

**TERMS AND CONDITIONS OF THE DHHS FOOD DISTRIBUTION INVITATION FOR BID**

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

**A. GENERAL**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:

The contract resulting from this IFB shall incorporate the following documents:

1. Amendment to Contract Award with the most recent dated amendment having the highest priority;
2. Contract Award and any attached Addenda;
3. The Invitation for Bid (IFB) and the Contractor's bid signed in ink;
4. Amendments to the IFB; and
5. The Master Solicitation for Commodity Processing.

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to Contract Award with the most recent dated amendment having the highest priority, 2) Contract Award and any attached Addenda, 3) the signed IFB form and the Contractor's bid, 4) Amendments to IFB, 5) the original IFB document and any Addenda.

Any ambiguity in any provision of this contract which shall be discovered after its execution shall be resolved in accordance with the rules of contract interpretation as established in the State of Nebraska.

Once bids are opened they become the property of the State of Nebraska and will not be returned.

**A. AWARD**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

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

Once intent to award decision has been determined, it will be posted to the Internet at the [DHHS Food Distribution website](#).

Grievance and protest procedure is available on the Internet at the [DHHS Food Distribution website](#).

Any protests must be filed by a vendor within ten (10) business days after the intent to award decision is posted to the Internet.

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

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

The Contractor shall comply with all applicable local, state and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State of Nebraska, and their Subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensations, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §48-1101 to 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this IFB.

**C. PERMITS, REGULATIONS, LAWS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

**D. OWNERSHIP OF INFORMATION AND DATA**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

The Contractor must guarantee that it has the full legal right to the materials, supplies, equipment, and other rights or titles (e.g. rights to licenses transfer or assign deliverables) necessary to execute this contract. The

contract price shall, without exception, include compensation for all royalties and costs arising from patents, trademarks, and copyrights that are in any way involved in the contract. It shall be the responsibility of the Contractor to pay for all royalties and costs, and the State must be held harmless from any such claims.

**E. INSURANCE REQUIREMENTS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

The Contractor shall not commence work under this contract until all the insurance required hereunder has been obtained and such insurance has been approved by the State. The Contractor shall maintain all required insurance for the life of this contract and shall ensure that the State Purchasing Bureau has the most current certificate of insurance throughout the life of this contract. If Contractor will be utilizing any Subcontractors, the Contractor is responsible for obtaining the certificate(s) of insurance required herein under from any and all Subcontractor(s). Contractor is also responsible for ensuring Subcontractor(s) maintain the insurance required until completion of the contract requirements. The Contractor shall not allow any Subcontractor to commence work on any subcontract until all similar insurance required of the Subcontractor has been obtained and approved by the Contractor. Approval of the insurance by the State shall not limit, relieve, or decrease the liability of the Contractor hereunder.

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

**1. WORKERS' COMPENSATION INSURANCE**

The Contractor shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the Contractors' employees to be engaged in work on the project under this contract and, in case any such work is sublet, the Contractor shall require the Subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. This policy shall include a waiver of subrogation in favor of the State. The amounts of such insurance shall not be less than the limits stated hereinafter.

**2. COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE**

The Contractor shall take out and maintain during the life of this contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect the Contractor and any Subcontractor performing work covered by this contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this contract, whether such operation be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an occurrence basis, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury and Contractual Liability coverage. The policy shall include the State, and others as required by the contract documents. This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered excess and non-contributory. The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned and Hired vehicles.

**3. INSURANCE COVERAGE AMOUNTS REQUIRED**

<b>WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY</b>	
Coverage A	Statutory
Coverage B	Statutory
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee
<b>COMMERCIAL GENERAL LIABILITY</b>	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 any one person
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Fire Damage	\$50,000 any one fire
Medical Payments	\$5,000 any one person
<b>UMBRELLA/EXCESS LIABILITY</b>	
Over Primary Insurance	\$1,000,000 per occurrence
<b>SUBROGRATION WAIVER</b>	
"Waiver of Subrogation on the Worker's Compensation in favor of the State of Nebraska."	
<b>LIABILITY WAIVER</b>	
"The State of Nebraska, Certificate holder, is an additionally insured, primary & noncontributory on the General Liability."	

