# CONTRACT DOCUMENTS

**CITY OF LINCOLN and**
**LANCASTER COUNTY, NEBRASKA**

Work/Services and/or Materials for the
Repair of Guardrails for the NDOR
State of Nebraska, Department of Roads Contract No. HH1305

**Contractor:**
**Garcia-Chicoine Enterprises, Inc.**
**P.O. Box 703**
**Milford, NE 68405**
**402-761-4460**

**CITY OF LINCOLN AND LANCASTER COUNTY, N E B R A S K A,**
**C O N T R A C T  A G R E E M E N T**

THIS CONTRACT, made and entered into by and between **Garcia-Chicoine Enterprises, Inc., P.O. Box 703, Milford, NE 68405,** hereinafter called Contractor, and the City of Lincoln, Nebraska, a municipal corporation and the County of Lancaster, Nebraska, a political subdivision, hereinafter called the Owners.

WHEREAS, Neb. Rev. Stat. § 23-3109(1)(d)(iii) allows for waiver of bidding requirements when the price has been established by a cooperative purchasing agreement by which supplies, equipment, or services are procured in accordance with a contract established by another governmental entity or group of governmental entities if the contract was established in accordance with the laws and regulations applicable to the establishing governmental entity or, if a group, the lead governmental entity; and

WHEREAS, Lincoln Municipal Code §2.18.030( c) allows the City of Lincoln to join with other units of government for cooperative purchasing; and

WHEREAS, the Owners through local inter-governmental cooperative purchasing have chosen to participate in the contract between the **State of Nebraska, Nebraska Department of Roads (NDOR) and Garcia-Chicoine Enterprises, Inc. - State on Nebraska NDOR Contract No. HH1305 to provide the work/services and/or materials for the repair of guardrails,** which was prepared in accordance with the State's usual and customary laws, procedures and policies, and has approved and adopted said documents connected with said, Work, to-wit:

for all labor, training, materials and equipment necessary to provide work/service and/or materials for the repair of guardrails for the Owners' various departments, agencies and divisions as the Owners may determine in compliance with the prices as established via the Contract between **Garcia-Chicoine Enterprises, Inc** and the **State of Nebraska NDOR, Contract No HH1305,** executed by the State of Nebraska on August 12, 2013.

WHEREAS, the Contractor, in response to the Owners' request to participate in said State of Nebraska contract, has submitted to the Owners, an offer approving Owners participation under the same pricing structure, terms and conditions as the State of Nebraska, with only those exceptions stated herein; and

WHEREAS, the State of Nebraska, in the manner usual and customary to their laws, policies and procedures has opened, read, examined, and canvassed the Proposals submitted in response to the proposal request, and as a result of such canvass has determined and declared the Contractor to be the lowest responsible bidder for the said Work for the sum or sums named in the contract between Garcia-Chicoine Enterprises, Inc. and the State of Nebraska NDOR, Contract No. HH1305, executed August 12, 2013, a copy thereof being attached to and made a part of this Contract;

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the mutual covenants herein contained, the Contractor and the Owners hereby agree as follows:

1. The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other accessories, services, and facilities necessary to provide document shredding services for the Owner's various departments, agencies and divisions as the Owners may determine.

2. Term of the Contract. The initial term of this contract is for a period beginning September 1, 2013 through August 31, 2016.
   2.1 Upon conclusion of the initial term, the contract may be renewed on a yearly basis with mutual written agreement by both parties for an additional four (4), one (1) year terms, a term not to exceed the State of Nebraska NDOR Contract HH1305.

2.2 Any renewal of the contract will be under the same terms and conditions as the original agreement.

3. Pricing. Pricing for these services is listed in the contract between Garcia-Chicoine Enterprises, Inc. and State of Nebraska NDOR Contract No. HH1305, executed by the State of Nebraska on August 12, 2013, a copy thereof being attached to and made a part of this Contract.

**The Owners will pay for products/service, according to the Line Item pricing as listed in Contractors Proposal/Supplier Response, a copy thereof being attached to and made a part of this Contract. The Owners shall order on an as- needed basis for the duration of the contract. The total cost of products or services for County agencies shall not exceed $15,000.00 during the contract term without approval by the Board of Commissioners. The total cost of products or services for City Departments shall not exceed $12,000.00 during the contract term without approval**

4. Independent Contractor. It is the express intent of the parties that this contract shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the Owners and employees of the Owners shall not be deemed to be employees of the Contractor. The Contractor and the Owners shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the Owners' employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employees' compensation.

5. Indemnification. The Contractor shall indemnify and hold harmless the Owners (City of Lincoln and Lancaster County),their agents, principals, officers, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorneys' fees), arising out of or resulting from the acts or omissions of the Contractor, its principals, officers, agents, or employees in the performance of this contract. Liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this contract that results in any claim for damage whatsoever including any bodily injury, civil rights liability, sickness, disease, or damage to or destruction of tangible property, including the loss of use resulting therefrom. Further, Contractor shall maintain a policy or policies of insurance (or a self-insurance program), sufficient in coverage and amount to pay any judgments or related expenses from or in conjunction with any such claims. Nothing in this contract shall require either party to indemnify or hold harmless the other party from liability for the negligent or wrongful acts or omissions of said other party or its principals, officers, or employees.

6. Equal Employment Opportunity. In connection with the carrying out of this project, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.

7. Owner Inclusion. It is understood and agreed by all parties that "Owner/s" shall include the City of Lincoln and Lancaster County, Nebraska. Whenever in the Contract documents, including the instructions to bidders, specifications, insurance requirements, bonds, and terms and conditions of any other documents which are a part of the Contract, a singular entity is referenced (i.e., "the City"

or "the County") it shall mean the "Owners" encompassing the City of Lincoln and County of Lancaster, Nebraska.

8. Termination. This Contract may be terminated by the following:
   8.1 Termination for Convenience. Either party may terminate this Contract upon fourteen (14) days written notice to the other party for any reason without penalty.
   8.2 Termination for Cause. The Owners may terminate the Contract for cause if the Contractor:
      8.2.1 Refuses or fails to supply the proper labor, materials and equipment necessary to provide services.
      8.2.2 Disregards Federal, State or local laws, ordinances, regulations, resolutions or orders.

      8.2.3 Otherwise commits a substantial breach or default of any provision of the Contract Document. In the event of a substantial breach or default the Owners will provide the Contractor written notice of said breach or default and allow the Contractor ten (10) days from the date of the written notice to cure such breach or default. If said breach or default is not cured within ten (10) days from the date of notice, then the contract shall terminate.

9. E-Verify. In accordance with Neb. Rev. Stat. 4-108 through 4-114, the contractor agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324 a, otherwise 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 a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A 1324b. The contractor shall require any subcontractor to comply with the provisions of this section.

10. The parties agree that the terms and conditions of this Contract shall prevail and govern in the case of any such inconsistent or additional terms in the Agreement between the **Garcia-Chicoine Enterprises, Inc. and State of Nebraska NDOR, Contract No. HH1305 for provide the work/services and/or materials for the repair of guardrails.**

11. Insurance. The Contractor shall maintain during the life of this contract the types and amounts of insurance as specified in the "Insurance Requirements for Lancaster County and City of Lincoln.

The Contract Documents comprise the Contract, and consist of the following:

1. Contract Agreement
2. State of Nebraska NDOR Contract No. HH1305
3. Proposal
4. Insurance Certificate

This Contract Agreement, together with the other Contract Documents herein above mentioned, form this Contract, and are a part of the Contract as if hereto attached.

The Contractor and the Owners hereby agree that all the terms and conditions of this Contract shall be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and the Owners do hereby execute this contract.

