For Budget Division Use Only
Under $10,000: [ ] Yes [ ] No
Reviewed by:

10-012

For Board Use Only
Date: 6/17/09
Number: 90

JL 02 2009

AGENCY COPY

For Purchasing Use Only
RFP # TO 1776

RETURN TO PURCHASING

BAPC/BAOP

CONTRACT SUMMARY

(This form must accompany all contracts submitted to the Board of Examiners (BOE) for review and approval)

I. DESCRIPTION OF CONTRACT

1. Agency Name: **Conservation & Natural Resources**
   Agency Code: **709**
   Appropriation Unit: **3185/04**
   Is budget authority available?: ☒ Yes ☐ No
   If "No" please explain:

   Contractor Name: **Employees Company of Nevada, Inc.**
   Address: **2901 Sherman Lane**
   Carson City, NV 89706-1744
   Contact / Phone: **Gay McCleary (775) 230-2173**
   Vendor No.: CDB#

   To what State Fiscal Year(s) will the contract be charged? **2010/2011**
   What is the source of funds that will be used to pay the contractor? Indicate the percentage of each funding source if the contractor will be paid by multiple funding sources.

☐	General Funds	%	☐	Fees	%
☐	Federal Funds	%	☐	Bonds	%
☐	Highway Funds	%	☒	Other funding: **Fees**	**100** %

2. Contract start date:
   a. Effective upon Board of Examiner's approval? ☒ or b. other effective date
   Anticipated BOE meeting date **June 9, 2009**
   [Contracts with an effective date prior to BOE approval (retroactive) must be accompanied by a memorandum explaining the reason prior BOE approval was not obtained.]

3. Termination date: **June 30, 2011** (original contract)
   Contract term: **2 years with option for 2 additional years by mutual agreement** (indicate in years the length of the contract and any potential renewals)

RECEIVED
MAY 07 2009
DEPARTMENT OF ADMINISTRATION
OFFICE OF THE DIRECTOR
BUDGET AND PLANNING DIVISION

4. Type of contract (check one):
   a. ☒ New Contract ☐ Contract Amendment # ☐ Interlocal Contract ☐ Cooperative Agreement ☐ Revenue Contract ☐ Other Contract:
   b. Contract Description (*limited to 3 or 4 key words*): **Air Pollution Control Permit Writer**

5. Purpose of contract (*Describe work to be accomplished*):
   Review, evaluate, and process air quality operating permit applications that are submitted by industry as required by federal and state regulations.

6. a. NEW CONTRACTS ONLY:
   The maximum amount of the contract for the term of the contract is: **NTE $200,000.00**
   Payment for services will be made at the rate of **65.00** (enter dollar amount) per **Hour** (time interval, i.e. , hour, year)
   or, if not applicable, specify other basis for payment:

   b. CONTRACT AMENDMENTS ONLY:

		Meeting date of BOE approval
Maximum amount of the original contract: (refer to 6 a)	1.	
Total amount of any previous contract amendments	2.	
Amount of current contract amendment	3.	
New maximum contract amount (Add lines 1, 2, and 3 for the total of line 4)	4.	

and/or the termination date of the original contract has changed to:
and/or explain other changes:

Board Use Only

II. JUSTIFICATION

7. What conditions mandate that this work be done?

As required by state and federal regulations, all air quality operating permit applications must be processed within regulatory timelines. These timelines range from 10 working days to 180 calendar days.

8. Explain why State employees in your agency or other State agencies are not able to do this work:

Current staff is unable to handle the excessive workload.

9. Were quotes or proposals solicited? ☒ Yes ☐ No

Was the solicitation (RFP) done by the Purchasing Division? ☒ Yes ☐ No If both are No, see 9 b.

a. If yes, list the names of vendors that submitted proposals.

Employees Company of Nevada, Inc., Dyer Engineering Consultants, Inc., TRC Solutions, Inc.

b. Solicitation Waiver ☐ # _____ Professional Service ☐ Exempt ☐

c. Why was this contractor chosen in preference to others?

Upon thorough review and evaluation of the proposals, it was determined by the evaluation committee that this vendor meets the needs of the State.

d. Last bid date: _____ Anticipated re-bid date: _____

10. Does the contract contain any IT components? ☐ Yes ☒ No

If yes, per NRS 242.151 DoIT approval is required.

_____ _____

DoIT Director or designee approval Date

III. OTHER INFORMATION:

11. Is the contractor employed by the State of Nevada, any of its political subdivisions or by any other government?

☐ Yes ☒ No If "Yes," is contractor planning to render services while on annual leave, compensatory time, sick leave, or on his own time? (*Please explain*)

12. Has the contractor ever been engaged under contract by any State agency?

☒ Yes ☐ No If "Yes," specify when and for which agency and indicate if the quality of service provided to the identified agency has been verified as satisfactory:

April 2001 – December 2003 and October 2005 to present for Nevada Department of Environmental Protection, Bureau of Air Pollution Control. Verified as satisfactory

13. Contracts over $25,000 per fiscal year: Is the contractor currently involved in litigation with the State of Nevada?

☐ Yes ☒ No If "Yes," please provide details of the litigation and facts supporting approval of the contract.

14. Agency Field Contract Monitor:

Francisco Vega	**Permitting Supervisor**	**(775) 687-9343**
Printed Name	Title	Phone No.

15. Certified Contract Manager Approval:

Vickie Rutledge	Vickie Rutledge	**(775) 687-9494**
Printed Name	Signature	Phone No.

16. Purchasing Division Approval: _____ Signature

17. Agency Head Approval: _____ Signature

18. Date Contract Summary was Prepared: **5-4-09** Date

For Purchasing Use Only:

RFP/CONTRACT #1776

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between the State of Nevada
Acting By and Through Its

Department of Conservation and Natural Resources
Bureau of Air Pollution Control, Permitting Branch
901 S. Stewart Street, Suite 4001
Carson City, NV 89701
Contact: Francisco Vega, Permitting Supervisor
Tel. (775) 687-9343 / Fax. (775) 687-6396
E-mail: fvega@ndep.nv.gov

and

Employees Company of Nevada, Inc.
2901 Sherman Lane
Carson City, NV 89706-1744
Contact: Gay McCleary, President
Tel. (775) 230-2173 / Fax. (775) 882-6566
Email: mccleary@pyramid.net

WHEREAS, NRS 284.173 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners, services of persons as independent contractors; and
WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada;
NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. REQUIRED APPROVAL. This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.

2. DEFINITIONS. "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307. "Independent Contractor" means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year.

3. CONTRACT TERM. This Contract shall be effective from subject to Board of Examiners' approval (anticipated to be June 9, 2009) to June 30, 2011, with an option to extend for two (2) additional years upon mutual agreement, unless sooner terminated by either party as specified in paragraph ten (10).

4. NOTICE. Unless otherwise specified, termination shall not be effective until 30 calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.

5. INCORPORATED DOCUMENTS. The parties agree that the scope of work shall be specifically described. This Contract incorporates the following attachments in descending order of constructive precedence:
ATTACHMENT AA: STATE SOLICITATION OR RFP #1776 and AMENDMENT #1;

ATTACHMENT BB: INSURANCE SCHEDULE; AND
ATTACHMENT CC: CONTRACTOR'S RESPONSE

A Contractor's Attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract.

6. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph five (5) at a cost of $65.00 per hour, with the total Contract or installments payable: as invoiced and upon agency approval, not to exceed $200,000.00. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

7. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. TIMELINESS OF BILLING SUBMISSION. The parties agree that timeliness of billing is of the essence to the contract and recognize that the State is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the State no later than the first Friday in August of the same year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject the Contractor to an administrative fee not to exceed one hundred dollars ($100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the State of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to the Contractor.

9. INSPECTION & AUDIT.

a. Books and Records. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the State Auditor, the relevant state agency or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three (3) years, and for five (5) years if any federal funds are used pursuant to the Contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. CONTRACT TERMINATION.

a. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties, or unilaterally by either party without cause.

b. State Termination for Non-appropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or

ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or

iv. If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or

v. If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or

vi. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph four (4), and the subsequent failure of the defaulting party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

e. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;

ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;

iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;

iv. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph twenty-one (21).

11. REMEDIES. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation one hundred and twenty-five dollars ($125.00) per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190.

