



**THE NEVADA STATE PURCHASING DIVISION IS SOLICITING BIDS FOR
BARRACUDA WEB FILTERS**

INVITATION TO BID NO. 8386

F.O.B. Nevada Department of Transportation, 1263 Stewart Street, Carson City, NV 89712

Release Date: October 23, 2015

Vendor Questions Due: October 29, 2015 @ 2:00 P.M., PT

Deadline for Submission and Opening Date and Time: **November 12, 2015 @ 2:00 P.M., PT**

Requisition No. NDHQ14416A

For additional information or to obtain a copy of this Invitation to Bid, please contact:

Marti Marsh, Purchasing Officer

(775) 684-0180

(TTY for the Hearing Impaired: 1-800-326-6868 and ask the relay agent to dial (775) 684-0180)

See page 7, for instructions on submitting bids.

Company Name: _____

Contact Name: _____ Title: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone (____) _____ Fax (____) _____

E-Mail Address: _____

While there are no set asides in the State of Nevada or preferences for Minority Business Enterprise, Women Business Enterprise and Small Business, we encourage those vendors to compete for state business at every opportunity and we make every effort to contact these businesses when opportunities arise, therefore if it is your judgment that your business fits within these categories, please check appropriate boxes.

Minority Owned

Women Owned

Small Business

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In accordance with NRS 333.350(1), a contract may be awarded for separate items, portions or groups of items in the best interest of the State, as required.

Prospective vendors are advised to review Nevada’s ethical standards requirements, including but not limited to, NRS 281A and the Governor’s Proclamation, which can be found on the Purchasing Division’s website (<http://purchasing.state.nv.us>).

1. PROJECT OVERVIEW

The intent of this solicitation is to obtain competitive pricing for two (2) Barracuda Web Filter 910 appliances. Equipment must be *new* only; used, demo, refurbished, prototype, or gray market equipment will not be accepted. For the purpose of uniformity, award will be made on an “all or none” basis.

2. ACRONYMS/DEFINITIONS

For the purposes of this Invitation to Bid, the following acronyms/definitions will be used:

- Awarded Vendor/ Contractor** The organization or individual that is awarded and has an approved contract or purchase order with the State of Nevada for the goods identified in this Invitation to Bid.
- Bidder/Vendor** Organization or individual submitting a bid in response to this Invitation to Bid.
- FOB Destination** Free on Board to the destination. 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. *See* NRS 104.2319(1)(b); UCC 2-319(1).
- Goods** As defined in NRS 104.2105, and as specifically identified in this Invitation to Bid.
- ITB** Invitation to Bid. A written statement which sets forth the requirements and specifications of a contract to be awarded by competitive selection. *See* NRS 333.020(4).
- Lowest Responsible Bidder/Vendor** Person or firm (company/organization) that conforms in all material respects to the specifications within the invitation to bid and offers the lowest cost after all factors have been considered. *See* NRS 333.340
- MSRP** Manufacturer’s Suggested Retail Price
- NAC** Nevada Administrative Code
- NOA** Notice of Award
- NRS** Nevada Revised Statutes

Proprietary Information	Any trade secret or confidential business information that is contained in a bid submitted on a particular contract. <i>See</i> NRS 333.020(5)(a); NRS 333.333.
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. <i>See</i> NRS 333.333; NRS 600A.030(5).
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.
Subcontractor	Third party, not directly employed by the vendor, who will provide goods and/or services identified in this ITB. This does not include third parties who provide support or incidental services to the vendor.
Shall/Must/Will	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of a bid as non-responsive.
Should/May	Indicates something that is recommended but not mandatory. If the vendor fails to provide recommended information, the State may, at its sole option, either ask the vendor to provide the information or evaluate the bid without the information.
State	The State of Nevada and any agency identified herein.
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. <i>See</i> NRS 600A.030(5).
UCC	Uniform Commercial Code

3. ITEM SPECIFICATIONS

Unless otherwise specified in this ITB, reference to a specific manufacturer or a specific product or model in the bid specifications does not restrict bidders to that manufacturer, product or model. This method is used to indicate the functional requirements (e.g., type, design, characteristics, quality) of the article desired. Bids may be considered on other manufacturer's products or other models determined by the Purchasing Division to be the functional equivalent of the product or model referenced.

The Department of Transportation requests bids on this manufacturer only in order to remain consistent with equipment currently deployed throughout their environment.