**EXECUTION BY THE CITY OF LINCOLN, NEBRASKA**

ATTEST:

_____
City Clerk

CITY OF LINCOLN, NEBRASKA

_____
Chris Beutler, Mayor

Approved by Resolution No._____

Dated _____

**EXECUTION BY LANCASTER COUNTY**

Contract Approved as to Form:

_____
Deputy County Attorney
For Lancaster County Attorney

The Board of County Commissioners of
Lancaster County, Nebraska

_____

_____

_____

_____

_____

Dated: _____

**EXECUTION BY CONTRACTOR**

IF A CORPORATION:

ATTEST:
_____ (SEAL)
Secretary

Garcia-Chicoine Enterprises, Inc.
Name of Corporation

P.O. BOX 703
MILFORD, NE 68405
(Address)

By: _____ Tyler J. Chicoine
Duly Authorized Official

Vice President
Legal Title of Official

IF OTHER TYPE OF ORGANIZATION:

_____
Name of Organization

_____
Type of Organization

_____
(Address)

By:_____
Member

By:_____
Member

Nebraska Dept. of Roads (NDOR)
Operations Division
5001 So. 14th Street
Lincoln, Nebraska 68512

CONTRACT AWARD

# STATE OF NEBRASKA

Vendor: **Garcia-Chicoine Enterprises, Inc.**
**PO Box 703**
**Milford, NE 68405**

Date: August 12, 2013

Contract Number: **HH1305**

General Classification: **Maintenance & Repair of Guardrail**
**District 1**

Contact: **Tyler J. Chicoine**
Phone: 402-761-4460
Fax: 402-761-4464

An Award has been made to the Vendor named above for the furnishing of equipment, material, supplies, or service as listed below for the period: **September 1, 2013 through August 31, 2016.**

For orders of equipment or supplies, no action on the part of the vendor needs to be taken at this time. Orders will be issued as needed by the various facilities of the Nebraska Department of Roads.

This contract is not an exclusive contract to furnish the equipment or supplies shown below, and does not preclude the purchase of similar items from other sources.

The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the vendor and the State of Nebraska.

Contract to provide the work/services and/or materials for the repair of guardrails for the Nebraska Dept. of Roads District 1 locations as specified in **RFP R23-13.**

Material Cost Plus: **0%**

Mobilization Price Per Mile: **$22.00**

Crew Hour: **$365.00 (Includes all labor and equipment costs)**

Flashing Arrow Panels Price Per Hour: **$400.00**

***Insurance Requirements are specified in RFP R23-13***

Gloria Ryken
NDOR Buyer

Company Representative

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 9/26/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| PRODUCER | CONTACT NAME: Mary Kent |
|---|---|
| UNICO Group<br>4435 O Street<br><br>Lincoln NE 68510 | PHONE (A/C, No, Ext): (402) 434-7200 FAX (A/C, No): (402) 434-7272<br>E-MAIL ADDRESS: mkent@unicogroup.com |

| INSURER(S) AFFORDING COVERAGE | NAIC # |
|---|---|
| INSURER A: Cincinnati Insurance Co. | 10677 |
| INSURER B: | |
| INSURER C: | |
| INSURER D: | |
| INSURER E: | |
| INSURER F: | |

INSURED
Garcia Chicoine Enterprises Inc.
Midwest Machine & Supply Co.
P O Box 703
Milford NE 68405-0703

**COVERAGES** **CERTIFICATE NUMBER:** 2012-13 GL,AU,WC,UMB **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|---|---|---|---|---|---|---|---|---|
| A | GENERAL LIABILITY<br>X COMMERCIAL GENERAL LIABILITY<br>CLAIMS-MADE X OCCUR<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br>POLICY X PRO-JECT LOC | | | CPP1082834 | 10/1/2012 | 10/1/2013 | EACH OCCURRENCE<br>DAMAGE TO RENTED PREMISES (Ea occurrence)<br>MED EXP (Any one person)<br>PERSONAL & ADV INJURY<br>GENERAL AGGREGATE<br>PRODUCTS - COMP/OP AGG | $ 1,000,000<br>$ 500,000<br>$ 5,000<br>$ 1,000,000<br>$ 2,000,000<br>$ 2,000,000 |
| A | AUTOMOBILE LIABILITY<br>X ANY AUTO<br>ALL OWNED AUTOS<br>X HIRED AUTOS<br>SCHEDULED AUTOS<br>X NON-OWNED AUTOS | | | CPP1082834 | 10/1/2012 | 10/1/2013 | COMBINED SINGLE LIMIT (Ea accident)<br>BODILY INJURY (Per person)<br>BODILY INJURY (Per accident)<br>PROPERTY DAMAGE (Per accident) | $ 1,000,000<br>$<br>$<br>$ |
| A | X UMBRELLA LIAB OCCUR<br>EXCESS LIAB CLAIMS-MADE<br>DED RETENTION $ | | | CPP1082834 | 10/1/2012 | 10/1/2013 | EACH OCCURRENCE<br>AGGREGATE | $ 5,000,000<br>$ 5,000,000 |
| A | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N<br>(Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below | N/A | | WC1926197 | 10/1/2012 | 10/1/2013 | X WC STATUTORY LIMITS OTHER<br>E.L. EACH ACCIDENT<br>E.L. DISEASE - EA EMPLOYEE<br>E.L. DISEASE - POLICY LIMIT | $<br>$ 500,000<br>$ 500,000<br>$ 500,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
RFP #R23-13, Nebraska Department of Roads, The Owner, if coverage is provide for a local Public Agency project, and the State of Nebraska, Dept of Roads, are listed as Additional Insureds per the blanket additional insured endorsement on the insureds general liability policy. General liability coverage is provided by a standard form commercial general liability policy (CG0001 or equivalent). This policy does not contain a total or absolute pollution exclusion. The General Liability, Auto and Workers Compensation include a Waiver of Subrogation as required by written contract with the named insured prior to a loss. The umbrella is following form.

**CERTIFICATE HOLDER**

Gloria.ryken@nebraska.gov

Nebraska Department of Roads
Operations Division
5001 S 14th St
Lincoln, NE 68512

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Ric Stoakes/MKENT


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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 9/25/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| PRODUCER | CONTACT NAME: Mary Kent |
|---|---|
| UNICO Group<br>4435 O Street<br><br>Lincoln NE 68510 | PHONE (A/C, No, Ext): (402)434-7200 FAX (A/C, No): (402)434-7272<br>E-MAIL ADDRESS: mkent@unicogroup.com |
| | INSURER(S) AFFORDING COVERAGE — NAIC # |
| | INSURER A: Cincinnati Insurance Co. — 10677 |
| INSURED<br>Garcia Chicoine Enterprises Inc.<br>Midwest Machine & Supply Co.<br>P O Box 703<br>Milford NE 68405-0703 | INSURER B :<br>INSURER C :<br>INSURER D :<br>INSURER E :<br>INSURER F : |

