



**STATE OF NEVADA**  
**DEPARTMENT OF ADMINISTRATION**  
*Purchasing Division*

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**THE NEVADA STATE PURCHASING DIVISION**

**TERMS AND CONDITIONS FOR STATEWIDE COMMODITIES**

**1. REQUIREMENTS**

- 1.1** A Nevada based business may apply for a five percent (5%) preference on its Quote. A Nevada based business is defined as a business which certifies that a 'majority of goods provided for the contract are produced' in Nevada. The preference will be applied to the Quote price. This preference cannot be combined with any other preference, granted for the award of a contract using federal funds, or granted for the award of a contract procured on a multi-state basis. **To claim this preference a business must submit a letter with its Quote showing it qualifies for the preference.**
- 1.2** Bidders are especially cautioned to recheck Quote prices for errors prior to submitting Quote as changes in Quote prices after opening date and hour of Bid Solicitation due to an error shall not be permitted or accepted. Bidders shall be required to furnish equipment at Quote price or prices or be penalized by being removed from bidders' list for a period of one year.
- 1.3** Equipment shall be *new* only; used, refurbished, demo, prototype or gray market equipment shall not be accepted.
- 1.4** Bidders are required to submit descriptive data or printed specifications describing items bidding. Failure to comply with this request may be cause for non-acceptance of Quote.
- 1.5** *Brand Names:* Unless otherwise stated "**No Exceptions**", brand names mentioned in these specifications are for reference only and are intended for the purpose of assisting in describing the need, use, and quality of the item. Bidders shall identify any alternate item(s) and it is the State's prerogative to either accept or reject any alternative item(s).
- 1.6** Proof, satisfactory to the State, shall be provided by bidders to show that any alternate article is equal to, or exceeds the Bid Solicitation specifications in design and performance. Complete and detailed comparative documentation for equipment other than requested in this Bid Solicitation is *required* to be submitted as an attachment with the Quote. Equivalent items may be subject to performance testing.
- 1.7** For purposes of addressing questions concerning this Bid Solicitation, the sole contact shall be the Purchasing Division's designee. Upon issuance of this Bid Solicitation,

employees and representatives of the agencies identified herein shall not answer questions or otherwise discuss the contents of this request with any prospective bidders or their representatives. Failure to observe this restriction may result in disqualification of any Quote. This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

## **2. PAYMENT**

- 2.1** Prices offered in Quotes are an irrevocable offer for the term of the Contract/Purchase Order and any Contract/Purchase Order extensions.
- 2.2** The State generally pays within 30-45 days upon receipt of invoice and the using agency's approval. Per the State's policy and procedures, payments are not made prior to receipt of goods. Pursuant to NRS 227.185 and NRS 333.450, the State shall pay claims for supplies, materials, equipment and services purchased under the provisions of this Bid Solicitation electronically, unless determined by the State Controller that the electronic payment would cause the payee to suffer undue hardship or extreme inconvenience.
- 2.3** Prompt payment discount periods equal to (or greater than) 30 calendar days shall receive consideration and Quote pricing shall be reduced (for evaluation purposes only) by the amount of that discount(s).
- 2.4** The Quote price is for the specified delivery, and, unless otherwise specified in the Contract/Purchase Order, is Free on Board (FOB) Destination, freight prepaid to the delivery address. FOB requires the seller to, at its own expense and risk, transport the goods to the destination and there tender delivery of them in the manner provided in NRS 104.2503. Unless otherwise specified in the Contract/Purchase Order, the price does not include applicable federal or State sales, use, excise, processing or any similar taxes, or duty charges, which shall be paid by the State, or in lieu thereof, the State shall provide the Vendor with a tax exemption certificate acceptable to the applicable taxing authority. Unless otherwise specified in the Contract/Purchase Order, payment shall be made in accordance with Nevada law to the Vendor.
- 2.5** The State requests Manufacturer's Suggested Retail Prices (MSRP) in effect at the time of Quote submittal for internal statistical purposes.
- 2.6** Purchasing Card Acceptance

In an effort to streamline the purchasing and payment process, the State is encouraging agencies to use the State contracted purchasing card to facilitate small dollar purchases. While at the present time it is not mandatory that a Vendor accept credit card purchases; bidders are encouraged to consider this alternate payment process. The current card available for State agency use is a MasterCard product.