**4. EVIDENCE OF COVERAGE**

The Contractor should furnish the State, with their proposal response, a certificate of insurance coverage complying with the above requirements, which shall be submitted to the attention of Chad Mohr at:

DHHS Food Distribution  
Nebraska State Office Building, 4th Floor  
P.O. Box 95026, Lincoln NE  
(facsimile) (402) 742 - 2328.

These certificates or the cover sheet shall reference the IFB number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

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

**F. COOPERATION WITH OTHER CONTRACTORS**

<b>Accept (Initial)</b>	<b>Reject (Initial)</b>	<b>Reject &amp; Provide Alternative within IFB Response (Initial)</b>	<b>NOTES/COMMENTS:</b>

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

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

**G. INDEPENDENT CONTRACTOR**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing the relationship of partners between the parties hereto. The Contractor represents that it has, or will secure at its own expense, all personnel required to perform the services under the contract. The Contractor's employees and other persons engaged in work or services required by the Contractor under the contract shall have no contractual relationship with the State; they shall not be considered employees of the State.

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

**H. CONTRACTOR RESPONSIBILITY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

The Contractor shall agree that it will not utilize any Subcontractors not specifically included in its proposal, in the performance of the contract without the prior written authorization of the State. Following execution of the contract, the Contractor shall proceed diligently with all services and shall perform such services with qualified personnel in accordance with the contract.

**I. CONTRACTOR PERSONNEL**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

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

1. Any and all employment taxes and/or other payroll withholding;
2. Any and all vehicles used by the Contractor's employees, including all insurance required by state law;
3. Damages incurred by Contractor's employees within the scope of their duties under the contract;
4. Maintaining workers' compensation and health insurance and submitting any reports on such insurance to the extent required by governing State law; and
5. Determining the hours to be worked and the duties to be performed by the Contractor's employees.

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

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

**K. CONFLICT OF INTEREST**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

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

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

**L. PROPOSAL PREPARATION COSTS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

The State shall not incur any liability for any costs incurred by bidders in replying to this IFB, or in any other activity related to bidding on this IFB.

**M. ERRORS AND OMISSIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

**N. BEGINNING OF WORK**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

**O. ASSIGNMENT BY THE STATE**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

**P. ASSIGNMENT BY THE CONTRACTOR**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

**Q. DEVIATIONS FROM THE IFB**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

The requirements contained in the IFB become a part of the terms and conditions of the contract resulting from this IFB. Any deviations from the IFB must be clearly defined by the bidder in its proposal and, if accepted by the State, will become part of the contract. Any specifically defined deviations must not be in conflict with the basic nature of the IFB, mandatory requirements, or applicable state or federal laws or statutes. "Deviation", for the purposes of this IFB, means any proposed changes or alterations to either the contractual language or deliverables within the scope of this IFB. The State discourages deviations and reserves the right to reject proposed deviations.

**R. GOVERNING LAW**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

**S. ATTORNEY'S FEES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

**T. ADVERTISING**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

**U. STATE PROPERTY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

**V. SITE RULES AND REGULATIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

**W. NOTIFICATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

During the bid process, all communication between the State and a bidder shall be between the bidder's representative clearly noted in its proposal and the contact person noted in the IFB. After the award of the contract, all notices under the contract shall be deemed duly given upon delivery to the staff designated as the point of contact for this IFB, in person, or upon delivery by U.S. Mail, facsimile, or e-mail. Each bidder should provide in its proposal the name, title, and complete address of its designee to receive notices.

1. Except as otherwise expressly specified herein, all notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth above, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or three (3) calendar days following deposit in the mail.
2. Whenever the Contractor encounters any difficulty which is delaying or threatens to delay its timely performance under the contract, the Contractor shall immediately give notice thereof in writing to the State reciting all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the State of any of its rights or remedies to which it is entitled by law or equity or pursuant to the provisions of the contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay.

Either party may change its address for notification purposes by giving notice of the change, and setting forth the new address and an effective date.