**COVERAGES** **CERTIFICATE NUMBER:** 2012-13 GL,AU,WC,UMB **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|---|---|---|---|---|---|---|---|---|
| A | GENERAL LIABILITY<br>[X] COMMERCIAL GENERAL LIABILITY<br>[ ] CLAIMS-MADE [X] OCCUR<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br>[ ] POLICY [X] PRO-JECT [ ] LOC | | | CPP1082834 | 10/1/2012 | 10/1/2013 | EACH OCCURRENCE<br>DAMAGE TO RENTED PREMISES (Ea occurrence)<br>MED EXP (Any one person)<br>PERSONAL & ADV INJURY<br>GENERAL AGGREGATE<br>PRODUCTS - COMP/OP AGG | $ 1,000,000<br>$ 500,000<br>$ 5,000<br>$ 1,000,000<br>$ 2,000,000<br>$ 2,000,000 |
| A | AUTOMOBILE LIABILITY<br>[X] ANY AUTO<br>[ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS<br>[X] HIRED AUTOS [X] NON-OWNED AUTOS | | | CPP1082834 | 10/1/2012 | 10/1/2013 | COMBINED SINGLE LIMIT (Ea accident)<br>BODILY INJURY (Per person)<br>BODILY INJURY (Per accident)<br>PROPERTY DAMAGE (Per accident) | $ 1,000,000<br>$<br>$<br>$ |
| A | [X] UMBRELLA LIAB [ ] OCCUR<br>EXCESS LIAB [ ] CLAIMS-MADE<br>DED RETENTION $ | | | CPP1082834 | 10/1/2012 | 10/1/2013 | EACH OCCURRENCE<br>AGGREGATE | $ 5,000,000<br>$ 5,000,000 |
| A | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N [ ]<br>(Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below | N/A | | WC1926197 | 10/1/2012 | 10/1/2013 | [X] WC STATUTORY LIMITS [ ] OTHER<br>E.L. EACH ACCIDENT<br>E.L. DISEASE - EA EMPLOYEE<br>E.L. DISEASE - POLICY LIMIT | <br>$ 500,000<br>$ 500,000<br>$ 500,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The general liability policy includes a blanket automatic additional insured endorsement that provides additional insured status only when there is a written contract between the named insured and the certificate holder that requires such status. The Blanket additional insured endorsement provides coverage for the City of Lincoln as required per the written prime contract. City of Lincoln and Lancaster County are Additional Insureds with respects to the general liability per form GA233 0207 attached.

**CERTIFICATE HOLDER**

LLIrons@lincoln.ne.gov

City of Lincoln
Attn: Robert Walla
440 S. 8th St #200 SW wing
Lincoln, NE 68508

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Ric Stoakes/MKENT


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**State of Nebraska**

# REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES FORM

RETURN TO:
Nebraska Dept. of Roads
Operations Divisions
5001 S. 14th Street
Lincoln, NE 68512
Phone: (402) 479-4356

| SOLICITATION NUMBER | RELEASE DATE |
|---|---|
| **R23-13** | **June 21, 2013** |
| OPENING DATE AND TIME | PROCUREMENT CONTACT |
| **July 30, 2013, 3:00 P.M. Central Time** | **Gloria Ryken** |

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

**PLEASE READ CAREFULLY!**

## SCOPE OF SERVICE

The State of Nebraska, Department of Roads (NDOR), is issuing this Request for Proposal, RFP Number R23-13 for the purpose of selecting a qualified contractor to provide the work/services and /or materials for the repair of guardrails as described in this RFP.

Written questions are due no later than July 17, 2013, and should be submitted via e-mail to gloria.ryken@nebraska.gov.

Written questions may also be sent by facsimile to (402) 479-4567.

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. Sealed proposals must be received in Nebraska Department of Roads by the date and time of proposal opening specified under the Schedule of Events. No late proposals will be accepted. No electronic, e-mail, fax, voice, or telephone proposals will be accepted.
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 bidder's proposal and any other requirements as specified in the Request for Proposal in order to be considered for an award.
3. **It is the responsibility of the bidder to check the website for all information relevant to this solicitation to include addenda and/or amendments issued prior to the opening date. Website address is as follows: http://www.transportation.nebraska.gov/operations/procur/.**
4. It is understood by the parties that in the State of Nebraska's opinion, any limitation on the contractor's liability is unconstitutional under the Nebraska State Constitution, Article XIII, Section 3, and that any limitation of liability shall not be binding on the State of Nebraska despite inclusion of such language in documents supplied with the contractor's bid or in the final contract.

## BIDDER MUST COMPLETE THE FOLLOWING

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

FIRM: Garcia-Chicoine Enterprises, Inc.

COMPLETE ADDRESS: P.O. Box 703, Milford, NE 68405

TELEPHONE NUMBER: 402.761.4460 FAX NUMBER: 402.761.4464

SIGNATURE: [signature] DATE: 7/30/13

TYPED NAME & TITLE OF SIGNER: Tyler J. Chicoine, Vice President

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# GLOSSARY OF TERMS

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

**Addendum:** Something added or deleted.

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

**Agent:** A person authorized by a superior or organization to act on their behalf.

**Amend:** To alter or change by adding, subtracting, or substituting. A contract can be amended only by the parties participating in the contract. A written contract can only be amended in writing.

**Amendment:** Written correction or alteration.

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

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

**Best and Final Offer (BAFO):** A second-stage bid in a public procurement for services.

**Bid:** The executed document submitted by a bidder in response to a Request for Proposal.

**Bid Bond:** A bond given by a surety on behalf of the bidder to ensure that the bidder will enter into the contract as bid and is retained by the State from the date of the bid opening to the date of contract signing.

**Bidder:** Any person or entity submitting a competitive bid response to a solicitation.

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

**Business Day:** Any weekday, excepting public holidays.

**Calendar Day:** Every day shown on the calendar; Saturdays, Sundays and State/Federal holidays included. Not to be confused with "Work Day".

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

**Competition:** The process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, delivery and/or service.

**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 provide.

**Contract:** An agreement between two or more persons to perform a specific act or acts.

**Contract Administration:** The Management of various facets of contracts to assure that the contractors total performance is in accordance with the contractual commitments and obligations to the purchaser are fulfilled.

**Contract Management:** Includes reviewing and approving of changes, executing renewals, handling disciplinary actions, adding additional users, and any other form of action that could change the contract.

**Contractor:** Any person or entity that supplies goods and/or services.

**Conversion Period:** A period of time not to exceed six (6) months, during which the State converts to a new Operating System under "Conversion" as per this RFP.

**Copyright:** A grant to a writer/artist that recognizes sole authorship/creation of a work and protects the creator's interest(s) therein.

**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.

**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.

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

**Deviation:** Any proposed change(s) or alteration(s) to either the contractual language or deliverables within the scope of this Request for Proposal.

**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.

**Evaluation Committee:** A committee (or committees) appointed by the requesting agency that advises and assists the procuring office in the evaluation of proposals.

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

**Extension:** A provision, or exercise of a provision, of a contract that allows a continuance of the contract (at the option of the State of Nebraska) for an additional time according to contract conditions. Not to be confused with "Renewals."

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

**Foreign Corporation:** A foreign corporation is a corporation that was formed (i.e. incorporated) in another state but transacting business in Nebraska pursuant to a certificate of authority issued by the Nebraska Secretary of State.

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

**Late Proposal:** A proposal received at the place specified in the solicitation after the date and time designated for all proposals to be received.

**Licensed Software:** Any and all software and documentation by which the State acquires or is granted any rights under this contract.

**May:** Denotes discretion.

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

**Module:** A collection of routines and data structures that perform a specific function of the Licensed Software.

**Must:** Denotes the imperative, required, compulsory or obligatory

**Opening Date:** Specified date and time for the public opening of received, labeled and sealed formal proposals. Not to be confused with "Release Date".

**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:** Acquiring computing or related services from a source outside of the State of Nebraska which may include programming and/or executing the State's Licensed Software on the State's CPU's, programming, and/or executing the State's programs and Licensed Software on the contractor's CPU's or any mix thereof.

**Outsourcing Company:** A company that provides Outsourcing Services under contract to the State.

**Performance Bond:** A bond given by a surety on behalf of the contractor to ensure the timely and proper (in sole estimation of the State) performance of a contract.

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

**Pre-Proposal Conference:** A meeting scheduled for the purpose of providing clarification regarding a Request for Proposal and related expectations.