12. LIMITED LIABILITY. The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed one hundred and fifty percent (150%) of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

13. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

14. INDEMNIFICATION. To the fullest extent permitted by law Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

15. INDEPENDENT CONTRACTOR. Contractor is associated with the State only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an

independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the State whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the State; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, nor representatives shall be considered employees, agents, or representatives of the State. The State and Contractor shall evaluate the nature of services and the term of the Contract negotiated in order to determine "independent contractor" status, and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

		Contractor's Initials YES	NO
1.	Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?	✓	
2.	Will the Contracting Agency be providing training to the independent contractor?		✓
3.	Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?	✓	
4.	Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada?		✓
5.	Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?	✓	
6.	Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform?		✓
7.	Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State?		✓

16. INSURANCE SCHEDULE. Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance and pay all taxes and fees incident hereunto. Policies shall meet the terms and conditions as specified within this Contract along with the additional limits and provisions as described in Attachment BB, incorporated hereto by attachment. The State shall have no liability except as specifically provided in the Contract.

The Contractor shall not commence work before:

1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and

2) The State has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

Insurance Coverage: The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum limits as specified in Attachment BB, incorporated hereto by attachment. Unless specifically stated herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until:

1. Final acceptance by the State of the completion of this Contract; or
2. Such time as the insurance is no longer required by the State under the terms of this Contract;
Whichever occurs later.

Any insurance or self-insurance available to the State shall be in excess of, and non-contributing with, any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

General Requirements:

a. Additional Insured: By endorsement to the general liability insurance policy evidenced by Contractor, the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.

b. Waiver of Subrogation: Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 for losses arising from work/materials/equipment performed or provided by or on behalf of the Contractor.

c. Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.

d. Deductibles and Self-Insured Retentions: Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed fifty thousand dollars ($50,000.00) per occurrence, unless otherwise approved by the Risk Management Division.

e. Policy Cancellation: Except for ten (10) days notice for non-payment of premium, each insurance policy shall be endorsed to state that without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address shown on page one (1) of this contract:

f. Approved Insurer: Each insurance policy shall be:
   1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and
   2) Currently rated by A.M. Best as "A-VII" or better.

Evidence of Insurance:

Prior to the start of any Work, Contractor must provide the following documents to the contracting State agency:

1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor. The certificate must name the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 as the certificate holder. The certificate should be signed by a person authorized insurer to bind coverage on its behalf. The state project/contract number; description and contract effective dates shall be noted on the certificate, and upon renewal of the policies listed Contractor shall furnish the State with replacement certificates as described within Insurance Coverage, section noted above.

Mail all required insurance documents to the State Contracting Agency identified on page one of the contract.

2) Additional Insured Endorsement: An Additional Insured Endorsement (CG 20 10 11 85 or CG 20 26 11 85) , signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per General Requirements, subsection a above.

3) Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

Review and Approval: Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

17. COMPLIANCE WITH LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

18. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

19. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

20. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations nor duties under this Contract without the prior written consent of the State.

21. STATE OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

22. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

23. CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.

24. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:

a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

25. LOBBYING. The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

a. Any federal, state, county or local agency, legislature, commission, counsel or board;

b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or

c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

26. WARRANTIES.

a. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multi-century formulas and data values and date data interface values that reflect the century.

27. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

28. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this Contract.

29. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

Gary McCleary 5/4/09 — President
Independent Contractor's Signature — Date — Independent's Contractor's Title

Leo Drozdoff 5/5/09 — Division Administrator, Environmental Protection
Leo Drozdoff — Date — Title

Stephanie Days for
Signature - Board of Examiners

APPROVED BY BOARD OF EXAMINERS

Approved as to form by:

On 6-17-09
(Date)

Deputy Attorney General for Attorney General

On 7 May 09
(Date)

Approved 05/08/02
Revised *11/07*

ATTACHMENT AA

STATE SOLICITATION; ATTACHMENTS #1, ETC.;
SCOPE OF WORK

State of Nevada
Department of Administration
Purchasing Division
515 E. Musser Street, Suite 300
Carson City, NV 89701

Jim Gibbons
Governor

Greg Smith
Administrator

SUBJECT: Amendment No. 1 to Request for Proposal No. 1776

DATE OF AMENDMENT: April 9, 2009

DATE OF RFP RELEASE: March 26, 2009

DATE AND TIME OF OPENING: April 21, 2009 @ 2:00 p.m.

AGENCY CONTACT: Teri Smith, Senior Buyer

The following shall be a part of RFP No. 1776 for ***Air Pollution Control Permit Writer.*** If a vendor has already returned a proposal and any of the information provided below changes that proposal, please submit the changes along with this amendment. You need not re-submit an entire proposal prior to the opening date and time.

---

1. For the technical proposal, does BAPC want to see a description of how the contracted firm will process an application from start to finish, or is this meant to be a description of company capabilities?

   Company's capabilities

2. For the cost proposal, is BAPC only interested the hourly rates of the personnel that will conduct the work, or would they like to see a projected cost of a permit application review and permit drafting process?

   Hourly Rate

3. Can I utilize a past employer as a reference for this proposal? I previously worked in this capacity for a regulatory agency and would like to know if utilizing them as a reference is appropriate, or are the reference forms more for determining adherence to project cost and scope?

   Yes, you can use a past employer as a reference.

4. Can both Part I and Part II of this proposal be combined on the same CD?

   Yes, as long as each section is contained in it's own folder on the CD.

5. Is there a standard format that the State uses for resumes of key personnel?

No.

6. Is there an incumbent? If so, who is the incumbent?

We currently have a contractor that performs similar services.

7. Is this Request for Proposal for Air Pollution Control Permit Writer based on a minimum or maximum number of operating permit applications the vendor will be assigned at a designated time interval?

No, there is no minimum or maximum work is on an as needed basis.

8. Which modeling program does the State of Nevada Bureau of Air Pollution Control utilize for air quality operating permit applications?

AERMOD, however a working knowledge of other modeling programs is required.

9. Is there currently an incumbent consultant performing this service?

Yes

10. Is there an indication of the amount of work expected from this contract, such as the current permit application backlog? This seems relevant since the cost proposal is expected to include a "not to exceed" value.

Workflow varies according to demand on any given day. Work assignments are on an as needed basis. Workload may also be adjusted based on complexity of the submitted application.

11. Has the Bureau indicated how much of the work is expected to be performed at their offices in Carson City, such as involvement in meetings with the Bureau staff and applicants?

All of the work is to be conducted in the Carson City office.

12. In Section 5.1 on page 7 of the proposal, your requirements for a cost proposal state the following: "Vendors must provide fixed prices for all costs associated with responsibilities and related services. Clearly specify the nature of all expenses [illegible] See Attachment B." Attachment B, "Air Pollution Control Permit Writer Pricing Sheet", appears only to require hourly rates and expenses. Since this RFP is for on call services and the number and type of permit applications is unknown, it is assumed that your cost proposal only requires hourly rates. Is that a correct assumption? Do you want an average hourly rate for all staff who are anticipated to work on the applications, or do you want us to submit a schedule of fees?

It is to be hourly rates only.

13. Clarification on expenses to be listed is also required: The Pricing Sheet requests that expenses detail include per day/event cost, hourly cost, etc. In what format do you want this expense pricing information? For example, the Scope of Work requires that pre-application meetings may be necessary. Do you want us to provide an expense cost per day/event cost and hourly cost for a pre-application meeting that must be conducted in the Bureau of Air Pollution Control, Permitting

Payment is made based on number of hours worked. Invoices need to be detailed as to work performed on a project by project basis.

14. Section 1, paragraph 1, of the RFP indicates the Permitting Branch is seeking proposals for air permitting assistance on air quality operating permit applications. However, Section 3.1 of the RFP (Scope of Work) indicates that permit review work will be in association with proposed new or modified sources. Please clarify the following:

    a. Please clarify the class of air permits covered under this RFP, i.e., operating permits, new source review permits, or both.

    All classes of permits may be covered, Class I, Class II General, Class II Stationary and Class III permits.

    b. If operating permits are included in this RFP, please clarify the type of operating permits to be included in the work scope, i.e., minor source operating permits and/or major source Title V operating permit renewals, first issue permits and/or permit modifications.

    All types of operating permits, major source, minor source, first issue, modification, and/or renewal.

    c. If new source review type permits are included in this RFP, please clarify the type of permits included in the work scope, i.e., minor modifications/new sources and/or major (PSD) modifications/new sources and/or nonattainment NSR permits.

    May include all types of major source permit actions.

