



University of Nebraska–Lincoln
September 28, 2009
Request for Proposals #725613
Commodity Internet Services
For
University of Nebraska Computing Services Network (UNCSN)
Omaha Location

Key Dates and Times:

Bids Due: Tuesday, October 20, 2009 2:00 P.M. Local Time

Office of University Services
Purchasing Department
1700 “Y” Street
Lincoln, Nebraska 68588-0645

Requests for reasonable accommodations needed in order to participate in the process described in this RFP may be directed to the Office of Equity, Access & Diversity, 128 Canfield Administration; phone- (402) 472-2322; Voice/TDD-(402) 472-3417.

TABLE OF CONTENTS

<u>1.0 COVER SHEET AND SPECIFICATIONS</u>	4
PROPOSAL COVER SHEET	4
SPECIFICATIONS	5
1.1 HISTORY AND BACKGROUND OF BIDDER	5
1.2 DESCRIPTION OF THE GOOD OR SERVICE SOUGHT	5-8
1.3 PRICE; TERM	8-10
1.4 REFERENCES	10
1.5 INSURANCE.....	10
1.6 IMPLEMENTATION/DELIVERY TIME LINE	10
<u>2.0 COMPONENTS OF THE PROCESS</u>	10
2.1 REQUIREMENTS-RESPONDING TO SPECIFICATIONS	10
2.2 COMMUNICATIONS	10
2.3 CRITICAL DATES	11
2.4 BASIS OF SELECTION	11
2.5 NEGOTIATION	12
2.6 NOTIFICATION OF AWARD	12
2.7 RESERVATION OF RIGHTS; REJECTION OF PROPOSALS; NON-RESPONSIVE PROPOSALS.....	12
2.8 PUBLIC INFORMATION.....	12
2.9 BOARD OF REGENTS APPROVAL	12
<u>3.0 PROPOSAL SUBMITTAL REQUIREMENTS</u>	12
3.1 SUBMITTALS AND BID OPENING	12
3.2 MAILING LABEL.....	12-13
3.3 BIDDER QUESTIONS; CLARIFICATIONS, AND ADDENDA INTERPRETATION.....	13
3.4 COST OF PREPARATION.....	13
3.5 BIDDER QUALIFICATION	13
3.6 EXCEPTIONS.....	13-14
<u>4.0 TERMS AND CONDITIONS</u>	14
4.1 GENERAL.	14
4.2 TERMINATION FOR CAUSE	14
4.3 CONTRACT ASSIGNMENT	14
4.4 INDEMNITY, GENERAL, AND PATENT	14
4.5 GOVERNING LAW; VENUE.....	14
4.6 FORCE MAJEURE.....	14-15

4.7	COMPLIANCE WITH LAWS AND REGULATIONS; GRAMM LEACH BLILEY; UNIVERSITY OF NEBRASKA POLICIES	15
4.8	SEXUAL HARASSMENT	15
4.9	DRUG FREE WORKPLACE	15
4.10	WEAPONS POLICY	15-16
4.11	EQUAL OPPORTUNITY IN PROCUREMENT AND CONTRACTS	16
4.12	PROPRIETARY INFORMATION, CONFIDENTIAL EMPLOYEE INFORMATION, HIPAA; FERPA	16
4.13	SUBCONTRACTORS.....	16
4.14	LEGISLATIVE FUNDING OUT CLAUSE.....	16
4.15	PARKING	16
4.16	BUILDING RULES AND REGULATIONS; TOBACCO USE	17
4.17	USE OF PREMISES.....	17
4.18	HAZARDOUS WASTE GENERATED BY CONTRACTORS	17
4.19	DELIVERY; F.O.B.; SHIPPING	17
4.20	QUANTITY	17
4.21	INSPECTION	17
4.22	DEFECTIVE GOODS OR WORK	18
4.23	LIENS	18
4.24	FEDERAL, STATE AND LOCAL SALES TAXES; FEDERAL EXCISE TAXES	18
4.25	AMBIGUITIES	18
4.26	RECYCLING POLICY	18
4.27	CONTRACTOR IDENTIFICATION	18
4.28	LEGAL RELATIONSHIP	18
4.29	USE OF UNIVERSITY NAMES AND LOGOS	19
4.30	IMPROPER BUSINESS RELATIONSHIPS AND CONFLICT OF INTEREST PROHIBITED.....	19
4.31	ELECTRONIC AND INFORMATION TECHNOLOGY ACCESSIBILITY	19

SECTION 1.0: COVER SHEET AND SPECIFICATIONS

**PROPOSAL COVER SHEET
UNIVERSITY OF NEBRASKA**

**Office of University Services
Purchasing Department
1700 "Y" Street, Lincoln, Nebraska 68588-0645**

PROPOSAL IN RESPONSE TO RFP #725613

The undersigned authorized officer of the bidder firm represents that the bidder has carefully examined the specifications and conditions contained in the RFP. The bidder fully understands the type and quality of the product(s) and/or service(s) sought by the University of Nebraska (NU) and hereby proposes to supply such at the prices stated and in accordance with the Proposal accompanying this cover sheet.

The bidder acknowledges its receipt of addenda numbered __through __ and further agrees that the provisions of such addenda, as well as those of the RFP, are fully incorporated into bidder's Proposal, unless otherwise clearly stated to the contrary in the Proposal. Proposals containing exceptions to RFP provisions may not be favorably received.

The bidder represents and warrants that the proposal submitted is not the result of collusion with other eligible bidders, with any employee of the State or University, and no effort has been made to preclude NU from obtaining the most advantageous response possible to this RFP.

The successful bidder, on behalf of itself and any subcontractor to the Contract, agrees that it shall use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. Reference Neb. Rev. Stat. 4-108 to 4-114.