**Product:** A module, a system, or any other software-related item provided by the contractor to the State.

**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 RFP, plus any additional programs and products licensed by the State under this contract for use by the State.

**Project:** The total of all software, documentation, and services to be provided by the contractor under this contract.

**Proposal:** The executed document submitted by a bidder in response to a Request for Proposal.

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

**Protest:** A complaint about a governmental action or decision related to a Request for Proposal or the resultant contract, brought by a prospective bidder, a bidder, a contractor, or other interested party to AS Materiel Division or another designated agency with the intention of achieving a remedial result.

**Public Proposal Opening:** The process of opening proposals, conducted at the time and place specified in the Request for Proposal, and in the presence of anyone who wishes 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:** Date of release of the Request for Proposal to the public for submission of proposal responses. Not to be confused with "Opening Date".

**Renewal:** Continuance of a contract for an additional term after a formal signing by the parties.

**Representative:** Includes an agent, an officer of a corporation or association, a trustee, executor or administrator of an estate, or any other person legally empowered to act for another.

**Request for Proposal (RFP):** All documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals.

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

**Responsive Bidder:** A bidder who has submitted a bid which conforms in all respects to the solicitation document.

**Shall:** Denotes the imperative, required, compulsory or obligatory.

**Should:** Indicates an expectation.

**Solicitation:** The process of notifying prospective bidders or offerors that the State of Nebraska wishes to receive proposals for furnishing services. The process may consist of public advertising, posting notices, or mailing Request for Proposals and/or Request for Proposal announcement letter to prospective bidders, or all of these.

**Solicitation Document:** Request for Proposal.

**Specifications:** The information provided by or on behalf of the contractor that fully describes the capabilities and functionality of the Licensed Software as set forth in any material provided by the contractor, including the documentation and User's Manuals described herein.

**System:** 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. All obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

**Trademark:** A distinguishing sign, symbol, mark, word, or arrangement of words in the form of a label or other indication, that is adopted and used by a manufacturer or distributor to designate its particular goods and which no other person has the legal right to use.

**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, 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)).

**Upgrade:** Any improvement or change in the Software that improves or alters its basic function.

**Vendor:** An actual or potential contractor; a contractor

**Will:** Denotes the imperative, required, compulsory or obligatory.

## I. SCOPE OF THE REQUEST FOR PROPOSAL

The State of Nebraska, Department of Roads (NDOR), is issuing this Request for Proposal, RFP Number R23-13 for the purpose of selecting a qualified contractor to provide the work/services and/or materials for the repair of guardrails as described in this RFP.

A contract(s) resulting from this Request for Proposal will be issued for a period of three (3) years effective September 1, 2013 through August 31, 2016, with the option to renew for two (2) additional one-year periods as mutually agreed upon by all parties.

ALL INFORMATION PERTINENT TO THIS REQUEST FOR PROPOSAL CAN BE FOUND ON THE INTERNET AT: http://www.transporation.nebraska.gov/operations/procure.

### A. SCHEDULE OF EVENTS

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

| | ACTIVITY | DATE/TIME |
|---|---|---|
| 1 | Release Request for Proposal | June 21, 2013 |
| 2 | Last day to submit written questions | July 17, 2013 |
| 3 | State responds to written questions through Request for Proposal "Addendum" and/or "Amendment" to be posted to the Internet at: http://www.transportation.nebraska.gov/operations/procure. | July 19, 2013 |
| 4 | Proposal opening<br>Location: Nebraska Department of Roads<br>Operations Division<br>5001 S. 14th Street<br>Lincoln, NE 68512 | July 30, 2013<br>3:00 P.M.<br>Central Time |
| 5 | Review for conformance of mandatory requirements | July 31, 2013 |
| 6 | Evaluation period | August 1 to August 5, 2013 |
| 7 | Oral Interviews/Presentations | To Be Determined |
| 8 | Post "Letter of Intent to Contract" to Internet at: http://www.transportation.nebraska.gov/operations/procure | August 5, 2013 |
| 9 | Contract award | August 16, 2013 |
| 10 | Contractor start date | September 1, 2013 |

## II. PROCUREMENT PROCEDURES

### A. PROCURING OFFICE AND CONTACT PERSON

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

Name: Gloria Ryken
Agency: Nebraska Department of Roads
Address: 5001 S. 14th Street
Lincoln, NE 68512
Telephone: (402) 479-4356

### B. GENERAL INFORMATION

The Request for Proposal is designed to solicit proposals from qualified vendors who will be responsible for providing the work/services and/or materials for the repair of guardrails as described in this RFP at a competitive and reasonable cost. Proposals that do not conform to the mandatory items as indicated in the Request for Proposal will not be considered.

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

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

### C. COMMUNICATION WITH STATE STAFF

From the date the Request for Proposal is issued until a determination is announced regarding the selection of the contractor, contact regarding this project between potential contractors and individuals employed by the State is restricted to only written communication with the staff designated above as the point of contact for this Request for Proposal.

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

The following exceptions to these restrictions are permitted:

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

Violations of these conditions may be considered sufficient cause to reject a bidder's proposal and/or selection irrespective of any other condition. No individual member of the State, employee of the State, or member of the Evaluation Committee is empowered

to make binding statements regarding this Request for Proposal. The buyer will issue any clarifications or opinions regarding this Request for Proposal in writing.

D. **WRITTEN QUESTIONS AND ANSWERS**

Any explanation desired by a bidder regarding the meaning or interpretation of any Request for Proposal provision must be submitted in writing to the Nebraska Department of Roads and clearly marked "RFP Number R23-13; Guardrail Repair Questions". It is preferred that questions be sent via e-mail to gloria.ryken@nebraska.gov. Questions may also be sent by facsimile to (402) 479-4567, but must include a cover sheet clearly indicating that the transmission is to the attention of Gloria Ryken showing the total number of pages transmitted, and clearly marked "RFP Number R23-13; Guardrail Repair Questions".

Written answers will be provided through an addendum to be posted on the Internet at http://www.transporation.nebraska.gov/operations/procure on or before the date shown in the Schedule of Events.

E. **SUBMISSION OF BIDS**

**Sealed bids in an envelope marked with the RFP number (R23-13) will be accepted up to the time and date specified in the Schedule of Events. The bid proposal shall include the completed signed "Request for Proposal for Contractual Services Form" and the Bid Sheet.** Bids may be mailed or hand delivered to the Nebraska Department of Roads, 5001 S. 14th Street, Lincoln, NE 68512.

F. **PROPOSAL OPENING**

The sealed proposals will be publicly opened and the bidding entities announced on the date, time and location shown in the Schedule of Events. Proposals will be available for viewing by those present after the proposal opening. Vendors may also contact the State to schedule an appointment for viewing proposals after the opening date.

G. **LATE PROPOSALS**

Proposals received after the time and date of the proposal opening will be considered late proposals. Rejected late proposals will be returned to the bidder unopened, if requested, at bidder's expense. The State is not responsible for proposals that are late or lost due to mail service inadequacies, traffic or any other reason(s).

H. **REJECTION OF PROPOSALS**

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

I. **REFERENCE CHECKS**

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

Information to be requested and evaluated from references may include, but is not limited to, some or all of the following: project description and background, job performed, functional and technical abilities, communication skills and timeliness, cost and schedule estimates and accuracy, problems (poor quality deliverables, contract disputes, work stoppages, et cetera), overall performance, and whether or not the

reference would rehire the firm or individual. Only top scoring bidders may receive reference checks and negative references may eliminate bidders from consideration for award.