<u>Item No.</u>	<u>Qty</u>	<u>Description</u>	<u>Unit Price</u>	<u>Extended Price</u>	<u>MSRP Price</u>
3.1	2 each	SECURITY APPLIANCE: 2U; rackmountable; hot swappable; 1 x Gigabit Ethernet; 2,500 – 4,500 concurrent users; Barracuda Web Filter 910 #BYF910a. Specify Mfr. & No. _____ Specify Warranty _____	_____ per each	_____	_____ per each
3.2	2 each	SUBSCRIPTION: Barracuda Web Filter 910 1-year Energize Updates; Barracuda #BYF910a-e1. Specify Mfr. & No. _____	_____ per each	_____	_____ per each
3.3	2 each	WARRANTY: Barracuda Web Filter 910 1-year Instant Replacement; Barracuda #BYF910a-h1. Specify Mfr. & No. _____	_____ per each	_____	_____ per each
Items 3.1 through 3.3 “ALL OR NONE” total -----				\$ _____	
3.4	1 lot	RETURN CREDIT: for Barracuda Web Filter 810’s; (S/N 304129, 277007).		\$ _____	

Additional Requirements

- 1) Bids MUST be submitted on this form to be considered.
- 2) Bidders are especially cautioned to RECHECK BID PRICES FOR ERRORS prior to submitting bid as changes in bid prices after opening date and hour of bid due to an error WILL NOT BE PERMITTED OR ACCEPTED. Bidder shall be required to furnish equipment at price or prices bid on or be penalized by being removed from bidder’s list for a period of one year.
- 3) For the purpose of uniformity, award of items 3.1 thru 3.3 will be made on an “ALL OR NONE” basis.
- 4) Equipment must be new only; used, refurbished, demo, prototype or gray market equipment will not be accepted.
- 5) For purposes of addressing questions concerning this solicitation, the sole contact will be the Purchasing Division’s designee. Upon issuance of this solicitation, employees and representatives of the agencies identified herein will not answer questions or otherwise discuss

the contents of this request with any prospective vendors or their representatives. Failure to observe this restriction may result in disqualification of any bid. This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

4. PAYMENT

4.1 Prices offered in bids are an irrevocable offer for the term of the contract and any contract extensions unless otherwise specified in the Additional Requirements of this ITB.

4.2 The State generally pays within 30 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.

Vendor's Payment Terms _____

4.3 Prompt payment discount periods equal to (or greater than) 30 calendar days will receive consideration and bid pricing will be reduced (for evaluation purposes only) by the amount of that discount(s).

Vendor's Prompt Payment Discount Offered _____

4.4 Vendor's prices contained in this bid are subject to acceptance within _____ calendar days.

4.5 The price quoted is for the specified delivery, and, unless otherwise specified in the Contract, is FOB destination (freight included) to the delivery address. Unless otherwise specified in the Contract, 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, payment shall be made in accordance with Nevada law to the Vendor.

4.6 The State requests MSRP prices in effect at the time of bid submittal for internal statistical purposes.

4.7 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 contractors accept credit card purchases; contractors are encouraged to consider this alternate payment process.

Purchasing (Credit) Cards accepted: Yes _____ No _____

Payment discount for transactions involving card use: _____ % Discount.

4.8 Delivery

Delivery will be completed within _____ calendar days after receipt of purchase order.

5. **BID SUBMITTAL INSTRUCTIONS**

5.1 **Bids must be received at the address referenced below no later than 2:00 PM Pacific Time, November 12, 2015.** Bids that do not arrive by bid opening time and date WILL NOT BE ACCEPTED. Vendors may submit their bid any time prior to the above stated deadline.

5.2 Bids may be submitted via mail, overnight delivery or facsimile.

5.2.1 *Hard Copy Bid Submission:* Must be submitted in a sealed package, the package must be clearly marked: Invitation to Bid No. 8386, Bid Opening Date: November 12, 2015.

Bid shall be submitted to:

State of Nevada, Purchasing Division
Marti Marsh, Purchasing Officer
515 E. Musser Street, Suite 300
Carson City, NV 89701

5.2.2 *Electronic Bid Submittal:* Faxed bids shall be sent to 775-684-0169 **ONLY**. Bids sent to any other fax number will NOT be accepted. Awarded vendor will be required to follow up with an original signature of the submitted bid. Bids sent by fax must be sent with a cover page, the package must be clearly marked: Invitation to Bid No. 8386, Bid Opening Date: November 12, 2015.

5.3 The State Purchasing Division will not be held responsible for bid packages mishandled as a result of not being properly prepared.

5.4 The Purchasing Division will accept questions received by email regarding this ITB as follows:

The Question Submittal Form is located on the Bidding Opportunities webpage at <http://purchasing.state.nv.us/bids/bdocs.htm>. Scroll down to the Bid number and select the "Question" link.

The deadline for submitting questions is October 29, 2015 @ at 2:00 p.m., Pacific Time. All questions and/or comments will be addressed in writing and responses e-mailed or faxed to prospective vendors on or about November 5, 2015.

