

REQUEST FOR PROPOSALS

No. 08 - 57HA - 08

Diagnostic and Feasibility Study of Lake Manawa, Pottawattamie County



Iowa Department of Natural Resources

Issuing Officer:

Mike McGhee

Fisheries Bureau, Lakes and Rivers Project Coordinator

Wallace State Office Building

502 East Ninth Street

Des Moines, IA 50319

E-mail: mike.mcgee@dnr.iowa.gov

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Responses Due: April 4, 2008, 4:00 p. m., central time

Notice of Intent to Bid Due: March 20, 2008, 4:00 p.m., central time

TABLE OF RFP CONTENTS

Section 1 – Introduction	.....	1
Section 2 – Service Requirements	.....	2
Section 3 – Format and Content of Bid Requirements	.....	3
Section 4 – Evaluation of Bid Proposals	.....	9
Section 5 – Contract and General Conditions	.....	10
Section 6 – Administrative Information	.....	17
Attachments	.....

SECTION 1 INTRODUCTION

1.1 Purpose

The purpose of this Request for Proposals (RFP) is to solicit proposals from qualified service providers to provide a diagnostic feasibility study of Lake Manawa, Pottawattamie County as part of the Department of Natural Resources (DNR) Lake Restoration activities. This study will include specifics for dredging activities that may ensue.

The primary goals of Lake Manawa's restoration will include an increase in mean depth from the current 6.1 feet to 10 feet and an increase in water clarity to 4.5 feet, at least 50% of the time as measured from April through September. A secondary goal will be to obtain deeper sand that may then be used for Iowa Department of Transportation (DOT) road projects, provided the sand meets DOT specifications.

DNR seeks an experienced service provider to analyze and make recommendations for restoration and dredging activities at Lake Manawa to meet these water quality goals. Due to the nature of the lake and the soils that form the liner or seal between the lake and the Missouri River, DNR seeks an experienced service provider to also analyze and recommend activities that avoid disturbance of the this hydraulic seal.

The Department intends to award a one-year contract beginning on **April 21st, 2008** and ending on **April 20th, 2009**, with up to **one** additional one (1) year extensions at the sole discretion of the Department. Any contract resulting from the RFP shall not be an exclusive contract.

1.2 Background Information

This RFP is designed to provide service providers with the information necessary for the preparation of competitive bid proposals. The RFP process is for the Department's benefit and is intended to provide the Department with competitive information to assist in the selection process. It is not intended to be comprehensive. Each service provider is responsible for determining all factors necessary for submission of a comprehensive bid proposal.

Lake Manawa is a natural lake located on historic Missouri River floodplain. Current lake surface area is 747 acres with a watershed to lake ratio of 3.5/1. Under controlled input, Mosquito Creek supplies additional water to the lake. Past lake dredging work in the 1960's deepened significant portions of the lake. However, maximum lake depth does not exceed 13 feet and large expanses of the lake average between 6 to 7 feet of water. The DNR still has a dredge containment site within the Lake Manawa Park Area that could potentially be utilized for the project.

The DOT approached the DNR to explore the possibility of dredging the lake for sand to use for highway construction. The DOT and DNR met in March 2007 to determine opportunities to obtain highway building materials from Lake Manawa sediments. It was determined at the meeting that while DOT is still interested in obtaining highway building materials, DNR shall solely determine how to safely supply the product. There is concern about whether sand materials can be removed from Lake Manawa while still maintaining the hydraulic seal between the lake and the fluctuating Missouri River. It is estimated that the DOT needs approximately 4 to 6 million cubic yards of sand material over a six year period, from 2011 to 2016.

SECTION 2 SERVICE REQUIREMENTS

2.1 Introduction

Initial hydrogeological studies have been done to determine hydrological connectivity between the lake and Missouri River and possible safe dredging limits. A cost share agreement between the DNR and DOT was entered into for the purpose of hiring Geotechnical Services, Inc. to drill wells in Lake Manawa to determine the boundaries between the lake and the river and possible safe dredging limits. This work was completed January of 2007. The DNR also obtained additional information with a September 2007 hydrogeologic study by HDR Engineering, Inc. These studies, as well as other relevant material, will be provided as described in Section 5.5.

The DNR believes that sufficient lake boring information exists and that detailed examination of the information, rather than additional boring activity, will suffice for the purpose of the proposed diagnostic feasibility study.

2.2 Scope of Work

Prepare a study for the DNR to use during its lake restoration activities. This study will, at a minimum:

- 2.2.1 Determine the feasibility of conducting dredging activities at Lake Manawa.
- 2.2.2 Identify any risks and remedial actions that should be taken with respect to the dredging activities at Lake Manawa.
- 2.2.3 If dredging is feasible, identify locations and method of in-lake dredging to obtain sand that meets DOT standards for highway building material.
- 2.2.4 Evaluate how a change(s) to the lake bottom, as the result of dredging, will influence the in-flow and out-flow (mass balance) of water in Lake Manawa.
- 2.2.5 Evaluate in-flow and out-flow interactions between Lake Manawa and Indian and Mosquito Creeks. Make recommendations on future water budgets for maintaining the desired lake water level.
- 2.2.6 Provide the DNR with a diagnostic and feasibility study of Lake Manawa for planning a lake restoration program on the lake and its watershed.
- 2.2.7 Provide an analysis and description of the current watershed and storm water movement, characteristics, and recommended improvements that could be made that would be beneficial to the water quality of the lake and environmental quality of the watershed.
- 2.2.8 Provide alternatives to proposed lake restoration activities contemplated in the existing studies and this RFP to meet water quality and recreational goals

SECTION 3 FORMAT AND CONTENT OF BID PROPOSALS

3.1 Instructions

These instructions prescribe the format and content of the bid proposal. They are designed to facilitate a uniform review process. Failure to adhere to the proposal format may result in the disqualification of the bid proposal.

- 3.1.1 The bid proposal shall be typewritten on 8.5" x 11" paper (one side only).
- 3.1.2 The bid proposal shall be divided into two parts: (1) the Technical Proposal and (2) the Cost Proposal. The bid proposal shall be sealed in an envelope. If multiple envelopes for each bid proposal are used, the envelopes shall be numbered in the following fashion: 1 of 4, 2 of 4, etc. The envelopes shall be labeled with the following information:

RFP Title:

Diagnostic and Feasibility Study of Lake Manawa, Pottawattamie County

Department's Address:

Wallace State Office Building

Attention: Mike McGhee, Fisheries Bureau

502 East Ninth Street

Des Moines, IA 50319

Service provider's Name and Address

- 3.1.3 One (1) original and [number] copies of the bid proposal, each in a sealed envelope, shall be timely submitted to the Issuing Officer.
- 3.1.4 If the service provider designates any information in its proposal as confidential pursuant to section 5.22, the service provider must also submit one (1) copy of the bid proposal from which confidential information has been excised. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the bid proposal as possible.
- 3.1.5 Bid proposals shall not contain promotional or display materials.
- 3.1.6 Attachments shall be referenced in the bid proposal.
- 3.1.7 If a service provider proposes more than one method of meeting these requirements, each should be labeled and submitted separately. Each will be evaluated separately.

3.2 Technical Proposal

The following documents and responses shall be included in the bid proposal in the order given below:

3.2.1 Transmittal Letter

An individual authorized to legally bind the service provider shall sign the transmittal letter. The letter shall include the service provider's mailing address, electronic mail address, fax number, and telephone number.

Any request for confidential treatment of information shall be included in the transmittal letter in addition to the specific statutory basis supporting the request and an explanation why disclosure of the information is not in the best interest of the public. The transmittal letter shall also contain the name, address and telephone number of the individual authorized to respond to the Department about the confidential nature of the information.