## **3. BID SOLICITATION, EVALUATION AND AWARD PROCESS**

- 3.1** This procurement is being conducted in accordance with NRS Chapter 333 and NAC Chapter 333.
- 3.2** Quotes shall conform to all terms, conditions and specifications in this Bid Solicitation.

**3.3** Vendor agrees to comply with conditions of the Federal Occupational Safety and Health Acts of 1970 (OSHA) as may be amended, and certifies that all items furnished and purchased under this order shall conform to and comply with said standards and regulations. Vendor further agrees to indemnify and hold harmless purchaser from all damages assessed against purchaser as a result of Vendor's failure to comply with the acts and standards thereunder and for the failure of the items furnished under this order to so comply.

**3.4** Pursuant to NRS Chapter 613 in connection with the performance of work under this Contract/Purchase Order, the Vendor agrees not to unlawfully discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation or age, including, without limitation, with regard to 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, without limitation, apprenticeship.

The Vendor further agrees to insert this provision in all subcontracts, hereunder, except subcontracts for standard commercial supplies or raw materials.

**3.5** Pursuant to NRS 333.338, the State of Nevada cannot enter into a contract with a company unless that company agrees for the duration of the contract not to engage in a boycott of Israel. By submitting a proposal or bid, vendor agrees that if it is awarded a contract it will not engage in a boycott of Israel as defined in NRS 333.338(3)(a).

**3.6** Every Contract/Purchase Order or order for goods shall be awarded to the lowest responsible bidder (*Refer to NRS 333.340(1)*). To determine the lowest responsible bidder, the Purchasing Division may consider:

- 3.6.1 The location of the using agency to be supplied;
- 3.6.2 The qualities of the articles to be supplied;
- 3.6.3 The total cost of ownership of the articles to be supplied;
- 3.6.4 The conformity of the articles to be supplied with the specifications;
- 3.6.5 The purposes for which the articles to be supplied are required; and
- 3.6.6 The dates of delivery of the articles to be supplied.

The Purchasing Division shall not be obligated to accept low bid, but shall make an award in the best interest of the State after all factors have been evaluated (*Refer to NRS 333.300(2)*).

3.6.7 When the Bid Solicitation includes a statement that Quotes for alternative articles shall be considered, alternative articles shall be considered in as much as they are determined to:

- 3.6.7.1 Meet or exceed the specifications of the article listed in the original Bid Solicitation;
- 3.6.7.2 The purchase of the alternative article results in a lower price; and
- 3.6.7.3 The Administrator or designee deems the purchase of the alternative article to be in the best interests of the State.

- 3.7** For the purpose of awarding a formal Contract/Purchase Order solicited in accordance NRS 333.300(2), if
- 3.7.1 A local business owned and operated by a veteran with a service-connected disability submits a Quote or proposal for a Contract/Purchase Order for which the estimated cost is more than \$50,000 but no more than \$250,000 and is a responsive and responsible bidder, the Quote or proposal shall be deemed to be five (5%) percent lower than the Quote or proposal actually submitted.
  - 3.7.2 A local business owned and operated by a veteran with a service-connected disability which is determined to be 50 percent or more by the United States Department of Veterans Affairs submits a Quote or proposal for a Contract/Purchase Order for which the estimated cost is more than \$250,000 but less than \$500,000 and is a responsive and responsible bidder, the Quote or proposal shall be deemed to be five (5%) percent lower than the Quote or proposal actually submitted.
  - 3.7.3 The preferences described above may not be combined with any other preference.
- 3.8** NRS 333.290 grants a preference to materials and supplies that can be supplied from a “charitable, reformatory or penal institution of the State” that produces such goods or services through the labor of inmates. The Administrator reserves the right to secure these goods, materials or supplies from any such eligible institution, if they can be secured of equal quality and at prices not higher than those of the lowest acceptable Quote received in response to this Bid Solicitation. In addition, NRS 333.410 grants a preference to commodities or services that institutions of the State are prepared to supply through the labor of inmates. The Administrator shall apply the preferences stated in NRS 333.290 and 333.410 to the extent applicable.
- 3.9** Quotes may be withdrawn by written or facsimile notice received prior to the Bid Solicitation opening time. Withdrawals received after the Bid Solicitation opening time shall not be considered except as authorized by NRS 333.350(3).
- 3.10** The State reserves the right to alter, amend, or modify any provisions of this Bid Solicitation, or to withdraw this Bid Solicitation, at any time prior to the award of a Contract/Purchase Order pursuant hereto, if it is in the best interest of the State to do so.
- 3.11** Any unsuccessful bidders may file an appeal in strict compliance with NRS 333.370.
- 3.12** The Legislature, the Supreme Court, the Nevada Wing of the Civil Air Patrol (NRS 333.469), the Nevada System of Higher Education (NRS 333.470) and local governments (as defined in NRS 332.015) are intended third party beneficiaries of any Contract/Purchase Order resulting from this Bid Solicitation and any local government may join or use any Contract/Purchase Order resulting from this Bid Solicitation subject to all terms and conditions thereof pursuant to NRS 332.195. The State is not liable for the obligations of any local government which joins or uses any Contract/Purchase Order resulting from this Bid Solicitation.