For the duration of the contract, all communication between Contractor and the State regarding the contract shall take place between the Contractor and individuals specified by the State in writing. Communication about the contract between Contractor and individuals not designated as points of contact by the State is strictly forbidden.

**X. EARLY TERMINATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.
2. The State, in its sole discretion, may terminate the contract for any reason upon thirty (30) calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the Contract. In the event of termination the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
3. The State may terminate the contract immediately for the following reasons:
  - a. if directed to do so by statute;
  - b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
  - c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
  - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
  - e. an involuntary proceeding has been commenced by any party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
  - f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
  - g. Contractor intentionally discloses confidential information;
  - h. Contractor has or announces it will discontinue support of the deliverable;

- i. second or subsequent documented "vendor performance report" form deemed acceptable by the Agency or;
- j. Contractor engaged in collusion or actions which could have provided Contractor an unfair advantage in obtaining this contract.

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

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

The State may terminate the contract, in whole or in part, in the event funding is no longer available. The State's obligation to pay amounts due for fiscal years following the current fiscal year is contingent upon legislative appropriation of funds for the contract. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal years for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of any termination, and advise the Contractor of the location (address and room number) of any related equipment. All obligations of the State to make payments after the termination date will cease and all interest of the State in any related equipment will terminate. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

**Z. BREACH BY CONTRACTOR**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

The State may terminate the contract, in whole or in part, if the Contractor fails to perform its obligations under the contract in a timely and proper manner. The State may, by providing a written notice of default to the Contractor, allow the Contractor to cure a failure or breach of contract within a period of thirty (30) calendar days (or longer at State's discretion considering the gravity and nature of the default). Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing the Contractor time to cure a failure or breach of contract does not waive the State's right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

**AA. ASSURANCES BEFORE BREACH**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

If any document or deliverable required pursuant to the contract does not fulfill the requirements of the IFB/resulting contract, upon written notice from the State, the Contractor shall deliver assurances in the form of additional Contractor resources at no additional cost to the project in order to complete the deliverable, and to ensure that other project schedules will not be adversely affected.

**BB. ADMINISTRATION – CONTRACT TERMINATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

1. Contractor must provide confirmation that upon contract termination all deliverables prepared in accordance with this agreement shall become the property of the State of Nebraska; subject to the ownership provision (section E) contained herein, and is provided to the State of Nebraska at no additional cost to the State.
2. Contractor must provide confirmation that in the event of contract termination, all records that are the property of the State will be returned to the State within thirty (30) calendar days. Notwithstanding the above, Contractor may retain one copy of any information as required to comply with applicable work product documentation standards or as are automatically retained in the course of Contractor’s routine back up procedures.

**CC. FORCE MAJEURE**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

**DD. PROHIBITION AGAINST ADVANCE PAYMENT**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

**EE. PAYMENT**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

**FF. INVOICES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

Invoices for payments must be submitted by the Contractor to the agency requesting the services with sufficient detail to support payment. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

**GG. RIGHT TO AUDIT**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

Contractor shall establish and maintain a reasonable accounting system that enables the State to readily audit contract. The State and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this contract kept by or under the control of the Contractor, including, but not limited to those kept by the Contractor, its employees, agents, assigns, successors, and Subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

Contractor shall, at all times during the term of this contract and for a period of five (5) years after the completion of this contract, maintain such records, together with such supporting or underlying documents and materials. The Contractor shall at any time requested by the State, whether during or after completion of this contract and at Contractor's own expense make such records available for inspection and audit (including

copies and extracts of records as required) by the State. Such records shall be made available to the State during normal business hours at the Contractor's office or place of business. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the State. Contractor shall ensure the State has these rights with Contractor's assigns, successors, and Subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Contractor and any Subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to the State.

Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the State unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Contractor to the State in excess of one-half of one percent (.5%) of the total contract billings, the Contractor shall reimburse the State for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the Contractor shall reimburse the State for total costs of audit. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the State's findings to Contractor.