15. In relation to Question 1 above, please provide an annual estimate of the expected contractor workload for each class of permit. It is understood that a forecast of permit application submittals is not exact, but an estimate based on recent past history of application receipt by the Agency is critical for contractor resource planning and cost proposal preparation.

While the workload varies, the contractor will be assigned a workload consisting of all types of permits that approximately equals one full time equivalent employee.

16. Section 3.1 of the RFP indicates the selected contractor will conduct pre-application conferences with the applicants. Please clarify the following:

a. Does a prospective contractor need to be physically located in Nevada to be considered for award under this RFP, i.e., can a consulting company located outside of Nevada be considered for award on this project?

Yes, contractor needs to work out of Carson City office.

b. Can the pre-application conferences be conducted via teleconference?

No.

c. Does the Permitting Branch pre-arrange the conference?

Generally, however adhoc conference can occur.

d. Does a representative of the Permitting Branch participate in each conference?

Generally yes, however some conferences may occur without supporting agency staff. The contractor is expected to work very independently and communicate with permitting supervisors as issues arise.

17. Section 3.4 of the RFP indicates the contractor will be required to "Conduct modeling analyses for appropriate pollutants for applications that are not required to provide the environmental evaluation." Please provide clarification as to when such modeling analyses are required to be performed by the contractor rather than the applicant.

For sources that are not required to submit an environmental evaluation pursuant to NAC 445B.310.1, BAPC assumes the responsibility of conducting those evaluations.

18. Section 3.6 of the RFP indicates the potential for project related travel upon request by the State. If possible, please provide the expected frequency of travel for this project, and the instances when travel would be required, e.g., is the contractor expected to be present during any or all public hearings?

Travel varies and is generally minimal. However, certain applications may require travel at approximately 10%.

19. Section 5 of the RFP pertains to the cost proposals. Please clarify the following:

a. Vendors are requested to provide detailed fixed prices for all responsibilities and services. Is the Permitting Branch expecting the vendor to submit separate upper limit prices for each type of permit that might be contracted under RFP 1776 (see related Question No. 2 above); or simply the vendor's professional hourly fee rates that would apply to any assignment issued by the Permitting Branch?

Hourly rate applies to all assignments issued by the Permitting Branch.

b. Section 3.6 of the RFP indicates that travel will be required only when approved by the State and at the reimbursable rates indicated in Section 3.6. Given the uncertainty as to when such travel would be required; the relatively fixed nature of reimbursement on these potential travel expenses;; and the variability of airfare rates; please confirm that such travel costs are not necessary for inclusion in estimating Section 5 costs.

Section 5 costs are related to hourly rates, travel would be paid at the current state rates.

20. Please clarify whether the selected contractor(s) will be responsible for direct correspondence and information exchange with the applicant or their representative, or whether such correspondence must be done through the Permitting Branch.

The contractor would need to draft the correspondence for signature by the permitting supervisor.

21. Please clarify whether the selected contractor(s) will be responsible for direct interaction with U.S. EPA during public review/EPA review of affected permits, or whether the Permitting Branch will be responsible for such correspondence.

No, they would not be interacting with U.S. EPA.

22. Please clarify whether the Permitting Branch will provide administrative support in terms of supplying all permit application materials to the term contractor needed for review and preparation of permit assignment.

Yes, BAPC will provide administrative support.

23. Please indicate whether the Permitting Branch currently uses a contractor to perform services similar to that requested under RFP No. 1776. If yes, can you please indicate the amount of contract award under the existing (prior) contract, per contractor, per year.

Yes, we currently have a contractor that performs similar services. The cost is not based on a per year contract.

24. Please indicated whether the Permitting Branch will be considering the use of a single contractor, or multiple contractors under RFP No. 1776

Single contractor.

25. Does this work include the preparation of construction permits? major and minor? Are all levels of operating permits included, minor source permits and modifications?

See response to item 15 above.

26. Are you planning on having multiple awards or one award of the contract? What is the expected annual level of effort for a contractor, either in terms of number of permits or dollars?

One award. Level of effort is estimated to be equivalent to one FTE.

27. The Scope of Work mentions pre-application meetings and entering information into a database. Can these functions be conducted remotely or do they need to be done in the Permitting Branch offices?

They need to be done from the Carson City NDEP office.

28. In Section 4.3.1.4, the RFP states that the State may request that proof of payment to subcontractors be submitted. Under what circumstances would you request proof of payment and what would be accepted proof?

If it is part of their invoice, would need to see proof of payment i.e. receipt or invoice.

29. Could you elaborate on what is required for the cost proposal? Are you requesting hourly rates that would cover labor and all of the expenses such as copies, courier, etc? or are you asking for the specific costs for each anticipated expense and hourly rates for labor? On page 7, under section 5.1, the RFP asks for "detailed fixed prices for all costs associated with the responsibilities and related services". Are the fixed prices referring to fixed hourly rates? What details are needed to support the hourly rates provided? In section 6.1, page 8, the RFP states "Payment tied to an hourly rate or on an as needed basis." what does this mean?

Looking for a fixed hourly rate.

30. The Attachment E, Pricing Sheet, shows lines for normal business hours, after hours, and emergency service calls, but not for different types of labor. Can we propose hourly rates for multiple labor categories, such as project manager, senior engineer, etc.?

Prefer one fixed hourly rate.

31. In addition to the hourly rates for the initial contract period, can hourly rates for the additional option years be proposed?

We prefer one hourly rate, but would consider [illegible] for other years.

32. Section 9.9 of the RFP refers to several documents that must be included in a proposal, including proposed terms and conditions, warranties, maintenance/service agreements, etc. Would it be acceptable to just state that we accept the state's terms and conditions with any exceptions we may have, which can be done using Attachment B of the RFP?

Yes.

33. Will the State consider a change to the waiver of subrogation to limit it to the worker's comp policy?

The State of Nevada Risk Management Division will review any changes to the insurance requirements, to determine acceptance or denial of those changes.

34. Will the State consider removing the endorsement requirement from the additional insured clause of the contract and revise it to say the contractor would provide a certificate of insurance naming the State as additional insured?

No. The Certificate of Insurance is informational only and the additional endorsement is required.

35. What is the current Nevada in-state travel rate?

The State uses current GSA rates. To access those rates go to http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=17943

36. Who approves the level of effort (# hours) to be billed per project? Will review of a poorly prepared application be expected to be billed the same amount of hours as if it were well prepared?

Permitting supervisor will approve the billing. Contractor will need to bill for all hours worked at the established hourly rate.

37. Sections 3.1 & 3.2: What is the process flow of information from NBAPC to consultant as far as information transfer?

The contractor is expected to work in the NDEP offices in Carson City. They will havdirect contact with the permitting supervisor for information flow.

38. Section 3.3: What type of permits will the contractor be working on? Title V, Class IIb, permit modifications, new facilities?

See response to item 15 above.

39. Section 3.4: For verification of air dispersion modeling, will rerunning the model be part of this contract?

Yes.

40 Section 3.3: Will the contractor be able to contact the applicant directly –or will we need to go through NBAPC?

Generally the contractor would be contacting the applicant directly following discussion with Permitting Supervisor.

41 Section 3.1: Are pre-application meetings expected to be conducted in person, or are teleconferences/web-based conferences acceptable?

Pre-application meetings need to be done in person.

ALL ELSE REMAINS THE SAME.

Vendor shall sign and return this amendment with proposal submitted.

NAME OF VENDOR _____

AUTHORIZED SIGNATURE _____

TITLE _____ DATE _____

This document must be submitted in the "State Documents" section/tab of vendors' technical proposal

State of Nevada
Department of Administration
Purchasing Division
515 E. Musser Street, Suite 300
Carson City, NV 89701

Jim Gibbons
Governor

Greg Smith
Administrator

Division of Purchasing
Request For Proposal No. 1776
for

AIR POLLUTION CONTROL PERMIT WRITER

Release Date: March 26, 2009
The deadline for submitting questions:
April 2, 2009 @ at 3:00 p.m., Pacific Time

Deadline for Submission and Opening Date and Time: April 21, 2009 @ 2:00 P.M.

-For additional information, please contact:
Teri Smith, Senior Buyer
(775) 684-0178
(TTY for the Deaf and Hard of Hearing: 1-800-326-6868.
Ask the relay agent to dial 1-775-684-0178/V.)

This document must be submitted in the "State Documents" section/tab of vendors' technical proposal

See Page 8, for instructions on submitting proposals.