3.2.2 Table of contents

The service provider shall include a table of contents of its bid proposal.

3.2.3 Executive Summary

The service provider shall prepare an executive summary and overview of the services it is offering, including all of the following information:

- 3.2.3.1 Statements that demonstrate that the service provider understands and agrees with the terms and conditions of the RFP and the proposed contract.
- 3.2.3.2 A vision and mission statement for this program.
- 3.2.3.3 A brief overview of the service provider's plans for how the service provider will provide the scope of services outlined in Section 2 of this RFP.
- 3.2.3.4 A demonstration of the service provider's knowledge of they type of services contemplated by Section 2 of this RFP.

3.2.4 Service Requirements

The service provider shall address each service requirement in Section 2 of the RFP and explain how it plans to approach each requirement. Proposals must be fully responsive to service requirements. Merely repeating the requirements will be considered non-responsive and may disqualify the service provider. Proposals must identify any deviations from the requirements of this RFP or requirements the service provider cannot satisfy. Any deviations from the requirements of the RFP or any requirement of the RFP that the service provider cannot satisfy may disqualify the service provider.

3.2.5 Background Information

The service provider shall provide the following general background information:

- 3.2.5.1 Name, address, telephone number, fax number and e-mail address of the service provider including all d/b/a's or assumed names or other operating names of the service provider.
- 3.2.5.2 Form of business entity, i.e., corporation, partnership, proprietorship, limited liability company.
- 3.2.5.3 State of incorporation, state of formation, or state of organization.
- 3.2.5.4 Identity and specify the location(s) and telephone numbers of the major offices and other facilities that relate to the service provider's performance under the terms of this RFP.

- 3.2.5.5 Local office address and phone number (if any).
- 3.2.5.6 Number of employees.
- 3.2.5.7 Type of business.
- 3.2.5.8 Name, address and telephone number of the service provider's representative to contact regarding all contractual and technical matters concerning this proposal.
- 3.2.5.9 Name, address and telephone number of the service provider's representative to contact regarding scheduling and other arrangements.
- 3.2.5.10 Name and qualifications of any subcontractors who will be involved with this project.
- 3.2.5.11 Identify the service provider's accounting firm, if applicable.
- 3.2.5.12 The successful service provider will be required to register to do business in Iowa. If already registered, provide the date of the service provider's registration to do business in Iowa and the name of the service provider's registered agent.

3.2.6 Experience

The service provider must provide the following information regarding its experience:

- 3.2.6.1 Number of years in business.
- 3.2.6.2 Number of years experience with providing the types of services sought by the RFP.
- 3.2.6.3 Describe the level of technical experience in providing the types of services sought by the RFP.
- 3.2.6.4 List all services similar to those sought by this RFP that the service provider has provided to other businesses or governmental entities.
- 3.2.6.5 Letters of reference from three (3) previous clients knowledgeable of the service provider's performance in providing services similar to the services described in this RFP and a contact person and telephone number for each reference.

3.2.7 Personnel

The service provider must provide resumes for all key personnel, including the project manager, who will be involved in providing the services contemplated by this RFP. The following information must be included in the resumes:

- 3.2.7.1 Full name.
- 3.2.7.2 Education.

- 3.2.7.3 Years of experience and employment history particularly as it relates to the scope of services specified herein.

3.2.8 Financial Information

The service provider must provide the following financial information

- 3.2.8.1 Submit audited financial statements (annual reports) for the last 3 years.
- 3.2.8.2 Provide a minimum of three (3) financial references.

3.4.2.9 Terminations, Litigation, Debarment

The service provider must address the following:

- 3.2.9.1 During the last five (5) years, has the service provider had a contract for services terminated for any reason? If so, provide full details related to the termination.
- 3.2.9.2 During the last five (5) years, describe any damages or penalties of anything of value traded or given up by the service provider under any of its existing or past contracts as it relates to services performed that are similar to the services contemplated by this RFP and the resulting Contract. If so, indicate the reason for the penalty or exchange of property or services and the estimated account of the cost of that incident to the service provider.
- 3.2.9.3 During the last five (5) years, describe any damages or penalties or anything of value traded or given up by service provider under any of its existing or past contracts as it relates to services performed that are similar to the services contemplated by this RFP. If so, indicate the reason for the penalty or exchange of property or services and the estimated amount of the cost of that incident to the service provider.
- 3.2.9.4 During the last five (5) years, describe any order, judgment or decree of any Federal or State authority barring, suspending or otherwise limiting the right of the service provider to engage in any business, practice or activity.
- 3.2.9.5 During the last five (5) years, list and summarize pending or threatened litigation, administrative or regulatory proceedings, or similar matters that could affect the ability of the service provider to perform the required services. The service provider must also state whether it or any owners, officers, or primary partners have ever been convicted of a felony. Failure to disclose these matters may result in rejection of the bid proposal or in termination of any subsequent contract. This is a continuing disclosure requirement. Any such matter commencing after submission of a bid proposal, and with respect to the successful service provider after the execution of a contract, must be disclosed in a timely manner in a written statement to the Department.
- 3.2.9.6 During the last five (5) years, have any irregularities been discovered in any of the accounts maintained by the service provider on behalf of others? If

so, describe the circumstances of irregularities or variances and disposition of resolving the irregularities or variances.

3.2.10 Proposal Certification

The service provider shall sign and submit with the bid proposal the document included as Attachment # 1 in which the service provider shall certify that the contents of the bid proposal are true and accurate.

3.2.11 Acceptance of Terms and Conditions

The service provider shall specifically agree that the bid proposal is predicated upon the acceptance of all terms and conditions stated in the RFP. If the service provider objects to any term or condition. The service provider must specifically refer to the RFP page, and section. Objections or responses that materially alter the RFP may be deemed non-responsive and disqualify the service provider.

3.2.12 Certification of Independence and No Conflict of Interest

The service provider shall sign and submit with the bid proposal the document included as Attachment # 2 in which the service provider shall certify that it developed the bid proposal independently. The service provider shall also certify that no relationship exists or will exist during the contract period between the service provider and the Department that interferes with fair competition or is a conflict of interest. The Department reserves the right to reject a bid proposal or cancel the award if, in its sole discretion, any relationship exists that could interfere with fair competition or conflict with the interests of the Department.

3.2.13 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

The service provider shall sign and submit with the bid proposal the document included as Attachment # 3 in which the service provider shall certify that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal, department or agency.

3.2.14 Authorization to Release Information

The service provider shall sign and submit with the bid proposal the document included as Attachment # 4 in which the service provider authorizes the release of information to the Department.

3.2.15 Firm Bid Proposal Terms

The service provider shall guarantee in writing the availability of the services offered and that all bid proposal terms, including price, will remain firm a minimum of 120 days following the deadline for submitting proposals.

3.3 Cost Proposal

The service provider shall provide its cost proposal for the proposed services. The cost proposal shall include proposed hourly rates, reimbursable expenses, if applicable, and methods used for developing the fee for providing the products and services requested under (Section 2.2 Scope of Work). If reimbursable expenses are included in the price proposal, rates shall not exceed those in procedure 210.245, "Travel-in-state-board, commission, advisory council, and task force member expenses," of the department of administrative services state accounting enterprise's Accounting Policy and Procedures Manual, which is available on the Department of Administrative Services' website. The fee proposal or other pricing information shall serve as a basis for contract negotiations in the event the parties modify the scope of work, consistent with rules promulgated by the Iowa Department of Administrative Services for engineering

services. Prospective Consultant receiving the highest initial evaluation may be invited for interview, for fine-tuning the scope of the project and fee negotiations, if necessary and within the sole discretion of the DNR.