**HH. TAXES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

**II. INSPECTION AND APPROVAL**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

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

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

The State may, upon the written agreement of Contractor, make changes to the contract within the general scope of the IFB. The State may, at any time work is in progress, by written agreement, make alterations in the terms of work, require the Contractor to make corrections, decrease the quantity of work, or make such

other changes as the State may find necessary or desirable. The Contractor shall not claim forfeiture of contract by reasons of such changes by the State. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable unit prices if any, or a pro-rated value.

Corrections of any deliverable, service or performance of work required pursuant to the contract shall not be deemed a modification.

Changes or additions to the contract beyond the scope of the IFB are not permitted..

**KK. SEVERABILITY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

**LL. CONFIDENTIALITY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

It is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable to Contractors by 5 U.S.C. 552a (m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

**MM. PROPRIETARY INFORMATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

Data contained in the proposal and all documentation provided therein, become the property of the State of Nebraska and the data becomes public information upon opening the proposal. If the bidder wishes to have any information withheld from the public, such information must fall within the definition of proprietary information contained within Nebraska's public record statutes. **All proprietary information the bidder wishes the State to withhold must be submitted in a sealed package, which is separate from the remainder of the proposal, and provide supporting documents showing why such documents should be marked proprietary.** The separate package must be clearly marked PROPRIETARY on the outside of the package. **Bidders may not mark their entire IFB as proprietary.** Bidder's cost proposals may not be marked as proprietary information. Failure of the bidder to follow the instructions for submitting proprietary and copyrighted information may result in the information being viewed by other bidders and the public. Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see Neb. Rev. Stat. §84-712.05(3)). In accordance with Attorney General Opinions 92068 and 97033, bidders submitting information as proprietary may be required to prove specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive. Although every effort will be made to withhold information that is properly submitted as proprietary and meets the State's definition of proprietary information, the State is under no obligation to maintain the confidentiality of proprietary information and accepts no liability for the release of such information.

**IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. §84-602.02, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. All non-proprietary or confidential information as defined by Law **WILL BE POSTED FOR PUBLIC VIEWING.** Bidders are required to waive copyrights from privilege for posting to the public website.

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

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

**OO. STATEMENT OF NON-COLLUSION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

The proposal shall be arrived at by the bidder independently and be submitted without collusion with, and without any direct or indirect agreement, understanding or planned common course of action with, any person; firm; corporation; bidder; Contractor of materials, supplies, equipment or services described in this IFB. Bidder shall not collude with, or attempt to collude with, any state officials, employees or agents; or evaluators or any person involved in this IFB. The bidder shall not take any action in the restraint of free competition or designed to limit independent bidding or to create an unfair advantage.

Should it be determined that collusion occurred, the State reserves the right to reject a bid or terminate the contract and impose further administrative sanctions.

**PP. PRICES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

Price increases during the contract period may be agreed to at the discretion of DHHS. The Contractor may provide an updated NEPDS – Bid Form to DHHS Thirty (30) days prior to the effective date of a proposed increase. Upon approval of DHHS, the updated NEPDS – Bid Form shall be incorporated and made a part of this Contract.

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

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

**QQ. BEST AND FINAL OFFER**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

The State will compile the final scores for all parts of each proposal. The award may be granted to the lowest responsible bidder. Alternatively, bidders may be requested to submit best and final offers. If best and final offers are requested by the State and submitted by the bidder, they will be evaluated Based on cost. The award will then be granted to the highest scoring bidder. However, a bidder should provide its best offer in its original proposal. Bidders should not expect that the State will request a best and final offer.

**RR. ETHICS IN PUBLIC CONTRACTING**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

No bidder shall pay or offer to pay, either directly or indirectly, any fee, commission compensation, gift, gratuity, or anything of value to any State officer, legislator, employee or evaluator based on the understanding that the receiving person's vote, actions, or judgment will be influenced thereby. No bidder shall give any item of value to any employee of DHHS or any evaluator. Bidder shall comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) and file all required certifications.

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

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

**SS. INDEMNIFICATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

**1. GENERAL**

The Contractor agrees to defend, indemnify, hold, and save harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, Subcontractors, consultants, representatives, and

agents, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

**2. INTELLECTUAL PROPERTY**

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

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

**3. PERSONNEL**

The Contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by the Contractor.