Contact Information

Company Name _____

Address _____ City _____ State _____ Zip _____

Telephone (___) _____ Fax (___) _____

E-Mail Address: _____

Prices contained in this proposal are subject to acceptance within _____ calendar days.

Contact Person _____

Print Name & Title _____

Approved 05/07/02
Revised08/06/04

TABLE OF CONTENTS

1. OVERVIEW OF PROJECT 3

2. ACRONYMS/DEFINITIONS 3

3. SCOPE OF WORK 5

4. COMPANY BACKGROUND AND REFERENCES 5

5. COST 7

6. PAYMENT 8

7. SUBMITTAL INSTRUCTIONS 8

8. PROPOSAL EVALUATION AND AWARD PROCESS 11

9. TERMS, CONDITIONS AND EXCEPTIONS 12

10. SUBMISSION CHECKLIST 17

Attachment A 18

Attachment B 20

Attachment C 22

Attachment D 33

Attachment E 36

A Request for Proposal process is different from an Invitation to Bid. The State expects vendors to propose creative, competitive solutions to the agency's stated problem or need, as specified below. Vendors may take exception to any section of the RFP. Exceptions should be clearly stated in Attachment B (Certification of Indemnification and Compliance with Terms and Conditions of RFP) and will be considered during the evaluation process. The State reserves the right to limit the Scope of Work prior to award, if deemed in the best interest of the State NRS §333.350(1).

1. OVERVIEW OF PROJECT

The State of Nevada, Purchasing Division, on behalf of The Bureau of Air Pollution Control, Permitting Branch, is seeking proposals from qualified and experienced individuals to review, evaluate, and process air quality operating permit applications within federal and state guidelines, and within regulatory timelines.

Any contract resulting from this RFP will be subject to Board of Examiners approval and will be administered by the State's designee. The resulting contract is anticipated to begin on the first of the month following Board of Examiner's approval, and will run for two (2) years, with an additional two (2) one (1) -year extension options upon mutual agreement by both parties.

2. ACRONYMS/DEFINITIONS

For the purposes of this RFP, the following acronyms/definitions will be used:

Awarded Vendor	The organization/individual that is awarded and has an approved contract with the State of Nevada for the services identified in this RFP.
Confidential Information	Any information relating to the amount or source of any income, profits, losses or expenditures of a person, including data relating to cost or price submitted in support of a bid or proposal. The term does not include the amount of a bid or proposal. See NRS §333.020(5)(b).
Division	Department of Conservation and Natural Resources, Division of Environmental Protection, Bureau of Air Pollution Control and Air Quality Planning.
Evaluation Committee	An independent committee comprised of a majority of State officers or employees established to evaluate and score proposals submitted in response to the RFP pursuant to NRS §333.335
LOI	Letter of Intent - notification of the State's intent to award a contract to a vendor, pending successful negotiations; all information remains confidential until the issuance of the formal notice of award.
May	Indicates something that is not mandatory but permissible.
NAC	Nevada Administrative Code
NRS	Nevada Revised Statutes

NOA	Notice of Award- formal notification of the State's decision to award a contract, pending Board of Examiners' approval of said contract, any non-confidential information becomes available upon written request.
Proprietary Information	Any trade secret or confidential business information that is contained in a bid or proposal submitted on a particular contract.
Public Record	All books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential (see NRS §333.333 and NRS §600A.030(5)) must be open to inspection by any person and may be fully copied or an abstract or memorandum may be prepared from those public books and public records.
RFP	Request for Proposal - a written statement which sets forth the requirements and specifications of a contract to be awarded by competitive selection NRS §333.020(7).
Shall/Must/Will	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of a proposal as non-responsive.
Should	Indicates something that is recommended but not mandatory. If the vendor fails to provide recommended information, the State may, at its sole option, ask the vendor to provide the information or evaluate the proposal without the information.
State	The State of Nevada and any agency identified herein.
Subcontractor	Third party, not directly employed by the vendor, who will provide services identified in this RFP. This does not include third parties who provide support or incidental services to the vendor.
Trade Secret	Means information, including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code that: derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain commercial or economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
Vendor	Organization/individual submitting a proposal in response to this RFP.

3. SCOPE OF WORK

3.1 In coordination with the Permitting Branch Supervisor, conduct pre-application conferences with representatives of the proposed new or modifying source to discuss permitting requirements, application submittal, modeling, emission calculations, applicability of state and federal regulations, monitoring, and/or any other additional requirements.

3.2 Review submitted application and supporting documentation for completeness in accordance with the Nevada Administrative Code. Prepare for supervisors signature, notification of application completeness or incompleteness within 10 working days of application receipt. Input appropriate completeness/incompleteness information into the database.

3.3 Examine, in detail, complete applications by reviewing site plans, topographic maps, construction drawings, design data, process information, control equipment and the types of pollutants to be emitted. Determine all applicable air quality regulations.

3.4 Verify emission factors, emission calculations, control efficiencies and documentation supporting applicant's conclusions. Review submitted modeling analyses for accuracy and demonstration of compliance with appropriate standards. Conduct modeling analyses for appropriate pollutants for applications that are not required to provide the environmental evaluation. Request clarifying information from applicant as necessary.

3.5 Prepare final draft of permit and transmittal letter for supervisor's signature.

3.6 Upon advance approval by the State's designee, if there is a need for the Contractor to travel, the State will reimburse valid travel expenses at actual cost but not to exceed current State of Nevada in-state travel rate. Air travel will be reimbursed at coach rates only.

3.7 While Contractor is under contract with the Bureau of Air Pollution Control, the Contractor is to inform the Bureau of any outside projects that might conflict with the duties that are assigned by the Bureau.

3.8 Contractor will be required to be able to start writing permits with little supervision and minimal training.

4. COMPANY BACKGROUND AND REFERENCES

4.1 PRIMARY VENDOR INFORMATION

Vendors must provide a company profile. Information provided shall include:

4.1.1 Company ownership (sole proprietor, partnership, etc).

4.1.1.1 Incorporated companies must identify the state in which the company is incorporated and the date of incorporation. **Please be advised**, pursuant to NRS §80.010, incorporated companies must register with the State of Nevada, Secretary of State's Office as a foreign corporation before a

contract can be executed between the State of Nevada and the awarded vendor, unless specifically exempted by NRS §80.015.

4.1.1.2 The selected vendor, prior to doing business in the State of Nevada, must be appropriately licensed by the Department of Taxation, in accordance with NRS §360.780.

4.1.2 Disclosure of any alleged significant prior or ongoing contract failures, contract breaches, any civil or criminal litigation or investigation pending which involves the vendor or in which the vendor has been judged guilty or liable with the State of Nevada.

4.1.3 Location(s) of the company offices and location of the office that will provide the services described in this RFP.

4.1.4 Is your firm a resident of Nevada or a resident of another state? If so, please list the state of residence. Does your resident state apply a preference, which is not afforded to bidders or vendors who are residents in the state of Nevada? This information may be utilized in determining whether an inverse preference applies pursuant to NRS §333.336.

4.1.5 Number of employees both locally and nationally.

4.1.6 Location(s) from which employees will be assigned.

4.1.7 Name, address and telephone number of the vendor's point of contact for a contract resulting from this RFP.

4.1.8 Company background/history and why vendor is qualified to provide the services described in this RFP.

4.1.9 Length of time vendor has been providing services described in this RFP to the **public and/or private sector**. Please provide a brief description.

4.1.10 Has the vendor ever been engaged under contract by any State of Nevada agency?
[ ] Yes [ ] No If "Yes," specify when, for what duties, and for which agency.

4.1.11 Is the vendor or any of the vendor's employees employed by the State of Nevada, any of its political subdivisions or by any other government?
[ ] Yes [ ] No If "Yes," is that employee planning to render services while on annual leave, compensatory time, sick leave, or on his own time?

4.1.12 Resumes for key staff to be responsible for performance of any contract resulting from this RFP.

4.1.13 ***Financial information and documentation to be included in Part III of your response in accordance with the Submittal Instructions.***

4.1.13.1 Dun and Bradstreet number

4.1.13.2 Federal Tax Identification Number

4.2 REFERENCES

Vendors should provide a minimum of three (3) references from similar projects performed for private, state and/or large local government clients within the last three years. Vendors **are required to submit Attachment D, Reference Form to the business references they list. The business references must submit the Reference Form directly to the Purchasing Division.** It is the vendor's responsibility to ensure that completed forms are received by the Purchasing Division on or before the proposal submission deadline for inclusion in the evaluation process. Business References not received, or not complete, may adversely affect the vendor's score in the evaluation

process. The Purchasing Division may contact any or all business references for validation of information submitted.