- 3.13** A Vendor who enters into a Contract/Purchase Order with the State of Nevada and who sells tangible personal property in the State of Nevada is required to obtain a permit in accordance with NRS 372.125, and required to collect and pay the taxes imposed by law on the sale of tangible personal property in this State.
- 3.14** When applicable, submission of a Quote shall include any and all proposed terms and conditions, including, without limitation, written warranties, maintenance/service agreements, license agreements, lease purchase agreements, and the bidder's standard contract language. A review of these documents shall be necessary to determine if a Quote is in the best interest of the State.
- 3.15** *Subcontractor:* Third party, not directly employed by the Vendor, who shall provide goods and/or services identified in this Bid Solicitation. This does not include third parties who provide support or incidental services to the Vendor.
- 3.16** *Proprietary Information:* Any trade secret or confidential business information that is contained in a Quote submitted on a particular Contract. *Refer NRS 333.020(5) (a); NRS 333.333.*
- 3.17** *Public Record:* All books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential must be open to inspection by any person and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. *Refer to NRS 333.333; NRS 600A.030(5).*
- 3.18** *Trade Secret:* Information including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain commercial or economic value from its disclosure or use, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. *Refer to NRS 600A.030(5).*
- 3.19** In accordance with NRS 333.350(1), a contract may be awarded for separate items, portions or groups of items in the best interests of the State, as required.
- 3.20** *Vendor Authorization:* By submitting a Quote the Vendor is duly organized, validly existing, and in good standing under the appropriate laws with full power and authority to conduct the business that it presently conducts in the State of Nevada. The Vendor has the legal power and right to enter into and perform the Contract. Consummation of the transactions contemplated by the Contract shall not violate any provision of law, or any of the Vendor's governing documents (articles of incorporation, partnership Contract, etc). Execution of the Contract and all documents provided for in the Contract by the Vendor and its delivery to the State have been duly authorized by the board of directors or managing agents of the Vendor and no further action is necessary on the Vendor's part to make the Contract valid and binding on the Vendor in accordance with its terms. The Vendor has obtained all licenses and permits to perform all of its requirements under the Contract, and is current on all tax obligations to the State of Nevada or any other governmental entity in Nevada.