J. **SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS**

All bidders are expected to comply with any statutory registration requirements. It is the responsibility of the bidder who is the recipient of an Intent to Award to comply with any statutory registration requirements pertaining to types of business entities (e.g. a foreign or Nebraska corporation, non-resident contractor, limited partnership, or other type of business entity). The bidder who is the recipient of Intent to Award will be required to certify that it has so complied and produce a true and exact copy of its registration certificate, or, in the case registration is not required, to provide the reason as to why none is required. This must be accomplished prior to the award of contract.

K. **VIOLATION OF TERMS AND CONDITIONS**

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

1. rejection of a bidder's proposal;
2. suspension of the bidder from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.

## III. TERMS AND CONDITIONS

By signing the "Request for Proposal for Contractual Services" form, the Bidder guarantees compliance with the provisions stated in this Request for Proposal, agrees to the terms and conditions and certifies bidder maintains a drug free work place environment.

Bidders are expected to closely read the Terms and Conditions and provide a binding signature of intent to comply with the Terms and Conditions; provided, however, a bidder may indicate any exceptions to the Terms and Conditions by (1) clearly identifying the term or condition by subsection, (2) including an explanation for the bidder's inability to comply with such term or condition which includes a statement recommending terms and conditions the bidder would find acceptable. Rejection in whole or in part of the Terms and Conditions may be cause for rejection of a bidder's proposal.

### A. AWARD

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

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

Once an intent to award decision has been determined, it will be posted to the Internet at:
http://www.transportation.nebraska.gov/operations/procure

### B. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION

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 or privileges of employment because of race, color, religion, sex, disability, or national origin (Neb. Rev. Stat. §48-1101 to 48-1125). The contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The contractor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Request for Proposal.

### C. PERMITS, REGULATIONS, LAWS

The contractor shall procure and pay for all permits, licenses and approvals necessary for the execution of the contract. The contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders and regulations.

D. **OWNERSHIP OF INFORMATION AND DATA**

The State of Nebraska shall have the unlimited right to publish, duplicate, use and disclose all information and data developed or derived by the contractor pursuant to this contract.

The contractor must guarantee that it has the full legal right to the materials, supplies, equipment, and other rights or titles (e.g. rights to licenses transfer or assign deliverables) necessary to execute this contract. The contract price shall, without exception, include compensation for all royalties and costs arising from patents, trademarks and copyrights that are in any way involved in the contract. It shall be the responsibility of the contractor to pay for all royalties and costs, and the State must be held harmless from any such claims.

E. **INSURANCE REQUIREMENTS**

The contractor shall not commence work under this contract until he or she has obtained all the insurance required hereunder and such insurance has been approved by the State. The contractor shall not allow any subcontractor to commence work on his or her subcontract until all similar insurance required of the subcontractor has been obtained and approved by the State (or contractor). Approval of the insurance by the State shall not limit, relieve or decrease the liability of the contractor hereunder.

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

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. This policy shall include a waiver of subrogation in favor of the State. The amounts of such insurance shall not be less than the limits stated hereinafter.

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 an Additional Insured. This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered excess and

non-contributory. The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned and Hired vehicles.

3. INSURANCE COVERAGE AMOUNTS REQUIRED

a. WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY

| | |
|---|---|
| Coverage A | Statutory |
| Coverage B | |
| Bodily Injury by Accident | $100,000 each accident |
| Bodily Injury by Disease | $500,000 policy limit |
| Bodily Injury by Disease | $100,000 each employee |

b. 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 |

c. COMMERCIAL AUTOMOBILE LIABILITY

| | |
|---|---|
| Bodily Injury/Property Damage | $1,000,000 combined single limit |

d. UMBRELLA/EXCESS LIABILITY

| | |
|---|---|
| Over Primary Insurance | $1,000,000 per occurrence |

4. EVIDENCE OF COVERAGE

The Contractor should furnish the State, with their proposal response, a certificate of insurance coverage complying with the above requirements, which shall be submitted to the Nebraska Department of Roads at 5001 South 14th Street, Lincoln, NE 68512 (facsimile (402) 479-4567. 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.
Notice of cancellation of any required insurance policy must be submitted to Administrative Services Risk Management when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

F. COOPERATION WITH OTHER CONTRACTORS

The State may already have in place or choose to award supplemental contracts for work related to this Request for Proposal, or any portion thereof.

1. The State reserves the right to award the contract jointly between two or more potential contractors, if such an arrangement is in the best interest of the State.
2. The contractor shall agree to cooperate with such other contractors, and shall not commit or permit any act which may interfere with the performance of work by any other contractor.

G. INDEPENDENT CONTRACTOR

It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing the relationship of partners between the parties hereto. The contractor represents that it has, or will secure at its own expense, all

personnel required to perform the services under the contract. The contractor's employees and other persons engaged in work or services required by the contractor under the contract shall have no contractual relationship with the State; they shall not be considered employees of the State.

All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination against the contractor, its officers or its agents) shall in no way be the responsibility of the State. The contractor will hold the State harmless from any and all such claims. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits from the State including without limit, tenure rights, medical and hospital care, sick and vacation leave, severance pay or retirement benefits.

## H. CONTRACTOR RESPONSIBILITY

The contractor is solely responsible for fulfilling the contract, with responsibility for all services offered and products to be delivered as stated in the Request for Proposal, the contractor's proposal, and the resulting contract. The contractor shall be the sole point of contact regarding all contractual matters.

If the contractor intends to utilize any subcontractors' services, the subcontractors' level of effort, tasks and time allocation must 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. Following execution of the contract, the contractor shall proceed diligently with all services and shall perform such services with qualified personnel in accordance with the contract.

## I. CONTRACTOR PERSONNEL

The contractor warrants that all persons assigned to the project shall be employees of the contractor or specified subcontractors, and shall be fully qualified to perform the work required herein. Personnel employed by the contractor to fulfill the terms of the contract shall remain under the sole direction and control of the contractor. The contractor shall include a similar provision in any contract with any subcontractor selected to perform work on the project.

Personnel commitments made in the contractor's proposal shall not be changed without the prior written approval of the State. Replacement of key personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

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

In respect to its employees, the contractor agrees to be responsible for the following:

1. any and all 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 and submitting any reports on such insurance to the extent required by governing State law; and
5. determining the hours to be worked and the duties to be performed by the contractor's employees.

Notice of cancellation of any required insurance policy must be submitted to the State when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

J. **STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION**

The contractor shall not, at any time, recruit or employ any State employee or agent who has worked on the Request for Proposal or project, or who had any influence on decisions affecting the Request for Proposal or project.

K. **CONFLICT OF INTEREST**

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

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

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

L. **PROPOSAL PREPARATION COSTS**

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

M. **ERRORS AND OMISSIONS**

The bidder shall not take advantage of any errors and/or omissions in this Request for Proposal or resulting contract. The bidder must promptly notify the State of any errors and/or omissions that are discovered.

N. **BEGINNING OF WORK**

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

O. **ASSIGNMENT BY THE STATE**

The State shall have the right to assign or transfer the contract or any of its interests herein to any agency, board, commission, or political subdivision of the State of Nebraska. There shall be no charge to the State for any assignment hereunder.

P. **ASSIGNMENT BY THE CONTRACTOR**

The contractor may not assign, voluntarily or involuntarily, the contract or any of its rights or obligations hereunder (including without limitation rights and duties of performance) to any third party, without the prior written consent of the State, which will not be unreasonably withheld.

Q. **GOVERNING LAW**

The contract shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the State of Nebraska regarding this Request for Proposal or any resultant contract shall be brought in the State of Nebraska administrative or judicial forums as defined by State law. The contractor must be in compliance with all Nebraska statutory and regulatory law.