4.2.1 Client name;
4.2.2 Project description;
4.2.3 Project dates (starting and ending);
4.2.4 Staff assigned to reference engagement that will be designated for work per this RFP;
4.2.5 Client project manager name, telephone number, fax number and e-mail address.

4.3 SUBCONTRACTOR INFORMATION

4.3.1 Does this proposal include the use of subcontractors?

Yes _____ No _____ Unknown _____

If "Yes", vendor must:

4.3.1.1 Identify specific subcontractors and the specific requirements of this RFP for which each proposed subcontractor will perform services.

4.3.1.2 Provide the same information for any proposed subcontractors as requested in the Primary Vendor Information section.

4.3.1.3 References as specified above must be provided for any proposed subcontractors.

4.3.1.4 The State may require that the awarded vendor provide proof of payment to any subcontractors used for this project. Proposals should include a plan by which, at the State's request, the State will be notified of such payments.

4.3.1.5 Primary vendor shall not allow any subcontractor to commence work until all insurance required of the subcontractor is provided to the using agency.

4.3.1.6 Primary vendor must notify the using agency of the intended use of any subcontractors not identified within their response and receive agency approval prior to subcontractor commencing work.

5. COST

Note: All Cost Proposals shall be submitted to the State as a separate, sealed package and clearly marked: "Cost Proposal in Response to RFP No. 1776", please refer to the Submittal Instructions for further instruction.

5.1 Vendors must provide detailed fixed prices for all costs associated with the responsibilities and related services. Clearly specify the nature of all expenses anticipated. (See Attachment E).

6. PAYMENT

6.1 Payment for the contracted service will be within 30 - 45 days upon receipt of invoice and the using agency's approval.

Payment tied to an hourly rate or on an "as needed basis". The State generally pays for services billed on a monthly basis, upon receipt of an invoice and using agency approval.

Vendors may propose an alternative payment option; alternative payment options must be listed on Attachment B of the RFP. Alternative payment options will be considered if deemed in the best interest of the State, project or service solicited herein. The State does not issue payment prior to receipt of goods or services.

7. SUBMITTAL INSTRUCTIONS

7.1 In lieu of a pre-proposal conference, the Purchasing Division will accept questions and/or comments in writing, received by e-mail regarding this RFP as follows:

Questions must reference the identifying RFP number and be addressed to the State of Nevada, Purchasing Division, Attn: Teri Smith, Senior Buyer, e-mailed to srvpurch@purchasing.state.nv.us The deadline for submitting questions is April 2, 2009, at 3:00 p.m., Pacific Time. All questions and/or comments will be addressed in writing and responses e-mailed or faxed to prospective vendors on or about April 9, 2009. Please provide company name, address, phone number, e-mail address, fax number, and contact person when submitting questions.

7.2 RFP Timeline

TASK	*DATE/TIME*
Deadline for submitting questions	April 2, 2009 @ 3:00 P.M.
Answers to all questions submitted available on or about	April 9, 2009
Deadline for submittal of Reference Questionnaires	April 20, 2009 @ 5:00 P.M.
Deadline for submission and opening of proposals	**April 21, 2009 @ 2:00 P.M.**
Evaluation period	April 22 – May 1, 2009
Selection of vendor	May 4, 2009

NOTE: ***These dates represent a tentative schedule of events. The State reserves the right to modify these dates at any time, with appropriate notice to prospective vendors.***

7.3 Proposal submission requirements:

7.3.1 Vendors shall submit their response in three (3) parts as designated below:

Part I: Technical Proposal
One (1) original marked "MASTER"

Seven (7) identical copies
One (1) identical copy on CD (**Note**: CD must be labeled accordingly and in a case.)

THE TECHNICAL PROPOSAL MUST INCLUDE A SEPARATE TAB/SECTION LABELED "**STATE DOCUMENTS**" WHICH SHALL INCLUDE:

- Page 1 of RFP
- All Amendments to the RFP
- All Attachments requiring signature
- Certificate of Insurance

Technical Proposal must not include cost or confidential information.

Technical Proposal shall be submitted to the State in a sealed package and be clearly marked:

"Technical Proposal in Response to RFP No. 1776"

Part II: Cost Proposal:

One (1) original marked "MASTER"
Seven (7) identical copies
One (1) identical copy on CD (**Note**: CD must be labeled accordingly and in a case.)

Cost Proposal shall be submitted to the State in a sealed package and be clearly marked:

"Cost Proposal in Response to RFP No. 1776"

Part III: Confidential Information:

One (1) original marked "MASTER"

Confidential Information shall be submitted to the State in a sealed package and be clearly marked:

"Confidential Information in Response to RFP No. 1776"

If the separately sealed proposal, marked as required above, are enclosed in another container for mailing purposes, the outermost container must fully describe the contents of the package and be clearly marked:

REQUEST FOR PROPOSAL NO.: 1776
PROPOSAL OPENING DATE: April 21, 2009 @ 2:00 P.M.
FOR: Air Pollution Control Permit Writer

7.3.2 **Proposal must be received at the address referenced below no later than 2:00 P.M. Pacific Time, April 21, 2009.** Proposals that do not arrive by proposal opening time and date WILL NOT BE ACCEPTED. Vendors may submit their proposal any time prior to the above stated deadline.

7.3.3 **Proposal shall be submitted to:**

State of Nevada, Purchasing Division
Teri Smith, Services Purchasing
515 E. Musser Street, Suite 300
Carson City, NV 89701

7.4 The State will not be held responsible for proposal envelopes mishandled as a result of the envelope not being properly prepared. Facsimile, e-mail or telephone proposals will **NOT** be considered; however, at the State's discretion, the proposal may be submitted all or in part on electronic media, as requested within the RFP document. Proposal may be modified by facsimile, e-mail or written notice provided such notice is received prior to the opening of the proposals.

7.5 Although it is a public opening, only the names of the vendors submitting proposals will be announced NRS §333.335(6). Technical and cost details about proposals submitted will not be disclosed. Assistance for handicapped, blind or hearing-impaired persons who wish to attend the RFP opening is available. If special arrangements are necessary, please notify the Purchasing Division designee as soon as possible and at least two days in advance of the opening.

7.6 If discrepancies are found between two or more copies of the proposal, the master copy will provide the basis for resolving such discrepancies. If one copy of the proposal is not clearly marked "MASTER," the State may reject the proposal. However, the State may at its sole option, select one copy to be used as the master.

7.7 For ease of evaluation, the proposal should be presented in a format that corresponds to and references sections outlined within this RFP and should be presented in the same order. Responses to each section and subsection should be labeled so as to indicate which item is being addressed. Exceptions to this will be considered during the evaluation process.

7.8 If complete responses cannot be provided without referencing confidential information, such confidential information must be provided in accordance with submittal instructions and specific references made to the tab, page, section and/or paragraph where the confidential information can be located.

7.9 Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.

7.10 Descriptions on how any and all equipment and/or services will be used to meet the requirements of this RFP shall be given, in detail, along with any additional information documents that are appropriately marked.

7.11 The proposal must be signed by the individual(s) legally authorized to bind the vendor. See NRS §333.337.

7.12 For ease of responding to the RFP, vendors are encouraged, but not required, to request an electronic copy of the RFP. Electronic copies are available in the following formats: Word 2003 via e-mail, diskette, or on the State Purchasing Division's website in PDF or Word format at http://purchasing.state.nv.us. When requesting an RFP via e-mail or diskette, vendors should contact the Purchasing Division for assistance. In the event vendors choose to receive the RFP on CD, the vendor will be responsible for providing a blank CD; unless vendors provide a Federal Express, DHL, etc. account number and appropriate return materials, the CD will be returned by first class U.S. mail.

7.13 Vendors utilizing an electronic copy of the RFP in order to prepare their proposal should place their written response in ***an easily distinguishable font*** immediately following the applicable question.