5.5 **ITB TIMELINE**

<i>TASK</i>	<i>DATE/TIME</i>
Deadline for submitting questions	October 29, 2015 @ 2:00 P.M., PT
Answers to all questions submitted available on or about	November 5, 2015

Deadline for submission and opening of bids

November 12, 2015 @ 2:00 P.M., PT

Evaluation period

November 12 – 17, 2015

Selection of vendor on or about

November 17, 2015

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

- 5.6 This entire document and any amendments, if applicable, to this ITB must be returned as part of the vendor's bid submission. Failure to comply with this requirement may be grounds for non-acceptance of the bid.
- 5.7 For purposes of addressing questions concerning this ITB the sole contact will be the Purchasing Division. Upon issuance of this ITB, employees and representatives of the agencies identified herein will not answer questions or otherwise discuss the contents of this ITB or any subsequent submitted bid responses with any prospective bidders or their representatives until issuance of formal NOA. Failure to observe this restriction may result in disqualification of any bid. This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.
- 5.8 Sealed bids will be publically opened and read at the date, time and location specified within the ITB. Assistance for handicapped, blind or hearing-impaired persons who wish to attend the ITB opening is available. If special arrangements are necessary, please notify the Purchasing Division designee as soon as possible and at least two days in advance of the opening.

6. BID SOLICITATION, EVALUATION AND AWARD PROCESS

- 6.1 This procurement is being conducted in accordance with NRS Chapter 333 and NAC Chapter 333.
- 6.2 Bids must conform to all terms, conditions and specifications in this ITB.
- 6.3 Contractor 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 will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless purchaser from all damages assessed against purchaser as a result of Contractor's failure to comply with the acts and standards thereunder and for the failure of the items furnished under this order to so comply.
- 6.4 Pursuant to NRS Chapter 613 in connection with the performance of work under this contract, the contractor 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 contractor further agrees to insert this provision in all subcontracts, hereunder, except subcontracts for standard commercial supplies or raw materials.

- 6.5 Every contract or order for goods must be awarded to the lowest responsible bidder. (NRS 333.340(1)) To determine the lowest responsible bidder, the Purchasing Division may consider:
- The location of the using agency to be supplied;
 - The qualities of the articles to be supplied;
 - The total cost of ownership of the articles to be supplied;
 - The conformity of the articles to be supplied with the specifications;
 - The purposes for which the articles to be supplied are required; and
 - The dates of delivery of the articles to be supplied.

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

- 6.5.1 When the advertisement for bids includes a statement that bids for alternative articles will be considered, alternative articles will be considered in as much as they are determined to:
- Meet or exceed the specifications of the article listed in the original request for bids;
 - The purchase of the alternative article results in a lower price; and
 - The Chief deems the purchase of the alternative article to be in the best interests of the State.

- 6.6 Bids may be withdrawn by written or facsimile notice received prior to the ITB opening time. Withdrawals received after the ITB opening time will not be considered except as authorized by NRS 333.350(3).

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

- 6.8 Any unsuccessful bidder may file an appeal in strict compliance with NRS 333.370.

- 6.9 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 resulting from this ITB and any local government may join or use any contract resulting from this ITB subject to all terms and conditions thereof pursuant to NRS 332.195. The State is not liable for the obligations of any local government which joins or uses any contract resulting from this ITB.

- 6.10 Vendors who enter into a contract with the State of Nevada and who sell tangible personal property in the State of Nevada are 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.

- 6.11 When applicable, submission of a bid must 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 will be necessary to determine if a bid is in the best interest of the State.

7. TERMS AND CONDITIONS FOR PURCHASE OF GOODS

7.1 **INCORPORATED DOCUMENTS:** The Contract shall consist of this ITB, any amendments to this ITB if applicable, the vendor's bid 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's bid shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in the Contract.

7.2 **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 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.

7.3 **TERMINATION:**

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

7.3.2 *State Termination for Nonappropriation.* The continuation of the Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate the Contract, 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.