R. **ATTORNEY'S FEES**

In the event of any litigation, appeal or other legal action to enforce any provision of the contract, the contractor agrees to pay all expenses of such action, as permitted by law, including attorney's fees and costs, if the State is the prevailing party.

S. **ADVERTISING**

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

T. **STATE PROPERTY**

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

U. **SITE RULES AND REGULATIONS**

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

V. **EARLY TERMINATION**

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 30 days 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 cancellation 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;
   c. a trustee or receiver of the contractor or of any substantial part of the contractor's assets has been appointed by a court;
   d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its contractor, its employees, officers, directors or shareholders;
   e. an involuntary proceeding has been commenced by any party against the contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) days; or (ii) the contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the contractor has been decreed or adjudged a debtor;

f. a voluntary petition has been filed by the contractor under any of the chapters of Title 11 of the United States Code;
g. contractor intentionally discloses confidential information;
h. contractor has or announces it will discontinue support of the deliverable;
i. second or subsequent documented "vendor performance report" form deemed acceptable by the State Purchasing Bureau.

**W. FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS**

The State may terminate the contract, in whole or in part, in the event funding is no longer available. The State's obligation to pay amounts due for fiscal years following the current fiscal year is contingent upon legislative appropriation of funds for the contract. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal years for which such funds are not appropriated. The State will give the contractor written notice thirty (30) days prior to the effective date of any termination, and advise the contractor of the location (address and room number) of any related equipment. All obligations of the State to make payments after the termination date will cease and all interest of the State in any related equipment will terminate. 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.

**X. BREACH BY CONTRACTOR**

The State may terminate the contract, in whole or in part, if the contractor fails to perform its obligations under the contract in a timely and proper manner. The State may, by providing a written notice of default to the contractor, allow the contractor to cure a failure or breach of contract within a period of thirty (30) days (or longer at State's discretion considering the gravity and nature of the default). Said notice shall be delivered by Certified Mail, Return Receipt Requested or in person with proof of delivery. Allowing the contractor time to cure a failure or breach of contract does not waive the State's 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.

**Y. FORCE MAJEURE**

Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. The State may grant relief from performance of the contract if the contractor is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest upon the contractor. To obtain release based on a Force Majeure Event, the contractor shall file a written request for such relief with the State Purchasing Bureau. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the contract.

**Z. PROHIBITION AGAINST ADVANCE PAYMENT**

Payments shall not be made until contractual deliverable(s) are received and accepted by the State.

**AA. PAYMENT**

State will render payment to contractor when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the contractor as

solely determined by the State. Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408). The State may require the contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any services provided by the contractor prior to the Effective Date, and the contractor hereby waives any claim or cause of action for any such services.

**BB. INVOICES**

Invoices shall be accompanied by a report documenting the completed activity. Send the invoice for the work completed to the appropriate District headquarters.

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.

**CC. AUDIT REQUIREMENTS**

All contractor books, records and documents relating to work performed or monies received under the contract shall be subject to audit at any reasonable time upon the provision of reasonable notice by the State. These records shall be maintained for a period of five (5) full years from the date of final payment, or until all issues related to an audit, litigation or other action are resolved, whichever is longer. All records shall be maintained in accordance with generally accepted accounting principles.

In addition to, and in no way in limitation of any obligation in the contract, the contractor shall agree that it will be held liable for any State audit exceptions, and shall return to the State all payments made under the contract for which an exception has been taken or which has been disallowed because of such an exception. The contractor agrees to correct immediately any material weakness or condition reported to the State in the course of an audit.

**DD. TAXES**

The State is not required to pay taxes of any kind and assumes no such liability as a result of this solicitation. Any property tax payable on the contractor's equipment which may be installed in a state-owned facility is the responsibility of the contractor.

**EE. INSPECTION AND APPROVAL**

Final inspection and approval of all work required under the contract shall be performed by the designated State officials. The State and/or its authorized representatives shall have the right to enter any premises where the contractor or subcontractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

**FF. CHANGES IN SCOPE/CHANGE ORDERS**

The State may, at any time with written notice to the contractor, make changes within the general scope of the contract. Changes in scope shall only be conducted with the written approval of the State's designee as so defined by the State from time to time. (The State retains the right to employ the services of a third party to perform any change order(s)).

The State may, at any time work is in progress, by written order, make alterations in the terms of work as shown in the specifications, require the performance of extra work, decrease the quantity of work, or make such other changes as the State may find necessary or desirable. The contractor shall not claim forfeiture of contract by reasons of such changes by the State. Changes in work and the amount of compensation to be paid to the contractor for any extra work so ordered shall be determined in accordance with the applicable unit prices of the contractor's proposal.

Corrections of any deliverable services or performance of work required pursuant to the contract shall not be deemed a modification requiring a change order.

**GG. SEVERABILITY**

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

**HH. CONFIDENTIALITY**

All materials and information provided by the State or acquired by the contractor on behalf of the State shall be regarded as confidential information. All materials and information provided by the State or acquired by the contractor on behalf of the State shall be handled in accordance with Federal and State Law, and ethical standards. The contractor must ensure the confidentiality of such materials or information. Should said confidentiality be breached by a contractor; contractor shall notify the State immediately of said breach and take immediate corrective action.

It is incumbent upon the contractor to inform its 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 to contractors by 5 U.S.C. 552a (m)(1), provides that any officer or employee of a contractor, 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.

**II. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION/COLLUSIVE BIDDING**

By submission of this proposal, the bidder certifies, that he or she is the party making the foregoing proposal that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham proposal, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and further that the bidder has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any

corporation, partnership, company association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

## JJ. PRICES

All prices, costs, terms and conditions outlined in the proposal shall remain fixed and valid commencing on the opening date of the proposal until an award is made (and for bidder receiving award prices shall remain as bid for the duration of the contract unless otherwise so stated in the contract) or the Request for Proposal is cancelled.

Contractor represents and warrants that all prices for services, now or subsequently specified are as low as and no higher than prices which the contractor has charged or intends to charge customers other than the State for the same or similar products and services of the same or equivalent quantity and quality for delivery or performance during the same periods of time. If, during the term of the contract, the contractor shall reduce any and/or all prices charged to any customers other than the State for the same or similar products or services specified herein, the contractor shall make an equal or equivalent reduction in corresponding prices for said specified products or services.

Contractor also represents and warrants that all prices set forth in the contract and all prices in addition, which the contractor may charge under the terms of the contract, do not and will not violate any existing federal, state or municipal law or regulations concerning price discrimination and/or price fixing. Contractor agrees to hold the State harmless from any such violation. Prices quoted shall not be subject to increase throughout the contract period unless specifically allowed by these specifications.

## KK. ETHICS IN PUBLIC CONTRACTING

No bidder shall pay or offer to pay, either directly or indirectly, any fee, commission compensation, gift, gratuity, or anything of value to any State officer, legislator or employee based on the understanding that the receiving person's vote, actions or judgment will be influenced thereby. No bidder shall give any item of value to any employee of the State Purchasing Bureau.

Bidders shall be prohibited from utilizing the services of lobbyists, attorneys, political activists, or consultants to secure the contract. It is the intent of this provision to assure that the prohibition of state contact during the procurement process is not subverted through the use of lobbyists, attorneys, political activists, or consultants. It is the intent of the State that the process of evaluation of proposals and award of the contract be completed without external influence. It is not the intent of this section to prohibit bidders from seeking professional advice, for example consulting legal counsel, regarding terms and conditions of this Request for Proposal or the format or content of their proposal.

If the bidder is found to be in non-compliance with this section of the Request for Proposal, they may forfeit the contract if awarded to them or be disqualified from the selection process.