7.14 ***For purposes of addressing questions concerning this RFP, the sole contact will be the Purchasing Division. Upon issuance of this RFP, other employees and representatives of the agencies identified in the RFP will not answer questions or otherwise discuss the contents of this RFP with any prospective vendors or their representatives. Failure to observe this restriction may result in disqualification of any subsequent proposal NAC §333.155(3).*** This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

7.15 Vendor who believes proposal requirements or specifications are unnecessarily restrictive or limit competition may submit a request for administrative review, in writing, to the Purchasing Division. To be considered, a request for review must be **received** no later than the deadline for submission of questions.

The Purchasing Division shall promptly respond in writing to each written review request, and where appropriate, issue all revisions, substitutions or clarifications through a written amendment to the RFP.

Administrative review of technical or contractual requirements shall include the reason for the request, supported by factual information, and any proposed changes to the requirements.

7.16 If a vendor changes any material RFP language, vendor's response may be deemed non-responsive. NRS §333.311.

7.17 Vendors are cautioned that some services may contain licensing requirement(s). Vendors shall be proactive in verification of these requirements prior to proposal submittal. Proposals, which do not contain the requisite licensure, may be deemed non-responsive. However, this does not negate any applicable Nevada Revised Statute (NRS) requirements.

8. PROPOSAL EVALUATION AND AWARD PROCESS

8.1 Proposals shall be consistently evaluated and scored in accordance with NRS §333.335(3) based upon the following criteria:

- Demonstrated competence
- Experience in performance of comparable engagements
- Conformance with the terms of this RFP
- Expertise and availability of key personnel
- Reasonableness of cost

Note: Financial stability will be scored on a pass/fail basis

Proposals shall be kept confidential until a contract is awarded.

8.2 The evaluation committee may also contact the references provided in response to the Section identified as Company Background and References; contact any vendor to clarify any response; contact any current users of a vendor's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process. The evaluation committee shall not be obligated to accept the lowest priced proposal, but shall make an award in the best interests of the State of Nevada NRS § 333.335(5)

8.3 Each vendor must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, contract breaches, any civil or criminal litigation or investigations pending which involves the vendor or in which the vendor has been judged guilty or liable. Failure to comply with the terms of this provision may disqualify any proposal. The State reserves the right to reject any proposal based upon the vendor's prior history with the State or with any other party, which documents, without limitation, unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet contract milestones or other contractual failures. See generally, NRS §333.335.

8.4 Clarification discussions may, at the State's sole option, be conducted with vendors who submit proposals determined to be acceptable and competitive NAC §333.165. Vendors shall be accorded fair and equal treatment with respect to any opportunity for discussion and/or written revisions of proposals. Such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing vendors.

8.5 A Notification of Intent to Award shall be issued in accordance with NAC §333.170. Any award is contingent upon the successful negotiation of final contract terms and upon approval of the Board of Examiners, when required. Negotiations shall be confidential and not subject to disclosure to competing vendors unless and until an agreement is reached. If contract negotiations cannot be concluded successfully, the State upon written notice to all vendors may negotiate a contract with the next highest scoring vendor or withdraw the RFP.

8.6 Any contract resulting from this RFP shall not be effective unless and until approved by the Nevada State Board of Examiners (NRS 284.173).

9. TERMS, CONDITIONS AND EXCEPTIONS

9.1 Performance of vendors will be rated semi-annually following contract award and then annually for the term of the contract by the using State agency in six categories: customer service; timeliness; quality; technology; flexibility; and pricing. Vendors will be notified in writing of their rating.

9.2 In accordance with Nevada Revised Statute 333.336, if a vendor submitting a proposal in response to this solicitation is a resident of another state, and with respect to contracts awarded by that state, applies to vendors who are residents of that state a preference, which is not afforded to vendors or contractors who are residents of the State of Nevada, the State of Nevada, Purchasing Division shall, insofar as is practicable, increase the out of state vendor's proposal by an amount that is substantially equivalent to the preference that the other state of which the vendor is a resident denies to vendors or contractors who are residents of the State of Nevada.

9.3 This procurement is being conducted in accordance with NRS chapter 333 and NAC chapter 333.

9.4 The State reserves the right to alter, amend, or modify any provisions of this RFP, or to withdraw this RFP, at any time prior to the award of a contract pursuant hereto, if it is in the best interest of the State to do so.

9.5 The State reserves the right to waive informalities and minor irregularities in proposals received.

9.6 The State reserves the right to reject any or all proposals received prior to contract award (NRS §333.350).

9.7 The State shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the State of Nevada after all factors have been evaluated (NRS §333.335).

9.8 Any irregularities or lack of clarity in the RFP should be brought to the Purchasing Division designee's attention as soon as possible so that corrective addenda may be furnished to prospective vendors.

9.9 Proposals must include any and all proposed terms and conditions, including, without limitation, written warranties, maintenance/service agreements, license agreements, lease purchase agreements and the vendor's standard contract language. The omission of these documents renders a proposal non-responsive.

9.10 Alterations, modifications or variations to a proposal may not be considered unless authorized by the RFP or by addendum or amendment.

9.11 Proposals which appear unrealistic in the terms of technical commitments, lack of technical competence, or are indicative of failure to comprehend the complexity and risk of this contract, may be rejected.

9.12 Proposals from employees of the State of Nevada will be considered in as much as they do not conflict with the State Administrative Manual, NRS Chapter §281 and NRS Chapter §284.

9.13 Proposals may be withdrawn by written or facsimile notice received prior to the proposal opening time. Withdrawals received after the proposal opening time will not be considered except as authorized by NRS §333.350(3).

9.14 The price and amount of this proposal must have been arrived at independently and without consultation, communication, agreement or disclosure with or to any other contractor, vendor or prospective vendor. Collaboration among competing vendors about potential proposals submitted pursuant to this RFP is prohibited and may disqualify the vendor.

9.15 No attempt may be made at any time to induce any firm or person to refrain from submitting a proposal or to submit any intentionally high or noncompetitive proposal. All proposals must be made in good faith and without collusion.

9.16 Prices offered by vendors in their proposals are an irrevocable offer for the term of the contract and any contract extensions. The awarded vendor agrees to provide the purchased services at the costs, rates and fees as set forth in their proposal in response to this RFP. No other costs, rates or fees shall be payable to the awarded vendor for implementation of their proposal.

9.17 The State is not liable for any costs incurred by vendors prior to entering into a formal contract. Costs of developing the proposal or any other such expenses incurred by the vendor in responding to the RFP, are entirely the responsibility of the vendor, and shall not be reimbursed in any manner by the State.

9.18 All proposals submitted become the property of the State, selection or rejection does not affect this right; proposals will be returned only at the State's option and at the vendor's request and expense. The master technical proposal, the master cost proposal and Confidential Information of each response shall be retained for official files. Only the master technical and master cost will become public record after the award of a contract. The failure to separately package and clearly mark Part III – which contains Confidential Information, Trade Secrets and/or Proprietary Information shall constitute a complete waiver of any and all claims for damages caused by release of the information by the State.

9.19 A proposal submitted in response to this RFP must identify any subcontractors, and outline the contractual relationship between the awarded vendor and each subcontractor. An official of each proposed subcontractor must sign, and include as part of the proposal submitted in response to this RFP, a statement to the effect that the subcontractor has read and will agree to abide by the awarded vendor's obligations.

9.20 The awarded vendor will be the sole point of contract responsibility. The State will look solely to the awarded vendor for the performance of all contractual obligations which may result from an award based on this RFP, and the awarded vendor shall not be relieved for the non-performance of any or all subcontractors.

9.21 The awarded vendor must maintain, for the duration of its contract, insurance coverages as set forth in the Insurance Schedule of the contract form appended to this RFP. Work on the contract shall not begin until after the awarded vendor has submitted acceptable evidence of the required insurance coverages. Failure to maintain any required insurance coverage or acceptable alternative method of insurance will be deemed a breach of contract.

Notwithstanding any other requirement of this section, the State reserves the right to consider reasonable alternative methods of insuring the contract in lieu of the insurance policies required by the below-stated Insurance Schedule. It will be the awarded vendor's responsibility to recommend to the State alternative methods of insuring the contract. Any alternatives proposed by a vendor should be accompanied by a detailed explanation regarding the vendor's inability to obtain insurance coverage as described below. The State shall be the sole and final judge as to the adequacy of any substitute form of insurance coverage.