Except where a written signature is required, please type or clearly print the following:

BIDDER FIRM: _____

By: _____ Date: _____
Authorized Signature

Signing Officer's Name and Title: _____

Correspondence to the bidder with respect to this RFP may be directed to:

Name _____ Phone # _____
Title _____ FAX # _____
Address _____ E-mail _____

NU appreciates your consideration of this Request for Proposals and looks forward to receiving your response.

Specifications

The University of Nebraska (“NU”) invites proposals from qualified bidders to provide the goods and/or services described below. If the bid process is successful, NU will enter into a contract with the successful bidder for the product or service.

The specifications and requirements listed in this RFP are the minimal standards by which proposals will be judged.

Each Proposal shall provide the information requested or indicate consent to the requirement described. The submitted proposal should be numbered so that responses in the Proposal correspond to the number of the items below.

1.1 History and Background of Bidder:

- A. Describe your company (a brief history may be appropriate), the nature of its legal entity (e.g. a Nebraska corporation, a limited partnership), its size and locations, and number of employees. Confirm that your company is qualified to do business in Nebraska.
- B. The bidder shall provide NU with audited financial statements and that of any parent or holding company for the three most recent fiscal years. Demonstrated financial ability and stability to ensure performance under any contract awarded is of extreme importance to the evaluation of the proposals. Without stating specific reasons, the University may reject or refuse to further evaluate any proposal based on the exercise of its judgment in its sole discretion that the financial position presented in a proposal lacks the qualities that NU deems necessary to the success of the project. Entities unable to meet the requirements set forth in this paragraph may provide other information or guaranties, which in the discretion of NU, meet its concerns regarding financial stability.
- C. Identify any litigation or claim brought against your company within the last seven years, which might reflect adversely on your company’s professional image or ability in relation to providing the goods or services sought under this RFP.
- D. Is your company currently for sale or involved in any transaction to expand or to become acquired by or merged with another organization? If so, please explain. Has your company been involved in any reorganization, acquisition or merger within the last two years? If so, please explain.
- E. Personnel: Provide a list of key technical people in the bidder’s organization. Provide the names and qualifications of personnel who would service UNCSN under this contract.

1.2 Description of the Good or Service Sought:

A. Introduction:

- 1. The University of Nebraska Computing Services Network (UNCSN) is seeking proposals for complete delivery of Internet Services in Omaha. UNCSN encourages alternate proposals, which may result in cost reductions, technical superiority, and/or other advantages, but must be clearly

labeled as an alternate proposal. If a Bidder has the ability to offer Internet services to UNCSN through more than one method or program offering, the Vendor is encouraged to submit multiple responses to this RFP outlining each offering that is being made available to UNCSN. UNCSN intends to make an award on RFP #725613. UNCSN is flexible with the implementation time period to have the internet service up and running, however UNCSN intends to have the internet service operational before January 2010.

2. UNCSN has a statewide responsibility, and as such, provides networking services to numerous locations around the state. This includes connections between all University campuses (UNL, UNK, UNMC and UNO), four Research and Extension Centers, numerous County Extension Offices, Learning Centers, Technology Development Centers and a variety of other field offices. In general, these locations are all connected back to UNCSN.
3. The purpose of this RFP is to identify the bidder or bidders able to provide UNCSN with internet services offering the most flexible, reliable, and least expensive service possible for the next three (3) to five (5) years. **The RFP will be for bidders to provide pricing for internet services in Omaha, Nebraska. Windstream is our primary internet service provider in Lincoln. For purposes of redundancy, the Omaha internet service must have divergent routes from our Lincoln Service. Windstream's upstream connection from Lincoln is in Dallas Texas and Louisville Kentucky.**
4. The University actively seeks Bidders willing to build out their network where necessary to reach University facilities in a way that is mutually beneficial to both parties.
5. Term of the contract will be for three (3) years with an option for two (2) additional one (1) year extensions to be determined by mutual agreement of UNCSN and the selected service provider.
6. The University will evaluate the response to this RFP with consideration for both one-time costs and operating costs through the term. UNCSN will analyze options based on a three year operating window and will seek the solution that provides the lowest cost and the greatest flexibility during this time frame.

B. Technical Requirements when Responding to Options 1, 2 or 3 of this RFP:

1. The Bidder selected through this RFP will need to provide up to 1000Mbps of Internet capacity to UNCSN and other University entities (the final amount of capacity purchased will be decided at the time of the award of this RFP). Other University campuses may also choose to purchase services as part of this RFP. It is likely that our needs will grow in the future, but no guarantees to that effect are made. The initial contract amount for this service will be approx 500Mbps or more, but eventual bandwidth will likely increase within the next 3-5 years.
2. Because of changing conditions within the University environment (number of students attending at any given time, research project needs...), the preferred Bidder **MUST** be able to provide a physical connection of Gigabit Ethernet to UNCSN. This will allow UNCSN to adjust to changing demands quickly without a lengthy delay while additional and/or different circuits are installed.
3. Bidder will make changes to internet capacity within twenty-four (24) business hours of a bandwidth request by UNCSN.