#### **4. TERMS AND CONDITIONS FOR PURCHASE OF GOODS**

- 4.1** *Goods:* As defined in NRS 104.2105, and as specifically identified in this Bid Solicitation.
- 4.2** *Purchase Order:* Buyer-generated document that authorizes a purchase transaction. It sets forth the descriptions, quantities, prices, discounts, payment terms, date of performance or shipment, other associated terms and conditions, and identifies a specific seller. When accepted by the seller, it becomes a contract binding on both parties; also called order.
- 4.3** *Incorporated Documents:* The Contract/Purchase Order shall consist of this Bid Solicitation, any amendments to this Bid Solicitation if applicable, the Vendor Quote and all documentation contained therein, together with any subsequently issued Purchase Order(s) executed by a person with full power and authority to issue same on behalf of the State. A Vendor Quote shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in the Contract/Purchase Order.
- 4.4** *Administrative Fee:* The State shall implement an administrative fee of not more than 1% on contracts procured or negotiated by the Purchasing Division. This fee shall be assessed over the time of the contract period. Fees shall be paid quarterly, 45 days after the close of the quarter, on all purchases under the contract.
- 4.5** *Notice:* Unless otherwise specified, termination shall not be effective until thirty (30) calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract/Purchase Order shall be in writing and shall be deemed to have been duly given if delivered via email, personally in hand, by telephonic facsimile, regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.
- 4.6** **TERMINATION:**
- 4.6.1** *Termination Without Cause:* Any discretionary or vested right of renewal notwithstanding, this Contract/Purchase Order may be terminated upon written notice by mutual consent of both parties or unilaterally by either party without cause.
- 4.6.2** *State Termination for Nonappropriation:* The continuation of the Contract/Purchase Order beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate the Contract/Purchase Order, and the Vendor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.
- 4.6.3** *Cause Termination for Default or Breach:* A default or breach may be declared with or without termination. The Contract/Purchase Order may be terminated by either party upon written notice of default or breach to the other party as follows:
- 4.6.3.1** If the Vendor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by the Contract/Purchase Order within the time requirements specified in the

Contract/Purchase Order or within any granted extension of those time requirements; or

- 4.6.3.2 If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by the Vendor to provide the goods or services required by the Contract/Purchase Order is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
- 4.6.3.3 If the Vendor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
- 4.6.3.4 If the State materially breaches any material duty under the Contract/Purchase Order and any such breach impairs the Vendor's ability to perform; or
- 4.6.3.5 If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by the Vendor, or any agent or representative of the Vendor, to any officer or employee of the State of Nevada with a view toward securing a Contract/Purchase Order or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such Contract/Purchase Order; or
- 4.6.3.6 If it is found by the State that the Vendor has failed to disclose any material conflict of interest relative to the performance of the Contract/Purchase Order.

4.6.4 *Time to Correct:* Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in **Section 4.4, Notice** and the subsequent failure of the defaulting party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

4.6.5 *Winding Up Affairs Upon Termination:* In the event of termination of the Contract/Purchase Order for any reason, the parties agree that the provisions of this paragraph survive termination:

- 4.6.5.1 The parties shall account for and properly present to each other all claims for fees and expenses and pay those that are undisputed and otherwise not subject to set off under the Contract/Purchase Order. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
- 4.6.5.2 The Vendor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency.

## 4.7 REPRESENTATIONS AND WARRANTIES:

The Vendor represents and warrants to the State:

- 4.7.1 *Bid Representations:* All statements made by the Vendor on any application, Quote, proposal, offer, financial statement, or other document used by the Vendor to induce the State to enter into the Contract/Purchase Order are true, correct, complete, and omit no information which would render them misleading.
- 4.7.2 *Use of Broker:* The Vendor agrees to indemnify the State from any damage, liability, or expense that it may suffer as a result of any claim of a broker or other finder with whom it is determined that the Vendor has dealt in connection with the transactions contemplated under the Contract/Purchase Order.
- 4.7.3 *Express Warranties:* For the period specified in the Contract/Purchase Order, Vendor warrants and represents each of the following with respect to any goods provided under the Contract/Purchase Order:
  - 4.7.3.1 *Fitness for Particular Purpose:* The goods shall be fit and sufficient for the particular purpose set forth in the Contract/Purchase Order.
  - 4.7.3.2 *Fitness for Ordinary Use:* The goods shall be fit for the purpose for which goods of a like nature are ordinarily intended, it being understood that the purpose for the goods covered by the Contract/Purchase Order are ordinarily intended for use in general government administration and operations.
  - 4.7.3.3 *Merchantable, Good Quality, No Defects:* The goods shall be merchantable, of good quality, and free from defects, whether patent or latent, in material and workmanship.
  - 4.7.3.4 *Conformity:* The goods shall conform to the standards, specifications and descriptions set forth in the Contract/Purchase Order. If the Vendor has supplied a sample to the State, the goods delivered shall conform in all respects to the sample and shall be identified by the word "sample" and Vendor's name.
  - 4.7.3.5 *Uniformity:* The goods shall be without variation, and shall be of uniform kind, quality, and quantity within each unit and among all units.
  - 4.7.3.6 *Packaging and Labels:* The goods shall be contained, packaged, and labeled so as to satisfy all legal and commercial requirements applicable to use by a government agency, including without limitation, Occupational Safety and Health Administration material safety data sheets and shall conform to all statements made on the label.
  - 4.7.3.7 *Full Warranty:* The foregoing warranties are "full" warranties within the meaning of the Magnuson-Moss Warranty -- Federal Trade Commission Improvement Act, 15 U.S.C. 2301 et seq., and implementing regulations 16 C.F.R. pts. 700-703, if applicable to this transaction.