SECTION 4 EVALUATION OF BID PROPOSALS

4.1 Introduction

This section describes the evaluation process that will be used to determine which bid proposal provides the greatest benefits to the Department. The evaluation process is designed to award the contract not necessarily to the service provider of least cost, but rather to the service provider with the best combination of attributes to perform the required services.

4.2 Evaluation Committee

The Department intends to conduct a comprehensive, fair and impartial evaluation of bid proposals received in response to this RFP. The Department will use an Evaluation Committee to review and evaluate the proposals.

4.3 Evaluation Criteria

The Evaluation Committee will evaluate all proposals and make an award made using the following criteria, which are listed in no particular order.

The evaluation committee will evaluate and score all proposals meeting all mandatory requirements, utilizing the following criteria:

- 4.3.1 Capability - Ability of the service provider to deliver products similar to those described in the RFP; demonstrated integrity and reliability.
- 4.3.2 Technical Expertise - Experience of the service provider and key individual(s) assigned to complete items listed within the project scope; professional licensing; past performance relative to the quality and timeliness of service on similar project and past experience with the state of Iowa in relation to services provided.
- 4.3.3 Work Plan – Proposed terms of delivery; assurance of high quality product & services, on time and within budget.
- 4.3.4 Cost - The cost of delivering the requested products & services to DNR are in the best interests of the state.

The evaluation committee will rank the proposals based on the following point values for the four criteria:

Criterion	Points
Capability	25
Technical Expertise	25
Work Plan	20
Cost	30

4.4 Recommendation of the Evaluation Committee

The final ranking and recommendation(s) of the Evaluation Committee shall be presented to DNR management and the Natural Resources Commission for consideration. This recommendation may include, but is not limited to, the name of one or more service providers recommended for selection or a recommendation that no service provider be selected.

SECTION 5 ADMINISTRATIVE INFORMATION

5.1 Issuing Officer

The Issuing Officer, identified below, is the sole point of contact regarding the RFP from the date of issuance until selection of the successful service provider.

*Mike McGhee
Department of Natural Resources, Fisheries Bureau
Wallace Building
502 E. 9th Street
Des Moines, Iowa 50319*

5.2 Restriction on Communication

From the issue date of this RFP until announcement of the successful service provider, service providers may contact only the Issuing Officer. The Issuing Officer will respond only to questions regarding the procurement process. Questions related to the interpretation of this RFP must be submitted in writing to the Issuing Officer by 4:30 p.m., central time, **March 20th, 2008**. Verbal questions related to the interpretation of this RFP will not be accepted. Service providers may be disqualified if they contact any state employee other than the issuing officer.

5.3 Downloading the RFP from the Internet

All amendments will be posted on the Department's home page at www.iowadnr.gov. The service provider is advised to check the Department's home page periodically for amendments to this RFP, particularly if the service provider downloaded the RFP from the Internet as the service provider may not automatically receive amendments. If the service provider received this RFP as a result of a written request to the Department, the service provider will automatically receive amendments.

5.4 Procurement Timetable

The following dates are set forth for informational and planning purposes; however, the Department reserves the right to change the dates.

Post RFP to Targeted Small Businesses	February 27 th , 2008
Post RFP to DNR Website	March 3 rd , 2008
Post a Public Notice of RFP in the DSM Register	March 3 rd , 2008
Letters of Intent and Questions Due	March 20 th , 2008
Response to Questions Issued	March 27 th , 2008
Closing Date for Receipt of Bid Proposals	April 4 th , 2008
Announce Successful Service provider	April 8 th , 2008
Natural Resource Commission Meeting	April 10 th , 2008
Completion of Contract Negotiations and Execution of the Contract	April 17 th , 2008
Begin Contract	April 21 st , 2008

5.5 Resources

A CD with material relevant to the RFP will be available, upon request, to potential service providers. Requests for material relevant to the RFP must be received from **by April 4th, 2008, 4:00 p.m., central time**, to be fulfilled. Material will include, but is not limited to the following items:

- 5.5.1 Barometric Pressure Data
- 5.5.2 Base Maps – Regional Hydrology
- 5.5.3 Borrow 27 – Preliminary Designs
- 5.5.4 Indian Creek Photos
- 5.5.5 Lake Manawa Stage Data
- 5.5.6 LIDAR Stream Elevation Data
- 5.5.7 Miscellaneous Images
- 5.5.8 Mosquito Creek Diversion Inflow
- 5.5.9 Report – GSI Geotechnical Exploration (046090) August 2004
- 5.5.10 Report – GSI Geotechnical Exploration (066152) January 2007
- 5.5.11 Report – Hydrogeologic Evaluation Report (034269) September 2007
- 5.5.12 Topography from LIDAR
- 5.5.13 USGS Indian Creek Seepage Measurements
- 5.5.14 Web Resources for Lake Manawa Information

5.6 Questions, Requests for Clarification, and Suggested Changes

Service providers are invited to submit written questions and requests for clarifications regarding the RFP. Service providers may also submit suggestions for changes to the requirements of this RFP. The questions, requests for clarifications, or suggestions must be in writing and received by the Issuing Officer before 4:30 p.m., central time, **March 20th, 2008**. Oral questions will not be permitted. If the questions, requests for clarifications, or suggestions pertain to a specific section of the RFP, the page and section number(s) must be referenced. Written responses to questions, requests for clarifications, or suggestions will be sent on or before **March 27th, 2008** to service providers who received RFP's. The Department's written responses will be considered part of the RFP. If the Department decides to adopt a suggestion, the Department will issue an amendment to the RFP.

The Department assumes no responsibility for verbal representations made by its officers or employees unless such representations are confirmed in writing and incorporated into the RFP.

5.7 Amendment to the RFP and Bid Proposal and Withdrawal of Bid Proposal

The Department reserves the right to amend the RFP at any time. The service provider shall acknowledge receipt of an amendment in its proposal. If the amendment occurs after the closing date for receipt of bid proposals, the Department may, in its sole discretion, allow service providers to amend their bid proposals in response to the Department's amendment if necessary.

The service provider may amend its bid proposal. The amendment must be in writing, signed by the service provider and received by time set for the receipt of proposals. Electronic mail and faxed amendments will not be accepted.

Service providers who submit proposals in advance of the deadline may withdraw, modify, and resubmit proposals at any time prior to the deadline for submitting proposals. Service providers must notify the Issuing Officer in writing if they wish to withdraw their proposals.

5.8 Letters of Intent to Bid

A letter of intent to bid must be mailed, sent via delivery service or hand delivered by the service provider or the service provider's representative to the Issuing Officer and received by 4:00 p.m., central time **March 20th, 2008.** The letter of intent to bid must include the service provider's name, mailing address, electronic mail address, fax number, telephone number, a statement of intent to bid for the **Diagnostic and Feasibility Study of Lake Manawa, Pottawattamie County** contract, and an authorizing signature. Electronic mail and faxed letters of intent to bid will not be accepted.

Submitting a letter of intent to bid is a mandatory condition to submit a bid proposal and to ensure receipt of written responses to service providers' questions and amendments to the RFP. Failure to submit a letter of intent by the deadline specified will result in the rejection of the service provider's bid proposal.