9.22 Each vendor must disclose any existing or potential conflict of interest relative to the performance of the contractual services resulting from this RFP. Any such relationship that might be perceived or represented as a conflict should be disclosed. By submitting a proposal in response to this RFP, vendors affirm that they have not given, nor intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or any employee or representative of same, in connection with this procurement. Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest will automatically result in the disqualification of a vendor's proposal. An award will not be made where a conflict of interest exists. The State will determine whether a conflict of interest exists and whether it may reflect negatively on the State's selection of a vendor. The State reserves the right to disqualify any vendor on the grounds of actual or apparent conflict of interest.

9.23 The State will not be liable for Federal, State, or Local excise taxes NRS §372.325.

9.24 Attachment B of this RFP shall constitute an agreement to all terms and conditions specified in the RFP, including, without limitation, the Attachment C contract form and all terms and conditions therein, except such terms and conditions that the vendor expressly excludes. Exceptions will be taken into consideration as part of the evaluation process.

9.25 The State reserves the right to negotiate final contract terms with any vendor selected NAC §333.170. The contract between the parties will consist of the RFP together with any modifications thereto, and the awarded vendor's proposal, together with any modifications and clarifications thereto that are submitted at the request of the State during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, the RFP, any modifications and clarifications to the awarded vendor's proposal, and the awarded vendor's proposal. Specific exceptions to this general rule may be noted in the final executed contract.

9.26 Vendor understands and acknowledges that the representations above are material and important, and will be relied on by the State in evaluation of the proposal. Any vendor misrepresentation shall be treated as fraudulent concealment from the State of the true facts relating to the proposal.

9.27 No announcement concerning the award of a contract as a result of this RFP can be made without the prior written approval of the State.

9.28 The Nevada Attorney General will not render any type of legal opinion regarding this transaction.

9.29 Any unsuccessful vendor may file an appeal in strict compliance with NRS 333.370 and chapter 333 of the Nevada Administrative Code.

9.30 Local governments (as defined in NRS §332.015) are intended third party beneficiaries of any contract resulting from this RFP and any local government may join or use any contract resulting from this RFP subject to all terms and conditions thereof pursuant to NRS §332.195. The State is not liable for the obligations of any local government which joins or uses any contract resulting from this RFP.

9.31 Any person who requests or receives a Federal contract, grant, loan or cooperative agreement shall file with the using agency a certification that the person making the declaration has not made, and will not make, any payment prohibited by subsection (a) of 31 U.S.C. §1352.

10. SUBMISSION CHECKLIST

This checklist is provided for vendor's convenience only and identifies documents that must be submitted with each package in order to be considered responsive. Any proposals received without these requisite documents may be deemed non-responsive and not considered for contract award.

Part I: **Completed**

1. Required number of Technical proposals (per Submittal Instructions) _____

2. **Required Forms to be submitted with technical proposal under section/tab labeled "State Documents";** _____

   a. Page 1 of the RFP completed _____

   b. All Amendments completed and signed _____

   c. Primary Vendor Attachments A & B signed _____

   d. Subcontractor Attachment A & B signed (if applicable) _____

   e. Primary Vendor Information provided _____

   f. Subcontractor Information provided (if applicable) _____

   g. Certificate of Insurance _____

   h. (other) _____ _____

Part II:

1. Required number of Cost proposals (per Submittal Instructions) _____

2. (other) _____ _____

Part III:

1. Required number of Confidential Information (per Submittal Instructions and defined in Acronyms/Definitions) _____

2. Financial Information _____

REMINDERS:

1. Send out Reference forms for Primary Vendor (with Part A completed) _____

2. Send out Reference forms for Subcontractors (with Part A completed) (if applicable) _____

Attachment A
CONFIDENTIALITY OF PROPOSALS AND CERTIFICATION OF INDEMNIFICATION
PRIMARY VENDOR

Submitted proposals, which are marked "confidential" in their entirety, or those in which a significant portion of the submitted proposal is marked "confidential" **will not** be accepted by the State of Nevada. Pursuant to NRS §333.333, only specific parts of the proposal may be labeled a "trade secret" as defined in NRS §600A.030(5). All proposals are confidential until the contract is awarded; at which time, both successful and unsuccessful vendors' technical and cost proposals become public information. In accordance with the Submittal Instructions of this document, vendors are requested to submit confidential information in a separate envelope or binder marked "**confidential**."

The State will not be responsible for any information contained within the proposal should vendors not comply with the labeling and packing requirements, proposals will be released as submitted. In the event a governing board acts as the final authority, there may be public discussion regarding the submitted proposals that will be in an open meeting format, the proposals will remain confidential.

By signing below, I understand it is my responsibility as the vendor to act in protection of the labeled information and agree to defend and indemnify the State of Nevada for honoring such designation. I duly realize failure to so act will constitute a complete waiver and all submitted information will become public information; additionally, failure to label any information that is released by the State shall constitute a complete waiver of any and all claims for damages caused by the release of the information.

This proposal contains either Confidential Information, Trade Secrets and/or Proprietary information as defined in Section 2 "ACRONYMS/DEFINITIONS."

YES_____

NO_____

SIGNATURE _____ _____
Primary Vendor Date

PRINT NAME _____
Primary Vendor

This document must be submitted in the "State Documents" section/tab of vendors' technical proposal

Attachment A
CONFIDENTIALITY OF PROPOSALS AND CERTIFICATION OF INDEMNIFICATION
SUBCONTRACTOR

Submitted proposals, which are marked "confidential" in their entirety, or those in which a significant portion of the submitted proposal is marked "confidential" **will not** be accepted by the State of Nevada. Pursuant to NRS §333.333, only specific parts of the proposal may be labeled a "trade secret" as defined in NRS §600A.030(5). All proposals are confidential until the contract is awarded; at which time, both successful and unsuccessful vendors' technical and cost proposals become public information. In accordance with the Submittal Instructions of this document, vendors are requested to submit confidential information in a separate envelope or binder marked "**confidential**."

The State will not be responsible for any information contained within the proposal should vendors not comply with the labeling and packaging submission requirements, proposal will be released as submitted. In the event a governing board acts as the final authority, there may be public discussion regarding the submitted proposal that will be in an open meeting format, the proposals will remain confidential.

By signing below, I understand it is my responsibility as the vendor to act in protection of the labeled information and agree to defend and indemnify the State of Nevada for honoring such designation. I duly realize failure to so act will constitute a complete waiver and all submitted information will become public information; additionally, failure to label any information that is released by the State shall constitute a complete waiver of any and all claims for damages caused by the release of the information.

This proposal contains either Confidential Information, Trade Secrets and/or Proprietary information as defined in Section 2 "ACRONYMS/DEFINITIONS."

YES_____

NO_____

SIGNATURE _____ _____
Subcontractor Date

PRINT NAME _____
Subcontractor

This document must be submitted in the "State Documents" section/tab of vendors' technical proposal

Attachment B
CERTIFICATION OF COMPLIANCE WITH TERMS AND CONDITIONS OF RFP
PRIMARY VENDOR

I have read, understand and agree to comply with the terms and conditions specified in this Request for Proposal.

Checking "YES" indicates acceptance of all terms and conditions, while checking "NO" denotes non-acceptance and vendor's exceptions should be detailed below. In order for any exceptions to be considered they **MUST** be documented.

YES _____ I agree. NO _____ Exceptions below:

SIGNATURE _____ _____
Primary Vendor Date

PRINT NAME _____
Primary Vendor

EXCEPTION SUMMARY FORM

RFP SECTION NUMBER	RFP PAGE NUMBER	EXCEPTION (PROVIDE A DETAILED EXPLANATION)

Attach additional sheets if necessary. Please use this format.

This document must be submitted in the "State Documents" section/tab of vendors' technical proposal

Attachment B
CERTIFICATION OF COMPLIANCE WITH TERMS AND CONDITIONS OF RFP
SUBCONTRACTOR

I have read, understand and agree to comply with the terms and conditions specified in this Request for Proposal.

Checking "YES" indicates acceptance of all terms and conditions, while checking "NO" denotes non-acceptance and vendor's exceptions should be detailed below. In order for any exceptions to be considered they **MUST** be documented.

YES _____ I agree. NO _____ Exceptions below:

SIGNATURE _____
Subcontractor

_____
Date

PRINT NAME _____
Subcontractor

EXCEPTION SUMMARY FORM

RFP SECTION NUMBER	RFP PAGE NUMBER	EXCEPTION (PROVIDE A DETAILED EXPLANATION)

Attach additional sheets if necessary. Please use this format.