4. For the duration of the contract, the Bidder will maintain adequate internet capacity within their network(s) to meet the capacity obligations of this RFP. If it is determined that UNCSN is unable to fully utilize its contracted amount of capacity on a regular basis because of a deficiency within the Bidder's network, UNCSN reserves the right to terminate the contract without penalty, or to request a credit based upon the amount of capacity we were unable to consume, at UNCSN's choosing.
5. While UNCSN will not dictate how maintenance and service is provided, it is required that the Bidder assume all responsibility for the maintenance and overall operation of the Bidder supplied equipment and services, including those provided by subcontractors. Bidder access to required UNCSN locations will be made available on a 7x24x365 basis.
6. UNCSN expects the Bidder to respond to any outages or interruptions in service within one (1) hour of a detected or reported problem.
7. The selected Bidder will supply replacement equipment within an eight (8) hour time period in case of an equipment failure. UNCSN would view equipment maintenance contracts specifying overnight or next day replacement for failed parts as unacceptable.
8. When planned network maintenance activities are conducted by the Bidder which runs the risk of interrupting or diminishing service to the UNCSN, the UNCSN Network Operation Center(s) must be notified of the event at least three (3) business days in advance. Additionally, the Bidder agrees to work with UNCSN to find an alternate date or time for the maintenance if the proposed time(s) would be particularly harmful to UNCSN.
9. Unless otherwise indicated, the Bidder agrees to have the connection fully operational within sixty (60) calendar days from the date the Bidder is notified that they are a successful bidder.
10. If the selected Bidder is not successful in installing a fully operational circuit within the agreed time period, UNCSN reserves the right to terminate the contract without penalty and award the contract to another Bidder.
11. The installation will not be considered to be complete until both the Bidder and UNCSN agree that the connection is operational and properly carrying production traffic.
12. UNCSN has several "/16" address ranges assigned to it, and is using other addresses from an existing Internet provider. Additional addresses in various class sizes are in use by some members of the educational community that will be using this service. By responding to this proposal, you understand and agree that you are willing to route these addresses.
13. UNCSN will maintain one or more routers that will be carrying a complete set of internet routing tables. The Bidder must agree to provide that information to our routers through BGP routing.
14. At this point in time, UNCSN does not limit, monitor, nor take responsibility for the content of the materials sent across the network. If the Bidder in any way restricts or filters sites or content, such restrictions and filters need to be documented in your response.
15. The Bidder must include a proposed Service Level Agreement (SLA) with their response. The SLA should document the expectations that will exist between the Bidder and UNCSN as it relates to

providing a quality Internet service. If a formal Service Level Agreement does not exist, a “terms and conditions” document may suffice.

16. The Bidder must designate the upstream internet provider and how they interconnect with that provider (ie 10 gig). Also, provide a brief explanation or diagram showing how the Bidder’s network gets to the internet if they are not a Tier 1 provider.
17. Although we believe that this is a private network, there may be requirements to meet the needs of the Communications Assistance for Law Enforcement Act (CALEA). The Bidder should indicate whether they can/will meet the requirements of CALEA on behalf of this network connection and the educational institutions using these Internet services.

C. Site Locations:

1. Bidders should provide pricing for delivered internet services to the following location.

Omaha Site:

Peter Kiewit Institute
1110 S. 67th St.
Omaha, NE 68182-0694

UNCSN will provide necessary rack space to house Bidder required equipment.

D. Business Profile:

1. Financial – If requested, Providers need only supply one (1) copy of the following.

Public Companies

- Annual reports for the last three (3) years
- History and description of the company
- Recent reports from securities analysts
- Published reports about the company

Private Companies

- Audited financial statements or tax forms from three (3) years
- History and description of the company
- Published reports about the company, if any

2. Credit rating/report, letter from bank, suppliers.
3. Security/Risk Management: Providers must provide a description of all Security/Risk Management measures in place to protect the Bidder’s network.

1.3 Price; Term: In order to permit an orderly comparison of proposals received, it is requested that each Provider use the following detailed format. **Failure to complete the University forms may disqualify your proposal.**

- A. **Pricing:** Provide attachments if additional space is required for your responses. The Bidder should provide the following pricing information in a clear and concise manner for UNCSN’s consideration. Please note that:
- Any costs not clearly identified will not be paid by UNCSN.
 - UNCSN is able to participate in State of Nebraska contracts if an applicable State of Nebraska contract for Internet services exists.
 - UNCSN is able to participate in federal GSA contracts if applicable.

1. Identify the location being bid.

Location A:

Peter Kiewit Institute
 1110 S. 67th St.
 Omaha, NE 68182-0694

2. Total one-time installation costs \$_____.
 Example: \$750 one-time installation cost

3. Total monthly recurring costs for delivered internet service per Mbps to Location A \$_____
 300-499 Mbps and \$_____ 500- 1000 Mbps
 Example: \$7,000 for 500-1000 Mbps

***This cost is for a flat fee delivered service. All monthly reoccurring costs should be included in this fee. There should NOT be a separate fee for transport and internet service.

4. Total monthly reoccurring costs for delivered internet service with incremental pricing.

- Example:
- 100Mbps \$10 per Mbps delivered
 - 150Mbps \$10 per Mbps delivered
 - 200Mbps \$10 per Mbps delivered
 - 250Mbps \$10 per Mbps delivered
 - 300Mbps \$10 per Mbps delivered
 - 350Mbps \$10 per Mbps delivered
 - 400Mbps \$10 per Mbps delivered
 - 450Mbps \$10 per Mbps delivered
 - 500Mbps \$9 per Mbps delivered
 - 550Mbps \$9 per Mbps delivered
 - 600Mbps \$9 per Mbps delivered
 - 650Mbps \$9 per Mbps delivered
 - 700Mbps \$8 per Mbps delivered
 - 750Mbps \$8 per Mbps delivered
 - 800Mbps \$8 per Mbps delivered
 - 850Mbps \$7 per Mbps delivered
 - 900Mbps \$7 per Mbps delivered
 - 950Mbps \$7 per Mbps delivered
 - 1000Mbps \$6 per Mbps delivered

5. List any charges such as activation, termination, and/or processing fees for changes in capacity requested by the University during the life of the contract. \$_____

6. Applicable taxes, licenses and fees must be incorporated into the costs above.

B. Proposal Content:

Providers shall ensure that all information required herein be submitted with the proposal. All information provided should be verifiable by documentation requested by the University. Failure to provide all information, inaccuracy or misstatement may be sufficient cause for rejection of the proposal or rescission of an award. Providers are encouraged to provide any additional information describing operational abilities. Responses to each requirement below should be in order and clearly marked with the section number to which they respond. All sections in the RFP should be responded to in detail as part of the Provider's response.