## LL. INDEMNIFICATION

### 1. GENERAL

The contractor agrees to defend, indemnify, hold, and save harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") 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 ("the claims"), sustained or asserted against the State, 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, except to the extent such contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

### 2. INTELLECTUAL PROPERTY

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

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

### 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 provided by the contractor.

## MM. ANTITRUST

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

## NN. DISASTER RECOVERY/BACK UP PLAN

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

**OO. TIME IS OF THE ESSENCE**

Time is of the essence in this contract. The acceptance of late performance with or without objection or reservation by the State shall not waive any rights of the State nor constitute a waiver of the requirement of timely performance of any obligations on the part of the contractor remaining to be performed.

**PP. DRUG POLICY**

Contractor certifies that 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.

**QQ. NEW EMPLOYEE WORK ELIGIBILITY STATUS**

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. The Contractor hereby agrees to contractually require any subcontractors to use a federal immigration verification system to determine the work eligibility status of new 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 a newly hired employee.

The undersigned duly authorized representative of the Contractor, by signing this agreement, hereby attests to the truth of the following certifications, and agrees as follows:

**Neb. Rev. Stat. §4-114.** I certify compliance with the provisions of Section 4-114 and, hereby certify that this Contractor shall register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. I agree to require all subcontractors, by contractual agreement, to require the same registration and verification process.

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 Roads website at http://www.nebraskatransportation.org/projdev/docs/save/dr289.pdf.

2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

3. 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.

## IV. PROJECT DESCRIPTION AND SCOPE OF WORK

### A. CONTRACT PERIOD AND EXTENSIONS

The State of Nebraska Department of Roads (NDOR) seeks to enter into a contract with a qualified Contractor for a period of three (3) years effective September 1, 2013 through August 31, 2016 with the option to renew for two (2) additional one (1) year periods as mutually agreed upon by all parties for the purpose of providing the work/services and/or materials for guardrail repair and associated work on an on-call basis, and for indefinite quantities.

### B. PRICE

Unit prices shall remain firm for the first year of the contract. The official notification to revise the bid prices must be submitted in writing a minimum of 60 days prior to the proposed effective date of the increase to Nebraska Department of Roads, Operations Division, 5001 So. 14th Street, Lincoln, NE 68512. NDOR will not entertain a price increase of less than 2%. A request to increase 2% or more must include justification, actual documentation such as invoices that demonstrate increase in cost and is not designed to increase profit beyond the level intended in the original bid price. Further documentation may be required by NDOR to authenticate the increase. Failing to supply any requested supporting documentation may be grounds to deny the proposed increase. NDOR further reserves the right to reject any proposed price increase(s), cancel the contract and re-bid if determined to be in the best interest of NDOR.

### C. PROJECT OVERVIEW AND SCOPE OF WORK

It is the intent of the NDOR to award a contract to a Contractor who is qualified for guardrail repair and associated work, as described in the RFP.

### D. ESTIMATED QUANTITIES

It shall be clearly understood by all parties that the items and quantities for guardrail repairs are unknown. No bids will be considered that require the purchase of any definite quantities.

### E. PROPOSAL PRICING

For the purpose of this contract, Mobilization shall be bid by the mile (MI), and Flashing Arrow Panels shall be bid by the hour (HR). Prices quoted shall be a unit price for labor and material to install, firm for one (1) year from date of award.

### F. REPAIR ORDERS

Request for repairs will be issued by the District Operations and Maintenance Manager, Maintenance Superintendents or Maintenance Supervisors. No repairs are to be made until authorized by the District with a Purchase Order number. Designated District staff will send the Contractor a DR form titled "Guardrail Damage Report and Repair Request" which will include the purchase order number (example attached).

### G. UNNECESSARY RIDERS

Unnecessary "riders" conditions or letters duplicating conditions stated herein may be confusing and are not desired. Quantity limitations to the bid will not be acceptable and will cause the bid to be irregular.

### H. GENERAL REQUIREMENTS

The Contractor will provide the Department with all labor and materials necessary for the replacement of damaged guardrail, bridge rail, and appurtenances at locations specified by the Department. Installations and/or repairs will meet or exceed requirements set forth in the Standard Plans.

Any item that is required as set forth in the Standard Plans, but not listed in the Proposal shall be considered to be incidental to other work and will not be paid for separately. For example, removal and disposal of damaged railing and hardware shall be the Contractor's responsibility.

I. **RESPONSE TIME/ PRIORITY AND STATUS UPDATES**

Repairs will begin within seventy-two (72) hours of initial notification of a requested repair. A telephone number will be provided for contact. Initial notification will be made by the Department during the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday.

Notification time will not include weekends and holidays. Repairs will not be completed on weekends and holidays.

If more than one location requires repair at the same time, the Department will establish the order in which the repairs are to be made. The Contractor will not be held to the 72-hour limitation at more than one location at a time.

The Contractor shall keep in contact with the designated District contact person and provide status updates of each project(s) to ensure satisfactory progress is being made.

J. **ADVERSE WEATHER CONDITIONS**

The Contractor will be expected to proceed with work in inclement weather conditions, as long as the weather does not pose a dangerous or hazardous situation to either the workers or the traveling public.

K. **DEPARTMENT-OWNED MATERIAL**

Department-owned railing and appurtenances may be used for repairs if it is mutually agreeable to both parties. When the work is completed using material owned by the Department, payment will be based on the contract price less the Contractor's cost of material. Invoice prices will be provided by the Contractor to verify material costs.

L. **TRAFFIC CONTROL**

Traffic control will be set up as specified in the Federal Highway Administration Publication titled the "Manual on Uniform Traffic Control Devices" and the Nebraska Department of Roads Standard Plans and Specifications. The Contractor will provide all traffic control devices (including flaggers) required for each location. Flashing Arrow Panels, if required, shall be bid by the hour (HR).

M. **SPECIFICATIONS**

All guardrail and associated materials furnished pursuant to this advertisement must conform to 2007 Standard Specifications of the Nebraska Department of Roads Standard Plans or supplemental specifications. Any questions regarding the specifications shall be directed to the designated District contact person.

N. **DESIGN STANDARDS**

Guardrail will be replaced "in kind" to "as built" specifications or updated to new standards as requested by the Department. Any questions regarding the specifications shall be directed to the designated District contact person. Removal of undamaged guardrail when updated will be paid as a removal item with a unit price of "Crew hour" including labor and equipment. Price will include all removals, disposal, labor, equipment and incidentals to complete the removal.

## O. INVOICING AND PAYMENT

Invoicing – All invoices must include an itemized list of materials, crew hours, hours for flashing arrows panels and mobilization charges for the repair. Invoices received that do not indicate a mobilization charge will be paid as invoiced. No future charges or corrections against that invoice or purchase order release will be allowed or paid due to failure of the Contractor to include mobilization charges. Invoices shall be accompanied by a report documenting the completed repair, including "before" and "after" photographs.

Payment – The Accounting Program will make payment after receiving and certifying that invoicing is correct and the repairs have been made at the designated location(s).

## P. MOBILIZATION

Mobilization shall be bid by the mile, and the costs shall be calculated based from the District's headquarter location to the site location. Mobilization shall be checked using "MapQuest" closest route. The District's headquarters locations are listed below:

| | |
|---|---|
| District 1 headquarters: | 302 Superior St., Lincoln, NE |
| District 5 headquarters: | 140375 Rundell Rd, Gering, NE |
| District 6 headquarters: | 1321 N. Jeffers, North Platte, NE |
| District 7 headquarters: | 619 Auditorium Dr., McCook, NE |

## BID SHEET

**Evaluation of bids:** Each line item shall be weighted based on past history to yield a weighted total score. The contract(s) will be awarded to the lowest over-all responsive bidder per each individual District. The evaluation criteria will become public information at the time of the Request for Proposal opening and will be posted to the Internet at: http://www.transportation.nebraska.gov/operations/procure

Evaluation criteria will not be released prior to the proposal opening.