5.9 Submission of Bid Proposals

The Department must receive the bid proposal at **Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319** before **4:00 p.m.**, central time, **April 4th, 2008.** This is a mandatory requirement and will not be waived by the Department. Any bid proposal received after this deadline will be rejected and returned unopened to the service provider. Service providers mailing bid proposals must allow ample mail delivery time to ensure timely receipt of their bid proposals. It is the service provider's responsibility to ensure that the bid proposal is received prior to the deadline. Postmarking by the due date will not substitute for actual receipt of the bid proposal. Electronic mail and faxed bid proposals will not be accepted.

Service providers must furnish all information necessary to evaluate the bid proposal. Bid proposals that fail to meet the mandatory requirements of the RFP will be disqualified. Verbal information provided by the service provider shall not be considered part of the service provider's proposal.

5.10 Bid Proposal Opening

The Department will open bid proposals at **8:00 a.m.**, central time, **April 7th, 2008.** The bid proposals will remain confidential until the Evaluation Committee has reviewed all of the bid proposals submitted in response to this RFP and the Department has announced a notice of intent to award a contract. See Iowa Code Section 72.3.

5.11 Costs of Preparing the Bid Proposal

The costs of preparation and delivery of the bid proposal are solely the responsibility of the service provider.

5.12 Rejection of Bid Proposals

The Department reserves the right to reject any or all bid proposals, in whole and in part, received in response to this RFP at any time prior to the execution of a written contract. Issuance of this RFP in no way constitutes a commitment by the Department to award a contract. This RFP is designed to provide service providers with the information necessary to prepare a competitive bid proposal. This RFP process is for the Department's benefit and is intended to provide the Department with competitive information to assist in the selection of a service provider to provide services. It is not intended to be comprehensive and each service provider is responsible for determining all factors necessary for submission of a comprehensive bid proposal.

5.13 Disqualification

The Department shall reject outright and shall not evaluate proposals for any one of the following reasons:

- 5.13.1 The service provider fails to deliver the bid proposal by the due date and time.
- 5.13.2 The service provider fails to deliver the cost proposal in a separate envelope.
- 5.13.3 The service provider states that a service requirement cannot be met.
- 5.13.4 The service provider's response materially changes a service requirement.
- 5.13.5 The service provider's response limits the rights of the Department.
- 5.13.6 The service provider fails to include information necessary to substantiate that it will be able to meet a service requirement. A response of "will comply" or merely repeating the requirement is not sufficient. Responses must indicate present capability; representations that future developments will satisfy the requirement are not sufficient.
- 5.13.7 The service provider fails to respond to the Department's request for information, documents, or references.
- 5.13.8 The service provider fails to include a bid bond.
- 5.13.9 The service provider fails to include any signature, certification, authorization, stipulation, disclosure or guarantee requested in section 3 of this RFP.
- 5.13.10 The service provider presents the information requested by this RFP in a format inconsistent with the instructions of the RFP.
- 5.13.11 The service provider initiates unauthorized contact regarding the RFP with state employees.
- 5.13.12 The service provider provides misleading or inaccurate responses.

5.14 Nonmaterial and Material Variances

The Department reserves the right to waive or permit cure of nonmaterial variances in the bid proposal if, in the judgment of the Department, it is in the Department's best interest to do so. Nonmaterial variances include minor informalities that do not affect responsiveness; that are merely a matter of form or format; that do not change the relative standing or otherwise prejudice other service providers; that do not change the meaning or scope of the RFP; or that do not reflect a material change in the services. In the event the Department waives or permits cure of nonmaterial variances, such waiver or cure will not modify the RFP requirements or excuse the service provider from full compliance with RFP specifications or other contract requirements if the service provider is awarded the contract. The determination of materiality is in the sole discretion of the Department.

5.15 Reference Checks

The Department reserves the right to contact any reference to assist in the evaluation of the bid proposal, to verify information contained in the bid proposal and to discuss the service provider's qualifications and the qualifications of any subcontractor identified in the bid proposal.

5.16 Information From Other Sources

The Department reserves the right to obtain and consider information from other sources concerning a service provider, such as the service provider's capability and performance under other contracts.

5.17 Verification of Bid Proposal Contents

The content of a bid proposal submitted by a service provider is subject to verification. Misleading or inaccurate responses shall result in disqualification.

5.18 Criminal History and Background Investigation

The Department reserves the right to conduct criminal history and other background investigation of the service provider, its officers, directors, shareholders, or partners and managerial and supervisory personnel retained by the service provider for the performance of the contract.

5.19 Bid Proposal Clarification Process

The Department reserves the right to contact a service provider after the submission of bid proposals for the purpose of clarifying a bid proposal to ensure mutual understanding. This contact may include written questions, interviews, site visits, a review of past performance if the service provider has provided goods or services to the Department or any other political subdivision wherever located, or requests for corrective pages in the service provider's bid proposal. The Department will not consider information received if the information materially alters the content of the bid proposal or alters the type of goods and services the service provider is offering to the Department. An individual authorized to legally bind the service provider shall sign responses to any request for clarification. Responses shall be submitted to the Department within the time specified in the Department's request. Failure to comply with requests for additional information may result in rejection of the bid proposal as non-compliant.

5.20 Disposition of Bid Proposals

All proposals become the property of the Department and shall not be returned to the service provider unless all bid proposals are rejected or the RFP is cancelled. In either event, service providers will be asked to send prepaid shipping instruments to the Department for return of the bid proposals submitted. In the event the Department does not receive shipping instruments, the Department will destroy the bid proposals. Otherwise, at the conclusion of the selection process, the contents of all bid proposals will be in the public domain and be open to inspection by interested parties subject to exceptions provided in Iowa Code Chapter 22 or other applicable law.

5.21 Public Records and Requests for Confidential Treatment

The Department may treat all information submitted by a service provider as public information following the conclusion of the selection process unless the service provider properly requests that information be treated as confidential at the time of submitting the bid proposal. The Department's release of information is governed by Iowa Code chapter 22. Service providers are encouraged to familiarize themselves with chapter 22 before submitting a proposal. The Department will copy public records as required to comply with the public records laws.

Any request for confidential treatment of information must be included in the transmittal letter with the service provider's bid proposal. In addition, the service provider must enumerate the specific grounds in Iowa Code Chapter 22 or other applicable law which support treatment of the material as confidential and explain why disclosure is not in the best interest of the public. The request for confidential treatment of information must also include the name, address, and telephone number of the person authorized by the service provider to respond to any inquiries by the Department concerning the confidential status of the materials.

Any bid proposal submitted which contains confidential information must be conspicuously marked on the outside as containing confidential information, and each page upon which confidential information appears must be conspicuously marked as containing confidential information. Identification of the entire bid proposal as confidential may be deemed non-responsive and disqualify the service provider.

If the service provider designates any portion of the RFP as confidential, the service provider must submit one copy of the bid proposal from which the confidential information has been excised. This excised copy is in addition to the number of copies requested in section 3 of this RFP. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the bid proposal as possible.

The Department will treat the information marked confidential as confidential information to the extent such information is determined confidential under Iowa Code Chapter 22 or other applicable law by a court of competent jurisdiction.

In the event the Department receives a request for information marked confidential, written notice shall be given to the service provider seven calendar days prior to the release of the information to allow the service provider to seek injunctive relief pursuant to Section 22.8 of the Iowa Code.

The service provider's failure to request confidential treatment of material will be deemed by the Department as a waiver of any right to confidentiality, which the service provider may have had.

5.22 Copyrights

By submitting a bid proposal, the service provider agrees that the Department may copy the bid proposal for purposes of facilitating the evaluation of the bid proposal or to respond to requests for public records. The service provider consents to such copying by submitting a bid proposal and warrants that such copying will not violate the rights of any third party. The Department shall have the right to use ideas or adaptations of ideas that are presented in the bid proposals.