- 4.7.3.8 *Title:* The Vendor has exclusive title to the goods and shall pass title to the State free and clear of all liens, encumbrances, and security interests.
- 4.7.3.9 *Infringement; Indemnity:* The Vendor warrants the purchase or use of the goods shall not infringe upon any United States or foreign patent, and the Vendor shall indemnify the State against all judgments, decrees, costs, and expenses resulting from any alleged infringement and shall defend, upon written request of the State, at its own expense, any action which may be brought against the State, its vendees, lessees, licensees, or assignees, under any claim of patent infringement in the purchase or use of the Vendor's goods. If the State is enjoined from using such goods, the Vendor shall re-purchase such goods from the State at the original purchase price. The State shall notify the Vendor promptly in writing of any such suit. If the State compromises or settles any such suit without the written consent of the Vendor, the Vendor shall be released from the obligations of this paragraph and from any liability to the State under any statute or other rule of law.
- 4.7.3.10 *Usage of Trade; Course of Dealings; Implied Warranties:* The Vendor shall be bound by any implied warranty that, at the time of execution of the Contract/Purchase Order, prevails in the trade of government in the marketing area in and about the State of Nevada. The Vendor shall also be bound by any other implied warranty arising through course of dealings between the Vendor and the State from and after the execution of the Contract/Purchase Order. The Vendor shall also be bound by all warranties set forth in Nevada's Uniform Commercial Code (NRS Chapter 104) in effect on the date of issuance of the Contract/Purchase Order.
- 4.7.3.11 *Warranties Cumulative:* It is understood that warranties created by the Contract/Purchase Order, whether express or implied, as well as all warranties arising by operation of law that affect the rights of the parties, are cumulative and may be construed in a manner consistent with one another.
- 4.7.3.12 *Priority of Warranties:* If it is held by a court of competent jurisdiction that there is an irreconcilable conflict between or among any of the warranties set forth in the Contract/Purchase Order and any warranties implied by law, the parties agree that the specifications contained in the Contract/Purchase Order shall be deemed technical and mere language of description.
- 4.7.3.13 *Beneficiaries of Warranties:* Benefit of any warranty made in the Contract/Purchase Order shall be in favor of the State, any of its political subdivisions or agencies, employee or licensee thereof who uses the goods, and the benefit of any warranty shall apply to both personal injury and property damage.

- 4.8** *Delivery, Inspection, Acceptance, Title, Risk of Loss:* The Vendor agrees to deliver the goods as indicated in the Contract/Purchase Order, and upon acceptance by the State, title to the goods shall pass to the State. The State shall have the right to inspect the goods on arrival and within a commercially reasonable time. The State shall give notice to the

Vendor of any claim or damages on account of condition, quality, or grade of the goods, and shall specify the basis of the claim in detail. Acceptance of the goods described in the Contract/Purchase Order is not a waiver of UCC revocation of acceptance rights or of any right of action that the State may have for breach of warranty or any other cause. Unless otherwise stated above, risk of loss from any casualty, regardless of the cause, shall be on the Vendor until the goods have been accepted and title has passed to the State. If provided by the Vendor, the State agrees to follow reasonable instructions regarding return of the goods.