## DISTRICT 1

**Material Cost Plus** 0% **%**

**Mobilization Price Per Mile** $22.00

**Crew Hour** $365.00 **(Includes all labor and equipment costs)**

**Flashing Arrow Panels Price Per Hour** $400.00

**CONTACT PERSON INFORMATION**

- Contact Person Name & Title: Tyler J. Chicoine, VP
- Phone Number: 402.761.4460, [illegible]
- Cell Number: 402.432.9396
- E-Mail Address: tyler.chicoine@garciachicoineent.com

## DISTRICT 5

**Material Cost Plus** 0% **%**

**Mobilization Price Per Mile** $107.00

**Crew Hour** $390.00 **(Includes all labor and equipment costs)**

**Flashing Arrow Panels Price Per Hour** $1.000.00

## DISTRICT 7

**Material Cost Plus** 0% **%**

**Mobilization Price Per Mile** $72.00

**Crew Hour** $390.00 **(Includes all labor and equipment costs)**

**Flashing Arrow Panels Price Per Hour** $550.00

**CONTACT PERSON INFORMATION**

- Contact Person Name & Title: Tyler J. Chicoine, VP
- Phone Number: 402.761.4460
- Cell Number: 402.432.9396
- E-Mail Address: tyler.chicoine@garciachicoineent.com

# Nebraska ◆ Department ◆ of ◆ Roads

## District Engineers

**Thomas Goodbarn**
District 1
Lincoln
402-471-0850
FAX: 402-471-3401

**Timothy W. Weander**
District 2
Omaha
402-595-2534
FAX: 402-595-1720
or 402-595-2406

**Kevin Domogalla**
District 3
Norfolk
402-370-3470
FAX: 402-370-3473

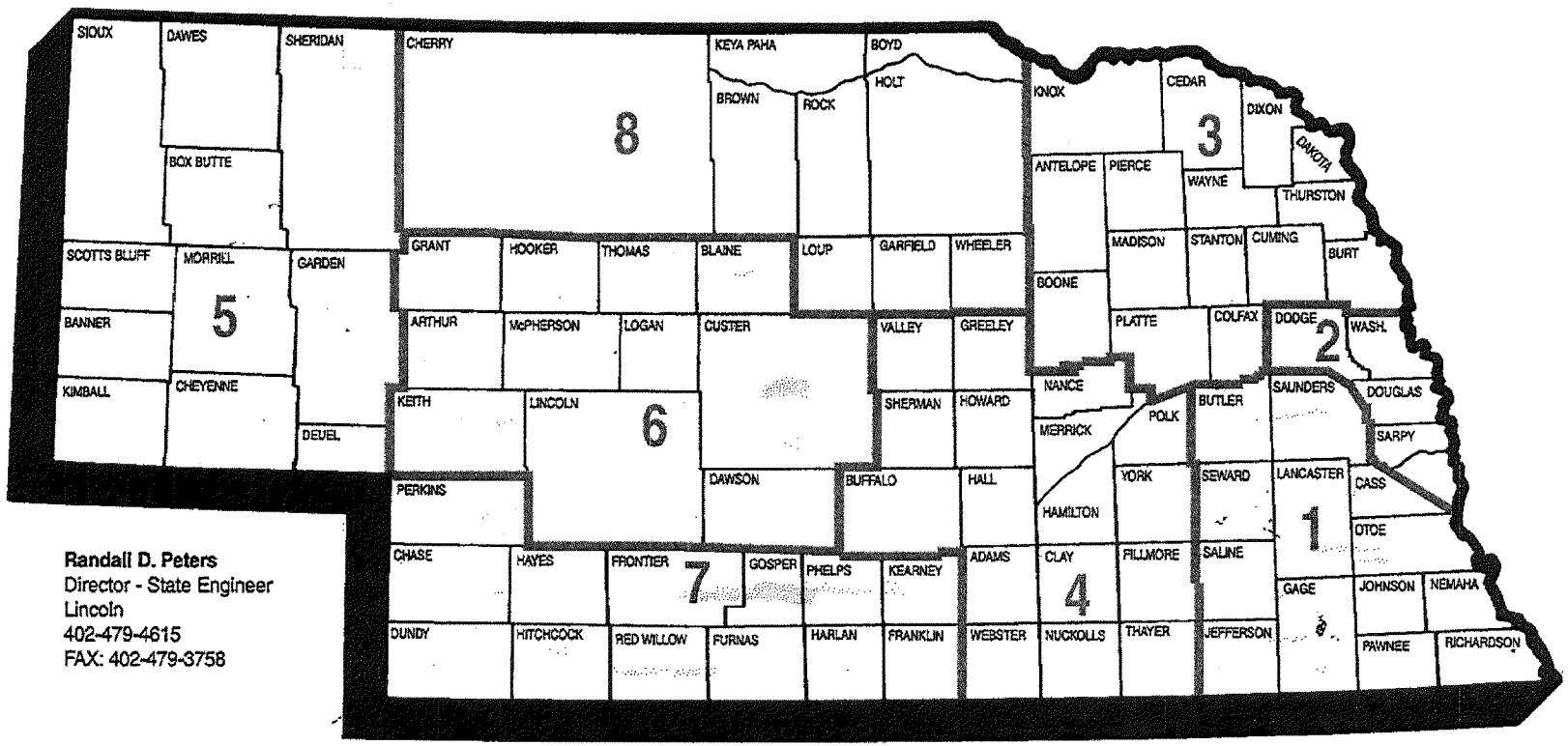
**Wesley Wahlgren**
District 4
Grand Island
308-385-6265
FAX: 308-385-6269

**Craig R. Lind**
District 5
Gering
308-436-6587
FAX: 308-633-6614

**Gary Thayer**
District 6
North Platte
308-535-8031
FAX: 308-535-8034

**Kurt Vosburg**
District 7
McCook
308-345-8490
FAX: 308-345-8492

**Mark Kovar**
District 8
Ainsworth
402-387-2471
FAX: 402-387-1498




**Randall D. Peters**
Director - State Engineer
Lincoln
402-479-4615
FAX: 402-479-3758

## Nebraska Highway Commission

**Rodney P. Vandeberg**
District 1
Falls City
402-245-3990
FAX: 402-245-2495

**E.J. Militti, Jr.**
District 2
Omaha
402-399-1513
FAX: 402-399-1575

**David E. Copple**
District 3
Norfolk
402-371-4300
FAX: 402-371-0790

**James H. Kindig**
District 4
Kenesaw
308-237-3151

**Doug Leafgreen**
District 5
Gering
308-635-2260
FAX: 308-635-2018

**Ron Books**
District 6
North Platte
308-532-9480

**Greg Wolford**
District 7
McCook
308-345-2370
FAX: 308-345-2371

**Jerome A. Fagerland**
District 8
Atkinson
402-925-5570
FAX: 402-925-2988

## DISTRICT 5

**CONTACT PERSON INFORMATION**

- Contact Person Name & Title: Tyler J. Chicoine, VP
- Phone Number: 402.761.4460
- Cell Number: 402.432.9396
- E-Mail Address: tyler.chicoine@garciachicoineent.com

## DISTRICT 6

**Material Cost Plus** 0% **%**

**Mobilization Price Per Mile** $57.00

**Crew Hour** $390.00 **(Includes all labor and equipment costs)**

**Flashing Arrow Panels Price Per Hour** $475.00

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- Cell Number: 402.432.9396
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