5.23 Release of Claims

By submitting a bid proposal, the service provider agrees that it will not bring any claim or cause of action against the Department based on any misunderstanding concerning the information provided herein or concerning the Department's failure, negligent or otherwise, to provide the service provider with pertinent information as intended by this RFP.

5.24 Presentations

Service providers may be required to make a presentation of the bid proposal. The presentation may occur at the Department's offices or at the offices of the service provider. The determination as to need for presentations, the location, order, and schedule of the presentations is at the sole discretion of the Department. The presentation may include slides, graphics and other media selected by the service provider to illustrate the service provider's bid proposal. The presentation shall not materially change the information contained in the bid proposal.

5.25 Evaluation of Bid Proposals Submitted

Bid proposals that are timely submitted and are not subject to disqualification will be reviewed in accordance with Section 4 of the RFP. The Department will not necessarily award any contract resulting from this RFP to the service provider offering the lowest cost to the Department. Instead, the Department will award the

contract to the compliant service provider whose proposal receives the most points in accordance with the evaluation criteria set forth in section 4 of this RFP and subject to approval of the **Natural Resource Commission**.

5.26 Award Notice and Acceptance Period

Notice of intent to award the contract will be sent by mail to all service providers submitting a timely bid proposal. Negotiation and execution of the contract shall be completed no later than **April 17th, 2008**. If the apparent successful service provider fails to negotiate and deliver an executed contract by **April 17th, 2008**, the Department may cancel the award and award the contract to the next highest ranked service provider.

5.27 Definition of Contract

The full execution of a written contract shall constitute the making of a contract for services and no service provider shall acquire any legal or equitable rights relative to the contract services until the contract has been fully executed by the successful service provider and the Department.

5.28 Choice of Law and Forum

This RFP and the resulting contract are to be governed by the laws of the state of Iowa. Changes in applicable laws and rules may affect the award process or the resulting contract. Service providers are responsible for ascertaining pertinent legal requirements and restrictions. Any and all litigation or actions commenced in connection with this RFP shall be brought in the appropriate Iowa forum.

5.29 Restrictions on Gifts and Activities

Iowa Code Chapter 68B restricts gifts which may be given or received by state employees and requires certain individuals to disclose information concerning their activities with state government. Service providers are responsible to determine the applicability of this Chapter to their activities and to comply with the requirements. In addition, pursuant to Iowa Code section 722.1, it is a felony offense to bribe or attempt to bribe a public official.

5.30 Minimum Guaranteed

The Department anticipates that the selected service provider will provide services as requested by the Department. The Department will not guarantee any minimum compensation will be paid to the service provider or any minimum usage of the service provider's services.

SECTION 6 CONTRACT TERMS AND CONDITIONS

6.1 Contract Terms and Conditions

The contract that the Department expects to award as a result of this Request for Proposal will be based upon the bid proposal submitted by the successful service provider and this solicitation. The contract between the Department and the successful service provider shall be a combination of the specifications, terms and conditions of this RFP, general conditions the Department utilizes, the service provider's offer contained in the technical and cost proposals, written clarifications or changes made in accordance with the provisions herein, and any other terms deemed necessary by the Department.

The contract terms contained in Attachment 5 are not intended to be a complete listing of all contract terms but are provided only to enable service providers to better evaluate the costs associative with the RFP and the potential resulting contract. Service providers should plan on such terms being included in any contract awarded as a result of this RFP. All costs associated with complying with these requirements should be included in the revenue proposal or any pricing quoted by the service provider.

By submitting a proposal, each service provider acknowledges its acceptance of these specifications, terms and conditions without change except as otherwise expressly stated in its proposal. If a service provider takes exception to a provision, it must state the reason for the exception and set forth in its proposal the specific contract language it proposes to include in place of the provision. Exceptions that materially change these terms or the requirements of the RFP may be deemed non-responsive by the Department, in its sole discretion, resulting in possible disqualification of the proposal. The Department reserves the right to either award a contract without further negotiation with the successful service provider or to negotiate contract terms with the selected service provider if the best interests of the Department would be served.

6.2 Contract Length

The term of the contract will be one year(s) and will commence on April 21st, 2008 and end on April 20th, 2009.

The Department shall have the sole option to renew the contract upon the same terms and conditions for one additional one-year, beginning on April 21st, 2009.

Attachment # 1

Date

[Name of Issuing Officer], Issuing Officer
[name of Agency]
[Agency Address]

Re: Request for Proposal Number [fill in number]
PROPOSAL CERTIFICATION

Dear [Name of Issuing Officer]:

I certify that the contents of the proposal submitted on behalf of (Name of Service provider) in response to [Name of Agency] for Proposal Number XXX for XXX Services are true and accurate. I also certify that (Name of Service provider) has not made any knowingly false statements in its proposal.

Sincerely,

Name and Title

Attachment #2

Date

[Name of Issuing Officer], Issuing Officer
[Name of Agency]
[Agency Address]

Re: Request for Proposal Number [fill in number]
CERTIFICATION OF INDEPENDENCE AND NO CONFLICT OF
INTEREST

Dear [Name of Issuing Officer]:

By submitting a proposal in response to [Name of Agency] Request for Proposal Number [number] for [describe services] Services (RFP), the undersigned certifies the following:

1. The proposal has been developed independently, without consultation, communication or agreement with any employee or consultant to the Agency who has worked on the development of this RFP, or with any person serving as a member of the evaluation committee.
2. The proposal has been developed independently, without consultation, communication or agreement with any other service provider or parties for the purpose of restricting competition.
3. Unless otherwise required by law, the information found in the proposal has not been knowingly disclosed and will not be knowingly disclosed prior to the award of the contract, directly or indirectly, to any other service provider.
4. No attempt has been made or will be made by (Name of Service provider) to induce any other service provider to submit or not to submit a proposal for the purpose restricting competition.
5. No relationship exists or will exist during the contract period between (Name of Service provider) and the Agency that interferes with fair competition or as a conflict of interest.

Sincerely,

Name and Title

Attachment #3

Date

[Name of Issuing Officer], Issuing Officer
[Name of Agency]
[Agency Address]

Re: Request for Proposal Number [fill in number]
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND
ELIGIBILITY, AND VOLUNTARY EXCLUSION

Dear [Name of Issuing Officer]:

By submitting a proposal in response to [Name of Agency] Request for Proposal Number [number] for [describe services] Services (RFP), the undersigned certifies the following:

1. I certify that, to the best of my knowledge, (Name of Service provider) and all of its principals: (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal Agency or agency; (b) have not within a three year period preceding this proposal been convicted of, or had a civil judgment rendered against them form commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of antitrust statutes or commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property; (c) are not presently indicted for or other criminally or civilly charged by a government entity (federal, state, or local) with the commission of any of the offenses enumerated in (b) of this certification; and (d) have not within a three year period preceding this proposal had one or more public transactions (federal, state, or local) terminated for cause.
2. This certification is a material representation of fact upon which the Agency has relied upon when this transaction was entered into. If it is later determined that the undersigned knowingly rendered an erroneous certification, in addition to other remedies available, the Agency may pursue available remedies including suspension, debarment, or termination of the contract.

Sincerely,

Name and Title

Attachment #4

Date

[Name of Issuing Officer], Issuing Officer
[Name of Agency]
[Agency Address]

Re: Request for Proposal Number [fill in number]
AUTHORIZATION TO RELEASE INFORMATION

Dear [Name of Issuing Officer]:

[name of service provider] hereby authorizes the [Name of Agency] ("Agency") to obtain information regarding its performance on other contracts, agreements or other business arrangements, its business reputation, and any other matter pertinent to evaluation and the selection of a successful service provider in response to Request for Proposal Number [number].

