticipated during the term of the Contract, the Contractor shall provide notice to NDEE the circumstances of such change and indicate when the change will likely occur. The Department at its sole discretion will determine if the Contract will be retained or terminated as a result of change of ownership.

The Contractor's RFP response identified the roles of specific professionals who will work on these projects. The names and titles of the team proposed for assignment to the State projects has been identified in full, with a description of the team leadership, interface and support functions, and reporting relationships. The primary work assigned to each person has also been identified. The Contractor shall not reassign, remove or replace any identified personnel without the approval of NDEE. If, for any reason, one or more of the aforementioned employees becomes unavailable for assignment of work under this Contract, the Contractor shall provide notice to NDEE. The notice shall also identify the proposed replacement personnel. The Department shall have the right to approve or reject replacement personnel identified. The Department at its sole discretion will determine if the Contract will be retained or terminated as a result of a change of personnel.

E. Hold Harmless

The Contractor agrees to hold NDEE harmless for loss or damage sustained by any person as a direct result of the negligent or willful acts by the Contractor, its employees, subcontractors, or agents in the performance of this agreement including all associated costs of any defending action.

VII. CONTRACT ADMINISTRATORS

The Contract Administrators for each party to this Contract shall be as follows. The Contract Administrator may be changed upon written notification.

NDEE Contract Administrator

EXAMPLE ONLY – DO NOT SIGN FOR RFP SUBMITTAL

Phil Hargis
P.O. Box 98922
Lincoln, NE 68509

Nebraska Department of
Environment & Energy

Company Name: _____

Signature _____

Signature _____

Printed Name: Kevin Stoner

Printed Name _____

Title: Deputy Director of Administration

Title _____

Date: _____

Date _____

This Space Left Blank

Appendix A

DEE-PRR-SPARC-2021

Contractor Charge Rates

XXXXXXXX, Inc.

Labor

The Contractor shall perform the work called for in each Task Assignment issued under this contract on a time and materials basis. The Contractor shall receive compensation, as specified hereunder, for all services and work performed up to the ceiling price established for each Task Assignment. Labor costs shall be computed by multiplying employee's charge rate by the actual direct labor hours worked. The charge rate for each employee performing work under this contract shall be based on a totally burdened multiplier on direct salary. The burdened multiplier shall include profit, wages, overhead, general and administrative expenses, and the cost of bidding, awarding, and administering subcontracts. The Contractor shall not increase the wages of its employees for the purpose of increasing the employee charge rates. The burdened multiplier for the contract is X.XX. The charge rates shall not be varied by virtue of the Contractor having performed work on an overtime basis. Fractional parts of any hour shall be payable on a prorated basis. The burdened multiplier for travel time under this Contract shall be X.XX.

Subcontracts

The cost of subcontracts, which are authorized pursuant to the "Subcontracts" clause of Section IV/Services/Subcontracting, shall be reimbursable costs hereunder, provided such costs are consistent with the Direct Costs paragraph below. NDEE shall reimburse Contractor at a rate of XXX% of the actual cost paid for subcontracts.

Direct Costs

Allowable costs of direct materials, supplies, services, etc., shall be determined by NDEE. The Contractor shall be reimbursed for direct items and services purchased for the contract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. NDEE shall reimburse Contractor at a rate of XXX% of the actual cost paid for materials or services. Direct items and services are defined as those materials which enter directly into the end product or which are used or consumed directly in connection with the furnishing of such product.