This document must be submitted in the "State Documents" section/tab of vendors' technical proposal

Attachment C

CONTRACT FORM

The following State Contract Form is provided as a courtesy to vendors interested in responding to this RFP. Please review the terms and conditions in this form, as this is the standard contract used by the State for all services of independent contractors. It is not necessary for vendors to complete the Contract Form with their proposal responses.

All vendors are required to submit a Certificate of Insurance in the "State Documents tab/section of their technical proposal identifying the coverages and minimum limits currently in effect.

Please pay particular attention to the insurance requirements, as specified in paragraph 16 and Attachment BB of the attached contract.

As with all other requirements of this RFP, vendors may take exception to any of the terms in the Contract Form, including the required insurance limits. Exceptions will be considered during the evaluation process.

Unless specified as above, the insurance minimum limits will be negotiated at the time the State issues a Letter of Intent to Award.

For Purchasing Use Only:

RFP/CONTRACT #

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between the State of Nevada
Acting By and Through Its

(NAME, ADDRESS, PHONE AND FACSIMILE NUMBER OF CONTRACTING AGENCY)

and

(NAME, CONTACT PERSON, ADDRESS, PHONE, FACSIMILE NUMBER OF INDEPENDENT CONTRACTOR)

WHEREAS, NRS 284.173 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners, services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. REQUIRED APPROVAL. This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.

2. DEFINITIONS. "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307. "Independent Contractor" means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year.

3. CONTRACT TERM. This Contract shall be effective from _____ subject to Board of Examiners' approval (anticipated to be _____) to _____, unless sooner terminated by either party as specified in paragraph ten (10).

4. NOTICE. Unless otherwise specified, termination shall not be effective until ____ calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.

5. INCORPORATED DOCUMENTS. The parties agree that the scope of work shall be specifically described. This Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT AA: STATE SOLICITATION OR RFP #_____ and AMENDMENT(S) #___;
ATTACHMENT BB: INSURANCE SCHEDULE; AND
ATTACHMENT CC: CONTRACTOR'S RESPONSE

A Contractor's Attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract:

6. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph five (5) at a cost of $ _____ per _____ (state the exact cost or hourly, daily, or weekly rate exclusive of travel or per diem expenses) with the total Contract or installments payable: _____, not to exceed $ _____. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

7. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. TIMELINESS OF BILLING SUBMISSION. The parties agree that timeliness of billing is of the essence to the contract and recognize that the State is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the State no later

than the first Friday in August of the same year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject the Contractor to an administrative fee not to exceed one hundred dollars ($100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the State of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to the Contractor.

9. INSPECTION & AUDIT.

a. Books and Records. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the State Auditor, the relevant state agency or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three (3) years, and for five (5) years if any federal funds are used pursuant to the Contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. CONTRACT TERMINATION.

a. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties, or unilaterally by either party without cause.

b. State Termination for Non-appropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or

ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or

iv. If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or

v. If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or

vi. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph four (4), and the subsequent failure of the defaulting party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

e. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;

ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
iv. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph twenty-one (21).

11. REMEDIES. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation one hundred and twenty-five dollars ($125.00) per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190.

12. LIMITED LIABILITY. The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed one hundred and fifty percent (150%) of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

13. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

14. INDEMNIFICATION. To the fullest extent permitted by law Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

15. INDEPENDENT CONTRACTOR. Contractor is associated with the State only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the State whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the State; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, nor representatives shall be considered employees, agents, or representatives of the State. The State and Contractor shall evaluate the nature of services and the term of the Contract negotiated in order to determine "independent contractor" status, and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

		Contractor's Initials	
		YES	NO
1.	Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?	_____	_____
2.	Will the Contracting Agency be providing training to the independent contractor?	_____	_____
3.	Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?	_____	_____

4. Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada? _____ _____

5. Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)? _____ _____

6. Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform? _____ _____

7. Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State? _____ _____

16. INSURANCE SCHEDULE. Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance and pay all taxes and fees incident hereunto. Policies shall meet the terms and conditions as specified within this Contract along with the additional limits and provisions as described in Attachment BB, incorporated hereto by attachment. The State shall have no liability except as specifically provided in the Contract.

The Contractor shall not commence work before:

1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and

2) The State has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

Insurance Coverage: The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum limits as specified in Attachment BB, incorporated hereto by attachment. Unless specifically stated herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until:

1. Final acceptance by the State of the completion of this Contract; or
2. Such time as the insurance is no longer required by the State under the terms of this Contract;

Whichever occurs later.

Any insurance or self-insurance available to the State shall be in excess of, and non-contributing with, any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

General Requirements:

a. Additional Insured: By endorsement to the general liability insurance policy evidenced by Contractor, the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.

b. Waiver of Subrogation: Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 for losses arising from work/materials/equipment performed or provided by or on behalf of the Contractor.

c. Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.

d. Deductibles and Self-Insured Retentions: Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed fifty thousand dollars ($50,000.00) per occurrence, unless otherwise approved by the Risk Management Division.

e. Policy Cancellation: Except for ten (10) days notice for non-payment of premium, each insurance policy shall be endorsed to state that without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and/or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address shown on page one (1) of this contract.

f. Approved Insurer: Each insurance policy shall be:

1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and
2) Currently rated by A.M. Best as "A-VII" or better.

Evidence of Insurance:

Prior to the start of any Work, Contractor must provide the following documents to the contracting State agency:

1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor. The certificate must name the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 as the certificate holder. The certificate should be signed by a person authorized insurer to bind coverage on its behalf. The state project/contract number; description and contract effective dates shall be noted on the certificate, and upon renewal of the policies listed Contractor shall furnish the State with replacement certificates as described within Insurance Coverage, section noted above.

Mail all required insurance documents to the State Contracting Agency identified on page one of the contract.

2) Additional Insured Endorsement: An Additional Insured Endorsement (CG 20 10 11 85 or CG 20 26 11 85) , signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per General Requirements, subsection a above.
3) Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

Review and Approval: Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

17. COMPLIANCE WITH LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

18. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

19. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

20. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations nor duties under this Contract without the prior written consent of the State.

21. STATE OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the

State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

22. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

23. CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.

24. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:

a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

25. LOBBYING. The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

a. Any federal, state, county or local agency, legislature, commission, counsel or board;

b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or

c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

26. WARRANTIES.

a. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multi-century formulas and data values and date data interface values that reflect the century.

27. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

28. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this Contract.

29. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless

an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

Independent Contractor's Signature	Date	Independent's Contractor's Title	
Signature	Date	Title	
Signature	Date	Title	
Signature	Date	Title	

Signature - Board of Examiners

APPROVED BY BOARD OF EXAMINERS

Approved as to form by:

On _____
(Date)

Deputy Attorney General for Attorney General

On _____
(Date)

Form Approved 05/08/02
Revised 11/07

ATTACHMENT BB
INSURANCE SCHEDULE

INDEMNIFICATION CLAUSE:

Contractor shall indemnify, hold harmless and, not excluding the State's right to participate, defend the State, its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys' fees and costs, (hereinafter referred to collectively as "claims") for bodily injury or personal injury including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State.

INSURANCE REQUIREMENTS:

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. **Commercial General Liability – Occurrence Form**
   Policy shall include bodily injury, property damage and broad form contractual liability coverage.
   - General Aggregate $2,000,000
   - Products – Completed Operations Aggregate $1,000,000

- Personal and Advertising Injury $1,000,000
- Each Occurrence $1,000,000

a. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

2. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	$100,000
Disease – Each Employee	$100,000
Disease – Policy Limit	$500,000

a. Policy shall contain a waiver of subrogation against the State of Nevada.
b. This requirement shall not apply when a contractor or subcontractor is exempt under N.R.S., **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

2. **Professional Liability (Errors and Omissions Liability)**
The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	$1,000,000
Annual Aggregate	$2,000,000

a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the State of Nevada is named as an additional insured, the State of Nevada shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
2 The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the State, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to **(State of Nevada Department Representative's Name & Address)**.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Nevada and with an "A.M. Best" rating of not

less than A-VII. The State in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State with certificates of insurance (ACORD form or equivalent approved by the State) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the State before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to **(State Department Representative's Name and Address)**. The State project/contract number and project description shall be noted on the certificate of insurance. The State reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATES RISK MANAGEMENT DIVISION.**

F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies **or** Contractor shall furnish to the State separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the Attorney General's Office or the Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

Independent Contractor's Signature	Date	Independent's Contractor's Title	
Signature- State of Nevada	Date	Title	

Attachment BB Page 1 of 3

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