The service provider acknowledges that it may not agree with the information and opinions given by such person or entity in response to a reference request. The service provider acknowledges that the information and opinions given by such person or entity may hurt its chances to receive contract awards from the Agency or may otherwise hurt its reputation or operations. The service provider is willing to take that risk.

The service provider hereby releases, acquits and forever discharges the State of Iowa, the Agency, their officers, directors, employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the undersigned that it may have or ever claim to have relating to information, data, opinions, and references obtained by the Agency in the evaluation and selection of a successful service provider in response to Request for Proposal Number [number].

The service provider authorizes representatives of the Agency to contact any and all of the persons, entities, and references which are, directly or indirectly, listed, submitted, or referenced in the undersigned's proposal submitted in response to Request for Proposal Number [number].

The service provider further authorizes any and all persons, entities to provide information, data, and opinions with regard to the undersigned's performance under any contract, agreement, or other business arrangement, the undersigned's ability to perform, the undersigned's business reputation, and any other matter pertinent to the evaluation of the undersigned. The undersigned hereby releases, acquits and forever discharges any such person or entity and their officers, directors, employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the undersigned that it may have or ever claim to have relating to information, data, opinions, and references supplied to the Agency in the evaluation and selection of a successful service provider in response to Request for Proposal Number [number].

A photocopy or facsimile of this signed Authorization is as valid as an original.

Sincerely,

Printed Name of Service provider Organization

Name and Title of Authorized Representative

Date

Attachment 5

GENERAL CONDITIONS

The parties agree as follows:

SECTION 1. DURATION OF CONTRACT

The term of this Contract shall be as set forth in the Special Conditions of this Contract, unless terminated earlier in accordance with the Termination section of this Contract.

SECTION 2. APPLICABILITY OF DEFINITIONS.

Definitions provided in the Special Conditions of this Contract shall apply to the General Conditions of this Contract.

SECTION 3. SCOPE OF SERVICES

3.1 Scope of Services. The Contractor shall provide services in accordance with the defined performance criteria as set forth in the Special Conditions of the Contract.

3.2 Monitoring Clause. In compliance with the State of Iowa Accountable Government Act, the Department will monitor the performance of the Contractor monthly by logging any complaints regarding Contractor's performance and meeting with Contractor to address those complaints to make sure that Contractor is meeting the deliverables of the Contract and achieving the specified results. The Contractor will be required throughout the duration of the contract to satisfactorily provide timely maintenance services in order to meet the desired outcomes.

3.3 Review Clause. All services and deliverables provided pursuant to this Contract shall be subject to the review process described in the Special Conditions of this Contract.

3.4 Key Personnel. The key personnel for the respective parties to this Contract are identified in the Special Conditions of this Contract.

3.5 Industry Standards. Services rendered pursuant to this Contract shall be performed in a professional and competent manner in accordance with the terms of this Contract and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a detailed specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard.

3.6 Non-Exclusive Rights. This Contract is not exclusive. The Department reserves the right to select other contractors to provide services similar or identical to the Scope of Services described in this Contract during the term of this Contract.

3.7 Final Notice of Acceptance. If the Department concludes, in its sole discretion, that all the Tasks required by the Statement of Work have been timely completed and all deliverables and services required by this contract have been satisfactorily completed and delivered, and that the implementation of the Statement of Work is completed and successfully deployed, then the Department shall issue a written Final Notice of Acceptance.

SECTION 4. PROJECT MANAGEMENT AND REPORTING.

4.1 Project Manager. At the time of execution of this Contract, each party shall designate, in writing, a Project Manager to serve until the expiration of this Contract or the designation of a substitute Project Manager. During the term of this Contract, each Project Manager shall be available to meet monthly, unless otherwise mutually agreed, to review and plan the services being provided under this Contract.

4.2 Review Meetings. During the review meetings, the Project Managers shall discuss progress made by the Contractor in the performance of this Contract. Each party shall provide a status report, as desired by a Project Manager, listing any problem or concern encountered since the last meeting. Records of such reports and other communications issued in writing during the course of Contract performance shall be maintained by each party.

4.3 Status Reports. Prior to each review meeting, each Project Manager shall provide a status report listing:

- 4.3.1 Accomplishments during the previous period,
- 4.3.2 Activities planned for the upcoming period,
- 4.3.3 Tasks completed or deliverables produced during the previous period,
- 4.3.4 An updated schedule of upcoming deliverables,
- 4.3.5 Any problems or concerns encountered since the last meeting, and
- 4.3.6 An explanation of any deviations from the financial and hourly expenditures contained in Contractor's original proposal.

4.4 Problem Reports. At the next scheduled meeting after which any party has identified in writing a problem, the party responsible for resolving the problem shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. For as long as a problem remains unresolved, written reports shall identify:

- 4.4.1 Any event not within the control of the Contractor or the Department that accounts for the problem;
- 4.4.2 Modifications to the Contract agreed to by the parties in order to remedy or solve the identified problem;
- 4.4.3 Damages incurred as a result of any party's failure to perform its obligations under this Contract; and
- 4.4.4 Any request or demand for services by one party that another party believes are not included within the terms of this Contract.

4.5 Problem Reporting Omissions. The Department's acceptance of a problem report shall not relieve the Contractor of any obligation under this Contract or waive any other remedy under this Contract or at law or equity that the Department may have. The Department's failure to identify the extent of a problem or the extent of damages incurred as a result of a problem shall not act as a waiver of performance under this Contract. Where other provisions of this Contract require notification of an event in writing, the written report shall be considered a valid notice under this Contract provided the parties required to receive notice are notified.

4.6 Change Order Procedure. The Department may at any time request a modification to the Scope of Services using a Change Order. The following procedures for a change order shall be followed:

- 4.6.1 Written Request. The Department shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Services.
- 4.6.2 The Contractor's Response. The Contractor shall submit to the Department a time and cost estimate for the requested Change Order within five (5) business days of receiving the Change Order Request.
- 4.6.3 Acceptance of the Contractor Estimate. If the Department accepts the estimate presented by the Contractor within five (5) business days of receiving the Contractor's response, the Contractor shall perform the modified services subject to the time and cost estimates included in the Contractor response. The Contractor's performance and the modified services shall be governed by the terms and conditions of this Contract.
- 4.6.4 Adjustment to Compensation. The parties acknowledge that a Change Order for this Contract may or may not entitle the Contractor to an equitable adjustment in the Contractor's compensation or the

performance deadlines under this Contract and that such Change Order may require approval of the Natural Resources or Environmental Protection Commission.

4.7 Department's right to review and observe. The Department shall have the right to review and observe, at any time, completed work or work in progress. Contractor shall upon reasonable notice allow the Department, or anyone designated by the Department, to inspect its facilities and books and records relating to invoicing and time records to monitor and evaluate performance of this Contract.

SECTION 5. COMPENSATION.

5.1 Pricing. The Contractor will be paid for the services described in this Contract in an amount not to exceed the amount listed in the Special Conditions of this Contract.

5.2 Billings. The Contractor shall submit an invoice for services rendered in accordance with this Contract at intervals provided for in the Special Conditions of this Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Department shall pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514 (2003 Supp.) The Department may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514.

Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any goods or services provided by or on behalf of the Contractor under this Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Contract.

5.3 Delay of Payment Due to Contractor's Failure. If the Department in good faith determines that the Contractor has failed to perform or deliver any service or product as required by this Contract, the Contractor shall not be entitled to any compensation under this Contract until such service or product is performed or delivered. In this event, the Department may withhold that portion of the Contractor's compensation, which represents payment for service or product that was not performed or delivered.