- 1.4 **References:** Provide at least three client references (including length and nature of service relationship, name of the contact person, title, phone number, and address) with which your firm has done comparable business within the past year.
- 1.5 **Insurance:** Describe the nature and extent of the general liability insurance (including completed operations) and workers compensation insurance carried to protect the bidder, recognizing that NU may require additional insurance to protect itself in relation to this project. NU requires that the Board of Regents of the University of Nebraska be added to any policy as an additional named insured. The successful bidder will be required to provide a certificate of insurance in the form attached as Exhibit A prior to the start of the work.
- 1.6 **Implementation/Delivery Time Line:** It is the University's intent to have the network operational in 2009. Regent's approval may be required, which would impact the timing and activities necessary for award.

SECTION 2.0: COMPONENTS OF THE PROCESS

- 2.1 **Requirements--Responding to Specifications:** Each bidder responding to this RFP is expected to submit a well organized, easy-to-read, written proposal, which clearly and coherently provides the information outlined in Section 1.0: Cover Sheet; Specifications. Answers and responses to the information required by Section 1.0 must be numbered to directly coordinate with the number of the inquiry as it appears in Section 1.0.
- 2.2 **Communications:** All questions concerning this RFP shall be in writing, and faxed or e-mailed by the bidder and addressed to:

Carl E. Hutchison
1700 Y Street
University of Nebraska–Lincoln
Lincoln, Nebraska 68588-0645
Fax: (402)472-2246
E-mail: unlpurchasing2@unl.edu

For additional information concerning bidder questions, clarifications and addenda, see Section 3.0: Proposal Submittal Requirements, item 3.3.

2.3 **Critical Dates:**

- 2.3.1 On the front cover of this RFP, a preliminary pre-bid conference may be indicated. If the conference is mandatory, then any entity wishing to preserve its ability to bid must be represented and will be required to register at the meeting. Persons planning to attend a preliminary conference should contact the UNL Purchasing Department [(402) 472-2126] no later than (N/A) in order that adequate meeting space is reserved. Persons planning to attend a preliminary conference are strongly encouraged to direct any questions they have about this RFP to the attention of Carl E. Hutchison, such questions to be in writing and delivered by fax [(402) 472-2246] or e-mail to the address listed above, no later than (N/A).
- 2.3.2 Proposals are due upon the date and time set forth on the cover to this RFP, late proposals will not be accepted.
- 2.3.3 Any bid may be withdrawn prior to the scheduled time for the opening of bids. Unless otherwise stated in this RFP, no Proposal may be rescinded within ninety (90) days following the scheduled opening of proposals without the approval of the Director of Purchasing.

2.4 **Basis of Selection:**

- 2.4.1 The award of a contract, if any, shall be made to the most responsible bidder, taking into consideration the best interest of the University. While pricing is often an important criterion, it may or may not be determinative. NU shall establish evaluation criteria and their components before proposals are opened. NU may waive any irregularity or other requirement, which it deems does not materially affect the selection process. Factors that may be considered include, but are not limited to, clarity and responsiveness, conformity with RFP specifications, cost effectiveness, design, delivery, installation, the specific needs of the NU community, bidder's reputation and/or past performance, quality of goods and/or services offered to NU, technical performance, installation, and ability to expand with NU's needs.
- 2.4.2 Proposals will be evaluated, and the contract, if any, awarded and performed in compliance with all relevant University of Nebraska policies.
- 2.4.3 The deliberations of the evaluation committee are confidential, and no representative of a bidder should directly or indirectly contact any member of the evaluation committee, or any faculty or staff member concerning this RFP, unless permission is explicitly otherwise given to the bidder by the Purchasing Department, for the purposes of providing additional information or facilitating the evaluation. Any attempt by a bidder to contact a member of the evaluation committee or any other faculty or staff member about this RFP can lead to disqualification.
- 2.4.4 NU reserves the right to request additional information from a bidder in any format which NU deems necessary to evaluate the proposals, including formal Q & A or meetings and presentations. The evaluation may include subjective assessment of the proposal materials, including factors not listed specifically in this RFP.
- 2.4.5 Bidders may be required to submit samples of any item or product offered in response to this RFP. Each sample must be clearly identified by the name of the bidder, name of the manufacturer, or other information, if requested, relevant to the evaluation of the sample.

- 2.5 **Negotiation:** NU reserves the right to conduct discussions and negotiations with any or all respondents to this RFP, concerning any element of or response to this RFP, for the purpose of clarification and

modification. Discussion and negotiation may include, but is not limited to, the scope of work, design, schedule, and price.

- 2.6 **Notification of Award:** Upon completion of the evaluation process, the bidders will be notified in writing, or by e-mail, of the identity of the successful bidder. If for any reason, NU and the successful bidder fail to finalize a contract, NU reserves the right to attempt to enter into a contract with the next most responsive bidder, based on evaluation results.
- 2.7 **Reservation of Rights: Rejection of Proposals; Non-Responsive Proposals:** NU reserves the right to reject all proposals received and discontinue the evaluation and selection process at any time. NU also reserves the right to resolicit proposals in response to this RFP or any amendment of this RFP. If no responsive bids are received by the NU, NU reserves the right to negotiate with any firm in order to substantially fulfill the RFP under such terms and conditions as NU deems best serve its needs.
- 2.8 **Public Information:** Bidders' names are public information at the time proposals are opened at the scheduled bid closing time. Until the successful bidder is determined and announced, NU will treat all other information as confidential until the successful bidder is announced, then the proposals will be treated as public information, except to the extent that any bidder gives NU specific written notice of information it believes to be proprietary, commercial, a trade secret, or otherwise confidential. Should NU determine that such bidder-identified information is indeed proprietary or otherwise confidential, then it will not publicly disclose that portion of the proposal without the consent of the bidder, unless otherwise required by law, e.g. judicial order. As a general matter, NU considers financial statements of privately held companies, if such are a required submission, to be proprietary. Pricing terms appearing in proposals are considered public information.
- Bidder shall be chiefly responsible for providing the defense for any challenge to a decision to withhold information contained in a Proposal, based upon bidder's identification of the information as not subject to public disclosure.
- 2.9 **Board of Regents Approval:** In certain instances, the Bylaws and Policies of the Board of Regents of the University of Nebraska require that the Board approve the award of a contract. Bidders shall be notified if Board of Regents approval is required. In such cases, no contract or award shall be enforceable absent the Regents' approval.