**TT. NEBRASKA TECHNOLOGY ACCESS STANDARDS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

Contractor shall review the Nebraska Technology Access Standards, found at <http://nitc.nebraska.gov/standards/2-201.html> and ensure that products and/or services provided under the contract are in compliance or will comply with the applicable standards. In the event such standards change during the Contractor's performance, the State may create an amendment to the contract to request the contract comply with the changed standard at a cost mutually acceptable to the parties.

**UU. ANTITRUST**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

**VV. DISASTER RECOVERY/BACK UP PLAN**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

**WW. TIME IS OF THE ESSENCE**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

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

**XX. RECYCLING**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

Preference will be given to items which are manufactured or produced from recycled material or which can be readily reused or recycled after their normal use as per Neb. Rev. Stat. §81-15,159.

**YY. DRUG POLICY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

Contractor certifies it maintains a drug free work place environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

**ZZ. EMPLOYEE WORK ELIGIBILITY STATUS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <http://das.nebraska.gov/materiel/purchasing.html>  
  
The completed United States Attestation Form should be submitted with the IFB response.
2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

**AAA. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND INELIGIBILITY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

The Contractor, by signature to this IFB, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). The Contractor also agrees to include the above requirements in any and all Subcontracts into which it enters. The Contractor shall immediately notify the Department if, during the term of this contract, Contractor becomes debarred. The Department may immediately terminate this contract by providing Contractor written notice if Contractor becomes debarred during the term of this contract.

Contractor, by signature to this IFB, certifies that Contractor has not had a contract with the State of Nebraska terminated early by the State of Nebraska. If Contractor has had a contract terminated early by the State of Nebraska, Contractor must provide the contract number, along with an explanation of why the contract was terminated early. Prior early termination may be cause for rejecting the proposal.

**BBB. POLITICAL SUB-DIVISIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

Only with written approval of DHHS Food Distribution, may the Contractor extend the contract to political sub-divisions conditioned upon the honoring of the prices charged to the State. Terms and conditions of the Contract must be met by political sub-divisions. Under no circumstances shall the State be contractually obligated or liable for any purchases by political sub-divisions or other public entities not authorized by Neb. Rev. Stat. §81-145, listed as "all officers of the state, departments, bureaus, boards, commissions, councils, and institutions receiving legislative appropriations." A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

**CCC. OFFICE OF PUBLIC COUNSEL**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

If it provides, under the terms of this contract and on behalf of the State of Nebraska, health and human services to individuals; service delivery; service coordination; or case management, Contractor shall submit to the jurisdiction of the Office of Public Counsel, pursuant to Neb. Rev. Stat. §§ 81-8,240 et seq. This section shall survive the termination of this contract and shall not apply if Contractor is a long-term care facility subject to the Long-Term Care Ombudsman Act, Neb. Rev. Stat. §§ 81-2237 et seq.

**DDD. LONG-TERM CARE OMBUDSMAN**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

If it is a long-term care facility subject to the Long-Term Care Ombudsman Act, Neb. Rev. Stat. §§ 81-2237 et seq., Contractor shall comply with the Act. This section shall survive the termination of this contract.

**EEE. LICENSE/SERVICE OR OTHER AGREEMENTS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

Any License/Service or other such agreements which the bidder may want the State to consider must be submitted with the bid. Any License/Service or other such agreements submitted to the State post bid opening may result in the bid being rejected in its entirety. Any such agreement, if agreed to by the State, will be considered an addendum to the contract. Any terms and conditions contained in any such accepted agreement

(addendum) must not conflict with or alter the State's Terms and Conditions (Terms and Conditions) as contained in the IFB and finalized in the contract. In the event of any conflict between the Terms and Conditions and any addendum the Terms and Conditions will prevail.

The State reserves the right to reject any submitted addendum and considers the submission of any such addendum to be a proposed alteration of the Terms and Conditions.

This clause does not apply to any third party license or service agreement.

**FFF. CLEAN AIR ACT**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within IFB Response (Initial)	NOTES/COMMENTS:

The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).