5.4 Retained Amounts. The Department shall retain ten percent (10%) of the compensation owed the Contractor associated with this Contract to secure Contractor's performance under this Contract. The Retained Amount shall be payable only upon the Department's issuance of a written Final Notice of Acceptance.

5.5 Erroneous Payments and Credits. Contractor shall promptly re-pay or refund to DNR the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by Contractor or notification by DNR of the overpayment or erroneous payment.

5.6 Set-Off Against Sums Owed by the Contractor. In the event that the Contractor owes the State any sum under the terms of this Contract, any other Contract, pursuant to any judgment, or pursuant to any lack the State may set off the sum owed to the State against any sum owed by the State to the Contractor in the State's sole discretion, unless otherwise required by law. The Contractor agrees that this provision constitutes proper and timely notice under the law of setoff.

SECTION 6. TERMINATION.

6.1 Immediate Termination by the Department. The Department may terminate this Contract for any of the following reasons effective immediately without advance notice:

6.1.1 In the event the Contractor is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

- 6.1.2 The Department determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, a client's life, health or safety to be jeopardized;
- 6.1.3 The Contractor fails to comply with confidentiality laws or provisions;
- 6.1.4 The Contractor furnished any statement, representation or certification in connection with this Contract or the RFP which is materially false, deceptive, incorrect or incomplete.

6.2 Termination for Cause. The occurrence of any one or more of the following events shall constitute cause for the Department to declare the Contractor in default of its obligations under this Contract.

- 6.2.1 The Contractor fails to perform, to the Department's satisfaction, any material requirement of this Contract or is in violation of a material provision of this Contract, including, but without limitation, the express warranties made by the Contractor;
- 6.2.2 The Department determines that satisfactory performance of this Contract is substantially endangered or that a default is likely to occur;
- 6.2.3 The Contractor fails to make substantial and timely progress toward performance of the Contract;
- 6.2.4 The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the Department reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- 6.2.5 The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this Contract; or
- 6.2.6 The Contractor has engaged in conduct that has or may expose the State or the Department to liability, as determined in the Department's sole discretion.
- 6.2.7 The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property right.

6.3 Notice of Default. If there is a default event caused by the Contractor, the Department shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the Department's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the Department may either:

- 6.3.1 Immediately terminate the Contract without additional written notice; or,
- 6.3.2 Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

6.4 Termination upon Notice. Following 30 days' written notice, the Department may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this Contract to the Department up to and including the date of termination.

6.5 Termination Due to Lack of Funds or Change in Law. The Department shall have the right to terminate this Contract without penalty by giving sixty (60) days' written notice to the Contractor as a result of any of the following:

- 6.5.1 Adequate funds are not appropriated or granted to allow the Department to operate as required and to fulfill its obligations under this Contract;

- 6.5.2 Funds are de-appropriated or not allocated or if funds needed by the Department, at the Department's sole discretion, are insufficient for any reason;
- 6.5.3 The Department's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Department;
- 6.5.4 The Department's duties are substantially modified.

6.6 Remedies of the Contractor in Event of Termination by the Department. In the event of termination of this Contract for any reason by the Department, the Department shall pay only those amounts, if any, due and owing to the Contractor for services actually rendered up to and including the date of termination of the Contract and for which the Department is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the Department under this Contract in the event of termination. However, the Department shall not be liable for any of the following costs:

- 6.6.1 The payment of unemployment compensation to the Contractor's employees;
- 6.6.2 The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;
- 6.6.3 Any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;
- 6.6.4 Any taxes that may be owed by the Contractor in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

6.7 The Contractor's Termination Duties. The Contractor upon receipt of notice of termination or upon request of the Department, shall:

- 6.7.1 Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, and conclusions resulting there from, any other matters the Department may require.
- 6.7.2 Immediately cease using and return to the Department any personal property or materials, whether tangible or intangible, provided by the Department to the Contractor.
- 6.7.3 Comply with the Department's instructions for the timely transfer of any active files and work product produced by the Contractor under this Contract.
- 6.7.4 Cooperate in good faith with the Department, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor.
- 6.7.5 Immediately return to the Department any payments made by the Department for services that were not rendered by the Contractor.

SECTION 7 CONFIDENTIAL INFORMATION

7.1 Access to Confidential Data. The Contractor's employees, agents and subcontractors may have access to confidential data maintained by the Department to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by the Department. The Contractor shall provide to the Department a written description of its policies and procedures to safeguard confidential information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in

connection with the performance of the Contract. The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Contract. The private or confidential data shall remain the property of the Department at all times.

7.2 No Dissemination of Confidential Data. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the Department, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the Department. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of the Department.

7.3 Subpoena. In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the Department and cooperate with the Department in any lawful effort to protect the confidential information.

7.4 Reporting of Unauthorized Disclosure. The Contractor shall immediately report to the Department any unauthorized disclosure of confidential information.

7.5 Survives Termination. The Contractor's obligation under this Contract shall survive termination of this Contract.

SECTION 8. INDEMNIFICATION.

8.1 By the Contractor. The Contractor agrees to indemnify and hold harmless the State of Iowa and the Department, its officers, employees and agents appointed and elected and volunteers from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the State of Iowa or the Department, related to or arising from:

- 8.1.1 Any breach of this Contract;
- 8.1.2 Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor;
- 8.1.3 The Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor;
- 8.1.4 Any failure by the Contractor to comply with the compliance with the Law provision of this Contract;
- 8.1.5 Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Iowa;
- 8.1.6 Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right;
or
- 8.1.7 Any failure by the Contractor to adhere to the confidentiality provisions of this Contract.

8.2 Survives Termination. Indemnification obligation of the parties shall survive termination of this Contract.

SECTION 9. LIMITATION OF LIABILITY.

The Contractor expressly acknowledges that the [name of project or services] is subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the [name of project or services] the Contractor shall not hold the Department liable in any manner for the resulting changes. The Department

shall use best efforts to provide thirty (30) days' written notice to the Contractor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair the Department's right to terminate the Contract pursuant to the termination provisions. For information regarding limitation of vendor liability, see: <http://das.gse.iowa.gov/Limitations.pdf>.

SECTION 10. REPRESENTATIONS.

10.1 Construction of Representations Expressed in this Contract with Warranties Implied by Law. All representations made by the Consultant in all provisions of this Contract and the Proposal by the Consultant, whether or not this Contract specifically denominates the Consultant's promise as a representation or whether the representation is created only by the Consultant's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the Department, shall not be construed as limiting or negating any representation provided by law, including without limitation, the Consultant's duty to perform in accordance with the applicable standard of care for its professional services. The provisions of this Section apply during the term of this Contract and any extensions or renewals thereof.

10.2 Concepts, Materials, and Works Produced. Consultant represents that, to the best of the Consultant's knowledge, all the concepts, materials and Works produced, or provided to the Department pursuant to the terms of this Contract shall be wholly original with the Consultant or that the Consultant has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and Works. The Consultant represents that, to the best of the Consultant's knowledge, the concepts, materials and Works and the Department's use of same and the exercise by the Department of the rights granted by this Contract shall not infringe upon any other work, other than material provided by the Contract to the Consultant to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Consultant represents that, to the best of the Consultant's knowledge, it is the owner of or otherwise has the right to use the software, the materials owned by the Consultant and any other materials, Works and methodologies used in connection with providing the services contemplated by this Contract.