SECTION 3.0: PROPOSAL SUBMITTAL REQUIREMENTS

- 3.1 **Submittals and Bid Opening:** One (1) original and two (2) copies, marked accordingly must be received by NU in the Office of University Services, Purchasing Department, 1700 Y Street, University of Nebraska–Lincoln, Lincoln, Nebraska 68588-0645 no later than the date and time set forth on the cover of this RFP. At that time, the proposals will be **opened publicly and only the names of those firms submitting proposals will be read aloud.** No proposals received after the opening time will be considered. Bidders may be requested to provide an electronic copy of their proposals. All proposals submitted, along with any exhibits, addenda or modifications shall be the property of NU.
- 3.2 **Mailing/Delivery:** Each bidder is responsible for making sure their proposal is properly addressed/identified. In order to assure proper processing and receipt, your bid submittal should be returned in an envelope (or parcel) and delivered to/addressed as follows: **University of Nebraska–Lincoln, Office of University Services, Purchasing Department, 1700 Y Street, Lincoln, NE 68588-0645** along with the applicable “**RFP Number**” and “**Title of Bid**” to which you are responding.

If you are delivering your proposal in person, it should be sealed, submitted and labeled in the above manner, and given to an authorized member of the Purchasing staff.

- 3.3 **Bidder Questions, Clarifications, and Addenda Interpretation:** It is the responsibility of each bidder to become familiar with the project requirements. Lack of knowledge concerning the project requirements will not relieve bidders of the conditions required as responsive to this RFP.

Except in the course of preliminary conference open to all interested parties, should one be held, no interpretation related to the requirements of this RFP will be made verbally to any bidder by NU. Any request for bid interpretation shall be put in writing and faxed or e-mailed by the bidder and addressed to:

Carl E. Hutchison
Purchasing
University of Nebraska–Lincoln
Lincoln, Nebraska 68588-0645
FAX (402) 472-2246
E-mail: unlpurchasing2@unl.edu

In order to be given consideration, any requests for interpretation must be received no later than Wednesday, October 14, 2009. Any and all interpretations and any supplemental instructions provided by NU shall be in the form of a written addenda to the Request for Proposal, which if issued, will be mailed, e-mailed or faxed to all known interested parties or bidders, or such other form of communication as NU deems reasonably likely to reach interested parties; provided however, that bidders who became aware of this RFP by accessing the UNL Purchasing Department website are responsible to check the website from time-to-time in order to inform themselves of any addenda to the RFP. The bidder, not NU, is responsible to secure notification and delivery of an addendum. Failure of any bidder to receive any addenda or other information released by NU after the initial distribution of this RFP shall not relieve the bidder from the obligations specified in addenda or other releases. All addenda shall be incorporated in the RFP to the same effect as if they were set out in the initial RFP release.

The bidders are solely responsible for providing their correct mailing addresses, email addresses, and fax numbers for any response to inquiries. NU is not responsible for lost or undeliverable responses.

- 3.4 **Cost of Preparation:** NU will not be responsible for any costs incurred in preparation of the bidder's proposal.
- 3.5 **Bidder Qualification:** NU may make any investigations deemed necessary or request any documentation to evaluate the ability of the bidder to perform the specifications of this RFP. The bidder shall furnish NU with pertinent information and data upon request. NU reserves the right in its sole discretion to reject any bid based on the facts resulting from an investigation which indicate that a bidder: (a) is not properly qualified to carry out the obligations of any contract awarded; or (b) presents a public image not in keeping with the professional standards and reputation which NU expects. Conditional bids will not be accepted.
- 3.6 **Exceptions:** Any exceptions with respect to any requirement of this RFP must be specified in writing as part of the submitted proposal. Specific reference must be made to the paragraph numbers and other identifying criteria with respect to any exceptions proposed by the bidder. Generally, NU will not look favorably upon the request for any exceptions. However, NU recognizes that in certain instances, an exception may be appropriate, and therefore, will consider and reserves the right to grant exceptions when NU deems such exceptions promote its best interests. Conditional bids will not be considered.

SECTION 4.0: TERMS AND CONDITIONS

The information contained in this section is a partial listing of standard terms commonly appearing in contracts awarded by NU. All proposals are subject to these terms, unless otherwise explicitly stated.

4.1 **General:** The specifications, terms, and conditions set forth in this RFP and any related award document shall be incorporated by reference, without Bidder exception, into any resulting contract between the University and the successful bidder. Any additional or different terms proposed by the successful bidder are not accepted, unless the same are expressly accepted in writing by NU.

The contract may not be changed in any way except by an instrument in writing signed by both parties. The contract cancels and supersedes any prior understandings or agreements between the parties with respect to the subject matter hereof. Failure of any party to enforce its right under the contract shall not constitute a waiver of such rights or of any other rights under the contract.