- 4.9** *No Arrival, No Sale:* The Contract/Purchase Order is subject to provisions of no arrival, no sale terms, but proof of shipment shall be given by the Vendor; each shipment to constitute a separate delivery. A variation of ten (10) days in time of shipment or delivery from that specified in the Contract/Purchase Order does not constitute a ground for rejection. The State may treat any deterioration of the goods as entitling the State to the rights resulting from a casualty to the identified goods without regard to whether there has been sufficient deterioration so that the goods no longer conform to the Contract/Purchase Order.
- 4.10** *Breach, Remedies:* Failure of either party to perform any obligation of the Contract/Purchase Order shall be deemed a breach. In the event of a breach, the party asserting breach may, in addition to any remedies or rights afforded by Nevada law, cancel the Contract/Purchase Order with respect to any executory obligations. All rights and remedies are cumulative with one another and with those provided by law, and exercise of one remedy or right is not a waiver of the right to pursue any other right or remedy afforded. Either party, as a prevailing party to any other action regarding the enforcement of the Contract/Purchase Order, is entitled to reasonable attorney's fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation One Hundred Fifty Dollars (\$150.00) per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of the Vendor to any State agency.
- 4.11** *Limited Liability:* The State shall not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract/Purchase Order liability of both parties shall not be subject to punitive damages.
- 4.12** *Waiver of Breach:* A failure to assert any right or remedy available to a party under the Contract/Purchase Order, or a waiver of the rights or remedies available to a party by a course of dealing or otherwise shall not be deemed to be a waiver of any other right or remedy under the Contract/Purchase Order, unless such waiver is contained in a writing signed by the waiving party.
- 4.13** *Severability:* If any provision contained in the Contract/Purchase Order is held to be unenforceable by a court of law or equity, the Contract/Purchase Order shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of the Contract/Purchase Order unenforceable.
- 4.14** *Assignment/Delegation:* To the extent that any assignment of any right under the Contract/Purchase Order changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of the Contract/Purchase Order, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of the Contract/Purchase Order. No duties of either party may be delegated without

written consent by the other party, and any such consent does not in any way affect the liability of the delegating party, unless the writing so states.

- 4.15** *Force Majeure:* Neither party shall be deemed to be in violation of this Contract/Purchase Order if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause shall not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract/Purchase Order after the intervening cause ceases.
- 4.16** *Governing Law; Jurisdiction:* This Contract/Purchase Order and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, including, without limitation, Nevada's UCC (NRS Chapter 104) in effect on the date of the Contract/Purchase Order. The parties consent to the jurisdiction and exclusive venue of the First Judicial District Court, Carson City, Nevada for enforcement of the Contract/Purchase Order.
- 4.17** *Entire Agreement; Conflict with Other Documents:* The Contract/Purchase Order (including all incorporated attachments) is intended by the parties as the final expression of their agreement and is the complete and exclusive statement of the terms hereof. All prior agreements are superseded and excluded. Prices, quantities, dates, and places of deliveries and means of transportation may be fixed by attachments to the Contract/Purchase Order. Except as previously stated, if any term in any incorporated attachment or in any Vendor's invoice contradicts or negates a term in the Contract/Purchase Order, the Contract/Purchase Order shall control. All amendments shall be in writing and signed by the parties.
- 4.18** In accordance with NRS 333.4611, the State of Nevada, Purchasing Division shall require the purchase of new appliances, equipment, lighting and other devices that use electricity, natural gas, propane or oil, have received the Energy Star label pursuant to the program established pursuant to 42 U.S.C. 6294a or its successor, or meet the requirements established pursuant to 48 C.F.R. 23.203. These standards do not apply insofar as: (a) No items in a given class have been evaluated to determine whether they are eligible to receive the Energy Star label or have been designated by the Federal Government to meet the requirements established pursuant to 48 C.F.R. 23.302 or (b) The purchase of these items that have received the Energy Star label would not be cost-effective in an individual instance, comparing the cost of the items to the cost of the amount of energy that shall be saved over the useful life of the item.
- 4.19** *Term:* In accordance with NRS 333.280, the Purchasing Division may enter into a Contract/Purchase Order for the furnishing of goods for not more than two (2) years. The original terms of a Contract/Purchase Order may be extended annually thereafter if the conditions for extension are specified in this Bid Solicitation, and the Purchasing Division determines that an extension is in the best interest of the State.
- 4.20** *Insurance:* Automobile Liability, as stated below, is required only if the commodity is being delivered to the State by the Vendor. If the commodity is being shipped by common carrier, automobile liability shall not be required. Vendor shall furnish the State with certificates of insurance (ACORD form or equivalent approved by the State) as required.

The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

#### 4.20.1 Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)            \$1,000,000