10.3 Professional Practices. The Consultant represents that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

10.4 Conformity with Contractual Requirements. The Consultant represents that the Works will be in conformance with the terms and conditions of this Contract.

10.5 Authority to Enter into Contract. The Consultant represents that it has full authority to enter into this Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the Department.

10.6 Obligations Owed to Third Parties. The Consultant represents that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Consultant pursuant to this Contract are or will be fully satisfied by the Consultant so that the Department will not have any obligations with respect thereto.

10.7 Title to Property. The Consultant represents that, to the best of the Consultant's knowledge, title to any property assigned, conveyed or licensed to the Department is good and that transfer of title or license to the Department is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.

SECTION 11. CONFLICT OF INTEREST

The Contractor covenants that the Contractor presently has no interest and shall not acquire any interest, direct and indirect, which would conflict in any manner or degree with the performance of services required under this contract. The Contractor further covenants that in the performance of this contract no person having any such interest shall be

employed. During the term of this Contract, Contractor shall not provide services that would create a conflict of interest with the Contractor's duties set out in this Contract. In determining whether a particular activity creates an unacceptable conflict of interest, situations in which an unacceptable conflict shall be deemed to exist shall include, but not to be limited to, any of the following:

- 11.1 The activity involves the use of the state's or Department's time, facilities, equipment, and supplies or other evidences of employment for purposes other than the performance of Contractor's obligations under this Contract.
- 11.2 The activity involves the receipt of, promise of, or acceptance of money or other consideration by Contractor from anyone other than the state or Department for the performance of any acts that Contractor is required or expected to perform as a part of Contractor's performance under this Contract.
- 11.3 The outside employment or activity is subject to the official control, inspection, review, audit, or enforcement authority of the Department.

If the activity creating a conflict of interest is in progress when the term of this Contract begins or is described in paragraph "11.1" or "11.2", Contractor shall immediately cease the activity. During the term of this Contract, Contractor shall not enter into any activity described in paragraph "11.3" or which constitutes any other unacceptable conflict of interest. Contractor shall immediately disclose to the Department the existence of any conflict of interest, including conflicts of interest which are described in paragraph "11.3" and are in progress when the term of this Contract begins.

SECTION 12. CONTRACT ADMINISTRATION.

12.1 Independent Contractor. The status of the Contractor shall be that of an independent contractor. The Contractor, its employees, agents and any subcontractors performing under this Contract are not employees or agents of the State of Iowa or any agency, division or department of the state. Neither the Contractor nor its employees shall be considered employees of the Department or the State of Iowa for federal or state tax purposes. The Department will not withhold taxes on behalf of the Contractor (unless required by law).

12.2 Incorporation of Documents. The RFP, and amendments and written responses to bidders' questions (collectively RFP) and the Contractor's Proposal submitted in response to the RFP, form the Contract between the Contractor and the Department and are incorporated herein by reference. The parties are obligated to perform all services described in the RFP and Proposal unless the Contract specifically directs otherwise.

12.3 Order of Priority. In the event of a conflict between the Contract, the RFP and the Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the RFP; (3) Proposal.

12.4 Compliance with the Law. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or suppliers. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract. The Contractor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 IAC, Sec 4.

12.5 Amendments. This Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to this Contract must be in writing and fully executed by the parties.

12.6 Third Party Beneficiaries. There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State, the Department and the Contractor.

12.7 Choice of Law and Forum. The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, the exclusive

jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa wherever jurisdiction is appropriate. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the Department or the State of Iowa.

12.8 Assignment and Delegation. This Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.

12.9 Use of Third Parties. The Department acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. The Contractor shall notify the Department in writing of all subcontracts relating to services to be performed under this contract. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all services performed under this Contract. All restrictions, obligations and responsibilities of the Contractor under this Contract shall also apply to the subcontractors. The Department shall have the right to request the removal of a subcontractor from the Contract for good cause.

12.10 Integration. This Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in this Contract.

12.11 Headings or Captions. The paragraph headings or captions used in this Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

12.12 Not a Joint Venture. Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived here from. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.

12.13 Joint and Several Liabilities. If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default of activities and obligations.

12.14 Supersedes Former Contracts or Agreements. This Contract supersedes all prior Contracts or Agreements between the Department and the Contractor for the services provided in connection with this Contract.

12.15 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the Department and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

12.16 Notice.

12.16.1 Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth in the Special Conditions of this Contract.

12.16.2 Each such notice shall be deemed to have been provided:

12.16.2.1 At the time it is actually received; or,

12.16.2.2 Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

12.16.2.3 Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

12.16.3 From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

12.17 Cumulative Rights. The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

12.18 Severability. If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.

12.19 Time is of the Essence. Time is of the essence with respect to the performance of the terms of this Contract.

12.20 Authorization. Each party to this Contract represents and warrants to the other parties that:

12.20.1 It has the right, power and authority to enter into and perform its obligations under this Contract.

12.20.2 It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Contract, and this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

12.21 Successors in Interest. All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

12.22 Record Retention and Access. The Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the Department throughout the term of this Contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records.

12.23 Solicitation. The Contractor warrants that no person or selling agency has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

12.24 Obligations beyond Contract Term. This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. All obligations of the Department and the Contractor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Contract.

12.25 Counterparts. The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

12.26 Additional Provisions. The parties agree that if an Addendum, Rider or Exhibit is attached hereto by the parties, and referred to herein, and then the same shall be deemed incorporated herein by reference.

12.27 Further Assurances and Corrective Instruments. The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Contract.

12.28 Delay or Impossibility of Performance. The Contractor shall not be in default under this Contract if performance is delayed or made impossible by an act of God, flood, fire or similar events. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Contractor. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of this Contract.

12.29 Non-discrimination Provisions. The Contractor agrees to the following:

12.29.1 The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, national origin, age, or mental or physical disability. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated, during employment, without regard to their race, creed, color, religion, sex, national origin, sexual orientation, gender identity, age or mental or physical disability except where mental or physical disability relates to a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor's business. Such action shall include but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to post notices, setting forth provisions of this nondiscrimination clause, in conspicuous places available to employees and applicants for employment.

12.29.2 The Contractor shall in all solicitations or advertisements for employees, placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, creed, color, religion, sex, national origin, sexual orientation, gender identity, age, or mental or physical disability except where mental or physical disability is a bona fide occupation qualification reasonably necessary to the normal operation of the Contractor's business.

12.29.3 The Contractor shall comply with all relevant provisions of the Iowa Civil Rights Act of 1965, as amended, Iowa Executive Order 15 or 1973, Chapter 19B, Code of Iowa, Federal Executive Order 11246 of 1965, as amended by Federal Executive Order 11376 of 1967, and Title VI of the Civil Rights Act of 1964, as amended. The Contractor shall furnish all information and reports requested by the state of Iowa or required by, or pursuant to, the rules and regulations thereof and shall permit access to payroll and employment records by the state of Iowa for purposes of investigation to ascertain compliance with such rules, regulations or requests, or with this nondiscrimination clause.

12.29.4 In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the aforesaid rules, regulations or requests, this contract may be canceled, terminated or suspended in whole or in part. In addition, the state of Iowa may take such further action, and such other sanctions may be imposed and remedies invoked, as provided by the Iowa Civil Rights Act of 1965, as amended, Chapter 216, Code of Iowa, or as otherwise provided by law.

12.29.4 The Contractor shall include the provisions of this attachment in every subcontract, unless specifically exempted by approval of the state of Iowa, so that such provisions shall be binding on each subcontract. The Contractor shall take such action with respect to any subcontract as the state of Iowa may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the state of Iowa, the Contractor may request the state of Iowa to enter into such litigation to protect the interests of the state of Iowa.