4.2 **Termination for Cause:** NU may terminate the contract at any time if the successful bidder fails to carry out its terms or fails to make substantial progress toward the fulfillment of those terms. In such an event, NU shall provide the successful bidder with a thirty (30) day written notice of the terms in breach. If after such notice, the successful bidder fails to remedy the breach within those thirty (30) days, NU may immediately cancel the contract.

4.3 **Contract Assignment:** Contracts granted pursuant to this RFP shall not be transferred or assigned without prior written consent of NU.

4.4 **Indemnity, General and Patent:** The successful bidder shall indemnify and save harmless NU and its respective officers, agents and employees from and against any and all liabilities and losses whatsoever, including without limitation, costs and expenses in connection therewith, on account of, or by reason of, injury to or death of, any person whatsoever, or loss of or damage to any property whatsoever, suffered or sustained in the case of, or in connection with, the performance of the contract, except for that liability and loss arising from the acts or omissions of NU or its agents.

With respect to anything provided to NU by the bidder pursuant to this RFP, the bidder shall indemnify the University and its respective officers, agents and employees against liability, including costs and attorney's fees for infringement of any United States patent, copyright, trade infringement or other intellectual property right arising out of the manufacture, delivery and use of such by NU.

4.5 **Governing Law; Venue:** The laws of the State of Nebraska shall govern any contract awarded to the successful bidder. Any dispute arising under any contract awarded, which is not settled by agreement of the parties, shall be resolved in forums (except for applicable federal appellate courts) located in the State of Nebraska.

4.6 **Force Majeure:** Neither party to the contract shall be liable to the other for damages for any delay in performance arising out of causes beyond its reasonable control and without its fault or negligence, including without limitation: (1) fire, flood or water damage, elements of nature or other acts of God, including any of the foregoing that are harmful to electronic circuitry; (2) outbreak or escalation of hostilities, war, riots, or civil disorders in any country; (3) act or omission of the other party or any governmental authority, (4) labor disputes (whether or not the employees' demands are reasonable or within the party's power to satisfy), (5) non-performance by a third party (including any voice or data telecommunications common carrier), (6) failures or fluctuations in telephone, computer or other telecommunications equipment or lines or other equipment, (7) the real, potential, or credible threat of terrorist activity, or (8) a health emergency (e.g. serious outbreak of contagious disease such as a influenza

pandemic) which in the judgment of NU poses a serious threat to the public health. In the case of any such excusable delay, the non-performing party will be excused from performance of any affected obligation only for so long as the cause of the excusable delay prevails and such party continues to use commercially reasonable efforts to re-commence performance of its obligations as soon as possible; provided however, that the parties may mutually agree that such excusable delay is cause to cancel the contract in its entirety, in which case neither party shall be liable to the other for any further performance in relation obligations arising after cancellation.

- 4.7 **Compliance with Laws and Regulations; Gramm Leach Bliley; University of Nebraska Policies:** This contract must comply with all applicable federal, state and local laws, specifically including all laws and regulations related to the protection and security of any personal information gathered by the successful bidder, such as the Gramm Leach Bliley Act implemented at the University of Nebraska by Presidential Executive Memorandum No. 26 which requires specific vendor contract provisions; and all other applicable policies of the University of Nebraska. Bidder agrees to indemnify NU against any loss, cost, liability, or damage by reason of bidder's violation of any applicable law or regulation. Any successful bidder must be qualified to conduct the business necessary to the performance of the contract in the State of Nebraska throughout the duration of the contract term or any renewal thereof. The successful bidder shall obtain, at its own cost and expense, all necessary licenses, professional certifications and permits and shall assume the responsibility for and pay all applicable fees and all other taxes, which are now or may be imposed in the future by any governmental authority arising out of the conduct of bidder's business.
- 4.8 **Sexual Harassment:** State and federal law, as well as the policies of the Board of Regents of the University of Nebraska, prohibits sexual harassment of members of the NU community. Sexual harassment includes any unwelcome sexual advance, any request for a sexual favor, or any other verbal or physical conduct of a sexual nature that is so pervasive as to create a hostile or offensive environment. NU contractors, subcontractors and suppliers for this project are required to exercise control over their employees so as to prohibit acts of sexual harassment of NU employees, students and other members of the NU community. The employer of any person who NU, in its reasonable judgment, determines has committed an act of sexual harassment agrees as a term and condition of any contract awarded hereunder to cause such person to be removed from the project site and from NU premises and to take such other action as may be reasonably necessary to cause the sexual harassment to cease.
- 4.9 **Drug Free Workplace:** The successful bidder agrees that in the performance of this contract, neither the bidder nor any of its employees shall engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity covered by the contract. NU reserves the right to request a copy of the bidder's Drug Free Workplace Policy. The Bidder further agrees to insert a provision similar to this statement in all subcontracts or services required in response to this RFP.
- 4.10 **Weapons Policy:** Possession of dangerous weapons (concealed or unconcealed) on NU property, on the work site, in NU vehicles, or in personal vehicles when on NU property shall be a violation of NU policy. (A dangerous weapon shall include guns, knives, explosives, or any other device as determined by NU, which in the manner used or intended is capable of producing death or bodily injury. Devices authorized by the Vice Chancellor for Business and Finance and/or provided to its employees for the purpose of carrying out work responsibilities shall not be deemed dangerous weapons for the purpose of this policy.) Violations of this policy shall make the offender subject to appropriate disciplinary action. Should NU in its reasonable judgment determine that the bidder or its employee or agent has committed an act in violation of this policy, the bidder agrees as a term and condition of the contract awarded hereunder to cause such person and weapon to be removed from the project site and from NU premises and to take such other action as may be reasonably necessary to ensure compliance with this weapons policy.

4.11 **Equal Opportunity in Procurement and Contracts:** The University of Nebraska recognizes the importance of a strong culturally diverse business community and the positive impact that successful businesses have upon the people of the State of Nebraska. The University of Nebraska assumes a leadership role in actions that will provide business opportunities for all businesses in the State of Nebraska.