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

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

7.3.3.2 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 is

- for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
- 7.3.3.3 If the Vendor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
- 7.3.3.4 If the State materially breaches any material duty under the Contract and any such breach impairs the Vendor's ability to perform; or
- 7.3.3.5 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 or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
- 7.3.3.6 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.
- 7.3.4 *Time to Correct.* Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph 6.2, 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.
- 7.3.5 *Winding Up Affairs Upon Termination.* In the event of termination of the contract for any reason, the parties agree that the provisions of this paragraph survive termination:
 - 7.3.5.1 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. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
 - 7.3.5.2 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.
- 7.4 **REPRESENTATIONS AND WARRANTIES:** The Vendor represents and warrants to the State:
 - 7.4.1 *Bid Representations:* All statements made by the Vendor on any application, bid, proposal, offer, financial statement, or other document used by the Vendor to induce the State to enter into the Contract are true, correct, complete, and omit no information which would render them misleading.
 - 7.4.2 *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.
 - 7.4.3 *Express Warranties:* For the period specified in the NOA, Vendor warrants and represents each of the following with respect to any goods provided under the contract:
 - 7.4.3.1 *Fitness for Particular Purpose:* The goods shall be fit and sufficient for the particular purpose set forth in the Contract.
 - 7.4.3.2 *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 are ordinarily intended for use in general government administration and operations.
- 7.4.3.3 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.
 - 7.4.3.4 Conformity: The goods shall conform to the standards, specifications and descriptions set forth in the Contract. 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.
 - 7.4.3.5 Uniformity: The goods shall be without variation, and shall be of uniform kind, quality, and quantity within each unit and among all units.
 - 7.4.3.6 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.
 - 7.4.3.7 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.
 - 7.4.3.8 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.
 - 7.4.3.9 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.
 - 7.4.3.10 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, 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. 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 NOA.
 - 7.4.3.11 Warranties Cumulative: It is understood that warranties created by the Contract, whether express or implied, as well as all warranties arising by operation of law

that affect the rights of the parties, are cumulative and should be construed in a manner consistent with one another.

7.4.3.12 **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 and any warranties implied by law, the parties agree that the specifications contained in the Contract shall be deemed technical and mere language of description.

7.4.3.13 **Beneficiaries of Warranties:** Benefit of any warranty made in the Contract 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.

7.5 **DELIVERY, INSPECTION, ACCEPTANCE, TITLE, RISK OF LOSS:** The Vendor agrees to deliver the goods as indicated in the Contract, 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 must give notice to the Vendor of any claim or damages on account of condition, quality, or grade of the goods, and must specify the basis of the claim in detail. Acceptance of the goods described in the Contract 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.

7.6 **NO ARRIVAL, NO SALE:** The Contract 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 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.

7.7 **BREACH, REMEDIES:** Failure of either party to perform any obligation of the Contract 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 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. Penalties provided under Nevada law shall be limited to those in effect on the effective date of the Contract. *See* NRS 333.365. Either party, as a prevailing party to any arbitration or other action regarding the enforcement of the Contract, is entitled to reasonable attorney's fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation One hundred twenty-five dollars (\$125) per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of the Vendor to any State agency.

- 7.8 LIMITED LIABILITY: The State will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages.
- 7.9 WAIVER OF BREACH: A failure to assert any right or remedy available to a party under the Contract, 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, unless such waiver is contained in a writing signed by the waiving party.
- 7.10 SEVERABILITY: If any provision contained in the Contract is held to be unenforceable by a court of law or equity, the Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of the Contract unenforceable.
- 7.11 ASSIGNMENT/DELEGATION: To the extent that any assignment of any right under the Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of the Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of the Contract. 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.
- 7.12 FORCE MAJEURE: Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.
- 7.13 GOVERNING LAW; JURISDICTION: This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, including, without limitation, Nevada's UCC (NRS Chapter 104) in effect on the date of the NOA. The parties consent to the jurisdiction and venue of the First Judicial District Court, Carson City, Nevada for enforcement of the Contract.
- 7.14 ENTIRE AGREEMENT; CONFLICT WITH OTHER DOCUMENTS: The Contract (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. 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, the Contract shall control. All amendments must be in writing and signed by the parties.
- 7.15 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 will be saved over the useful life of the item.

7.16 **TERM:** In accordance with NRS 333.280, the Purchasing Division may enter into a contract for the furnishing of goods for not more than two (2) years. The original terms of a contract may be extended annually thereafter if the conditions for extension are specified in this solicitation, and the Purchasing Division determines that an extension is in the best interest of the State.

7.17 **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 will 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.

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

ATTACHMENT A

VENDOR AUTHORIZATION AND COMPLIANCE CERTIFICATION

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 will not violate any provision of law, or any of the Vendors 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.

Submission of a bid shall constitute an agreement to all terms and conditions specified in this ITB, including, without limitation, the Terms and Conditions for Purchase of Goods. Exceptions will be taken into consideration as part of the evaluation process.

I have read, understand and agree to comply with the specifications, terms and conditions specified in this ITB. Checking “YES” indicates compliance, while checking “NO” indicates non-compliance and must be detailed below. In order for any exceptions to be considered they **MUST** be documented.

YES _____ I agree. NO _____ I do not agree, Exceptions below:

SIGNATURE _____
Vendor

_____ Date

PRINT NAME _____
Vendor

EXCEPTION SUMMARY
Attached additional sheets if necessary

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