Accordingly, the University of Nebraska reaffirms its policy of providing equal opportunity to small business enterprises and to minority, disadvantaged and women owned business enterprises in all aspects of the University of Nebraska's procurement and contracting activities. This includes procurement of contracts for operational supplies and equipment, construction projects and materials, service contracts and License agreements. It is also the University of Nebraska's policy that any person or business seeking the opportunity to do business with the University of Nebraska shall not be discriminated against on the basis of race, color, religion, sex, national or ethnic origin, age, disability, marital status, or veteran status. The University of Nebraska conducts its procurement and contracting activities in a manner designed to prevent unlawful discrimination. University of Nebraska policies are consistent with applicable state and federal laws and regulations prohibiting unlawful discrimination. (See Attachment Equal Opportunity Form)

4.12 **Proprietary Information; Confidential Employee Information; HIPAA; FERPA:** It is to be expected that the parties to the contract may find it necessary to reveal certain proprietary information to each other. The contract may, when proprietary information is exchanged, include certain provisions to mutually protect against the use and disclosure of the proprietary information of each party. In the unusual circumstance that the contract should result in the sharing of employee information protected by the law or University of Nebraska policy, information protected by the Health Insurance Portability and Accountability Act, information protected by the Family Educational Rights and Privacy Act of 1974, or any other information deemed confidential and protected by the law, the parties to the contract agree to maintain the confidentiality of such information to the extent and manner required by the law and University policy.

4.13 **Subcontractors:** The successful bidder shall not subcontract all or substantially all of any facet of the Proposal without the prior written approval of NU. The successful bidder shall be fully responsible for the acts and omissions of its subcontractors and of the persons directly or indirectly employed by them. Every subcontractor shall be bound by the terms of any contract awarded under this RFP; provided however, that no contractual relationship shall exist between any subcontractor and NU unless it is evidenced in a separate contract independent of the contract with the successful bidder.

4.14 **Legislative Funding Out Clause:** Notwithstanding any provision in the contract to the contrary, if the legislative body appropriating funds, does not allocate sufficient funds to allow NU to make any periodic payment agreed to in the contract for any future fiscal period, NU will not be obligated to pay the contract balance remaining at the time of the governmental funding short-fall.

4.15 **Parking:** NU shall not be responsible for providing parking for successful bidder's parking needs. The successful bidder and/or its employees and agents will be solely responsible for any fines resulting from parking violations occurring on NU property.

4.16 **Building Rules and Regulations; Tobacco Use:** Employees of the successful bidder and any subcontractors shall comply with all NU rules and regulations pertaining to conduct in NU's facilities. NU reserves the right to request the removal or replacement of any bidder or subcontractor employee who fails to comply with such rules and regulations.

All buildings and University owned vehicles on the NU campus are tobacco-free. Use of tobacco products is not permitted inside any NU facility. The successful bidder is expected to respect this tobacco-free policy and fully comply with it.

4.17 **Use of Premises:** To the extent that any contract awarded requires the successful bidder or its employees or agents to be present on or within NU's properties, then the bidder shall limit its presence and activities to such areas as are reasonably necessary in order to perform under the contract. The successful bidder shall take such precautions as are required to avoid damage to buildings, facilities, utilities, ground resources, trees and landscape amenities, and other properties adjacent to the bidder's activities within the scope of the contract and agrees to be responsible and/or carry out any repairs for which it is liable, as a result of its performance under the contract.

4.18 **Hazardous Waste Generated by Contractors:** Any hazardous waste that is generated from the performance of any contract awarded shall be properly disposed of by the successful bidder in a timely fashion and in accordance with applicable hazardous waste laws and regulations. The cost for hazardous waste management and disposal is successful bidder's responsibility. Should NU deem it prudent to dispose of any hazardous waste left on its property, as a result of the successful bidder's failure to meet its responsibilities, all costs associated with such disposal shall be deducted from any amount yet to be paid to the bidder and/or billed to the bidder. University Environmental Health Services is to be notified of all hazardous waste issues.

Any non-hazardous waste generated in the performance of this contract must be disposed of off campus by the successful bidder.

4.19 **Delivery; F.O.B.; Shipping:** The successful bidder shall bear all costs of transportation, packing, crating, delivery, installation, storage, and service under warranty for any goods or related services, delivered pursuant to the contract. The successful bidder shall be responsible for and make delivery, including costs of delivery, cartage, temporary storage, off-loading costs, and insurance, F.O.B. destination: University of Nebraska -Lincoln, Lincoln, Nebraska. Unless otherwise specified, all shipments will utilize the best commercial practice to insure safe arrival at the NU delivery points.

4.20 **Quantity:** With respect to quantity of any good purchased under the contract, NU need not accept any variation in quantity except as specified in the contract. Over-shipments may be returned to the bidder at its expense, which shall include a reasonable cost for NU handling, or be retained by NU at no increase in price.

4.21 **Inspection:** NU may, at any time in the course of the contract, inspect and test materials and supplies being used in the performance of the contract, including at the point of manufacture. If inspection and tests are made on contractor's premises, contractor without additional charge shall provide reasonable facilities and assistance for the safety and convenience of the testing/inspection personnel. Except as otherwise agreed in writing, all goods, equipment and supplies furnished under the contract shall be subject to final inspection and acceptance by NU at the delivery destination.

4.22 **Defective Goods or Work:** NU, notwithstanding any prior acceptance, at its option, may reject or require prompt correction (in place or elsewhere) of any goods, equipment, supplies, or other work, which are defective in material or workmanship or otherwise fail to meet the requirements of the contract. All supplies furnished under the contract shall be subject to inspection at F.O.B. destination, and successful bidder shall be given notice of any defects, other than latent defects, within a reasonable time after receipt of the goods, equipment, and supplies, along with all records of delivery. NU may, in addition to any rights it may have

by law, prepare for shipment and ship the defective goods, equipment, and supplies to the successful bidder, require the successful bidder to remove them, or direct a correction in place. The expense of any such remedy shall be borne by the successful bidder, including any excess cost.

- 4.23 **Liens**: Successful bidder warrants that it has title to any goods delivered under the contract and shall deliver same free of all liens, claims, and encumbrances.
- 4.24 **Federal, State and Local Sales Taxes; Federal Excise Taxes**: Purchases made by the University of Nebraska are exempt from the payment of State Sales and Use Taxes and Federal Excise Taxes. Certification of these exemptions will be provided to the successful bidder upon request.
- 4.25 **Ambiguities**: Should the successful bidder perceive an ambiguity in the contract, the successful bidder shall request an interpretation from NU before proceeding. If a successful bidder fails to make such a request, failure to perform with respect to the alleged ambiguity shall not be excused.
- 4.26 **Recycling Policy**: When purchasing products, materials, or supplies for use, the University, when making such purchases shall actively pursue the purchase of products, materials, or supplies which are manufactured or produced with at least 10% post-consumer recycled materials. This policy shall not operate when it would result in the purchase of products, materials, or supplies that are of inadequate quality, not readily available or substantially higher in cost. It is the intent of the University to continually increase the percentage produced from post-consumer recycled material, and, to increase each year the types and variety of products, materials, or supplies purchased with post-consumer recycled material.
- 4.27 **Contractor Identification**: The Contractor shall cause each of its employees or any person acting on behalf of the Contractor, while providing goods/services to the University under this Agreement and working on University property, to carry identification, with photo, showing that the individual is an employee or person acting on behalf of the Contractor. A badge worn outside of clothing is appropriate for this purpose. Such identification shall be produced upon request of any University representative, in order to confirm that the Contractor's representative is authorized to be present on University property and/or performing as authorized by the Agreement. Whereas campus security is of utmost importance, failure of any Contractor representative to produce the requisite identification upon request shall be a material breach of the Agreement and shall be cause, at the discretion of the University, for immediate termination of the Agreement. For those who commonly wear a work uniform, such uniform shall be worn while providing the services related to this Agreement in order that the University may quickly and clearly identify Contractor's service representatives when necessary. A uniform, however, does not take the place of a photo identification badge.
- 4.28 **Legal Relationship**: The contractor shall under no circumstances be considered as an agent or employee of the University and shall have no right or authority to, in any manner, obligate the University to any person or company except as authorized in writing by the University.
- 4.29 **Use of University Names and Logos**: The contractor shall not use any University name, sign, logo, symbol, etc. for any purpose, without the prior written approval of the University. Use of University brands generally requires licensing.
- 4.30 **Improper Business Relationships and Conflict of Interest Prohibited**: In connection with this RFP, each bidder shall ensure that no improper, unethical, or illegal relationships or conflict of interest exists between or among the bidders, the University and any staff and faculty, and any other party to this RFP. The University reserves the right to determine the materiality of such relationships, when discovered or disclosed, whether intended or not; and to decide whether or not bidder disqualification and/or cancellation

of award shall result. Such disqualification and/or cancellation shall be at no fault or liability whatsoever to the University.

4.31 **Electronic and Information Technology Accessibility**: All electronic and information technology procurements, agreements, and contracts shall comply with Section 508 of the Rehabilitation Act of 1998 as amended.

**UNIVERSITY OF NEBRASKA
EQUAL OPPORTUNITY CLAUSE AND CERTIFICATION OF
NON-SEGREGATED FACILITIES**

Unless otherwise exempted by rules, regulations or orders issued under Executive Order 11246, during the performance of each order received from the Buyer:

- "(1) The Contractor will not discriminate against any employee or applicant of employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. 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 in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- "(2) The contractor will, in all solicitations or advertisement of employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- "(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of Sept. 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- "(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- "(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of Sept. 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- "(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contractor with any of such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies involved as provided in Executive Order No. 11246 of Sept. 24, 1965 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- "(7) The Contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 24 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency 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 contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

Seller certifies that he does not and will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not and will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained.

Seller agrees that a breach of this certification is a violation of the Equal Opportunity clause in this certification. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, or color or national origin, because of habit, local custom or otherwise.

During the performance of furnishing goods or services as stipulated in any purchase order, contract, or agreement whether written or verbal, the contractor agrees that the concern presented will comply with the provisions of 41 CFR 60-741.4 relating to employment of the Handicapped and 41 CFR 50-250.3 relating to employment of Disabled Veterans and Vietnam Era Veterans.

Moreover, if annual sales to the University of Nebraska exceeds \$50,000, I certify that our firm has on file an Affirmative Action Compliance Program, dated _____, or that our firm is exempt for the following reason: _____

During the performances of furnishing goods or services as stipulated in any purchase order, contract, or agreement whether written or verbal, the undersigned certifies that the concern represented will comply with the provisions of Executive Order 11246 as amended, and all rules, regulations and relevant orders of the Secretary of Labor, and will incorporate by reference in each contract and in each order which is within the scope of the regulations the clause relating to Equal Opportunity contained in 41 CFR 60-1.4, and the clauses relating to Employment of the Handicapped contained in 41 CFR 60-741.4, and Employment of Disabled and Vietnam Era Veterans, 41 CFR 50-250.3. The concern further agrees to comply with all existing federal, state and city legislation Prohibiting discrimination in all phases of its performances and certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained.

Firm	Address	City	State	Zip
Signature of Authorized Representative	Title	Date		
Federal I.D. # _____				

Please Return to: University of Nebraska-Lincoln, 1700 Y Street, Lincoln, NE 68588-0645