

Item # 8-4F

**City of Carson City
Agenda Report**

Date Submitted: October 27, 2009

Agenda Date Requested: November 5, 2009
Time Requested: Consent

To: Mayor and Supervisors
From: Purchasing & Contracts

Subject Title: Action to authorize all City departments to utilize RFP-1749 for Brownfield Program-Environmental Clean-up services through McGinley and Associated, Inc. which RFP-1749 was approved by the Nevada Board of Examiners and which is exempt from competitive bidding pursuant to NRS 332.115 subsection 1 (m) and NRS 332.195 providing Carson City's approved funding and purchasing procedures are followed (File No. 0910-107) (*Sandy Scott*)

Staff Summary: Carson City has received a grant award from EPA Region IX for Brownfields work. Work includes Phase I and II site assessments and development of site specific clean-up plans. All work is to be performed under the regulatory requirements of 40CFR Part 31, CERCLA: Section 104(k)2 and all other USEP Brownfields requirements.

The Office of Business Development and the City Manager's Office, Grants programs may also be utilizing this contract.

Type of Action Requested: (check one)

- Resolution
- Formal Action/Motion
- Ordinance
- Other (Specify)

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to authorize all City departments to utilize RFP-1749 for Brownfield Program-Environmental Clean-up services through McGinley and Associated, Inc. which RFP-1749 was approved by the Nevada Board of Examiners and which is exempt from competitive bidding pursuant to NRS 332.115 subsection 1 (m) and NRS 332.195 providing Carson City's approved funding and purchasing procedures are followed (File No. 0910-107) (*Sandy Scott*)

Explanation for Recommended Board Action: Pursuant to **NRS 332.115 subsection 1(m) and NRS 332.195**, staff is requesting the Board of Supervisors declare that the contract is not adapted to award by competitive bidding and authorize all city departments to be able to place orders from this contract providing Carson City's approved funding and purchasing procedures are followed.

NRS 332.115 Contracts not adapted to award by competitive bidding; purchase of equipment by local law enforcement agency, response agency or other local governmental agency; purchase of goods commonly used by hospital.

1. Contracts which by their nature are not adapted to award by competitive bidding, including contracts for:

(m) Supplies, materials or equipment that are available pursuant to an agreement with a vendor that has entered into an agreement with the General Services Administration or another governmental agency located within or outside this State; are not subject to the requirements of this chapter for competitive bidding, as determined by the governing body or its authorized representative.

NRS 332.195 Joinder or mutual use of contracts by governmental entities.

1. A governing body or its authorized representative and the State of Nevada may join or use the contracts of local governments located within or outside this State with the authorization of the contracting vendor. The originally contracting local government is not liable for the obligations of the governmental entity which joins or uses the contract.

2. A governing body or its authorized representative may join or use the contracts of the State of Nevada or another state with the authorization of the contracting vendor. The State of Nevada or other state is not liable for the obligations of the local government which joins or uses the contract.

(Added to NRS by 1975, 1539; A 1985, 357; 1999, 1686; 2001, 1320; 2003, 2263; 2005, 2556)

Applicable Statue, Code, Policy, Rule or Regulation: NRS 332.115 subsection 1(m) and NRS 332.195

Fiscal Impact: \$400,000.00

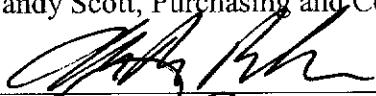
Explanation of Impact: If approved the below referenced accounts could be reduced by \$400,000.00.

Funding Source: Brownfields Grant - Salary 275-0640-465-0101; Professional Services 275-0640-465-0309; Operations 275-0640-465-0625; Travel 275-0640-465-0580; and Brownfields Assessment 275-0000-331-9440 Funds as provided for in FY 2009/2010.

Supporting Material: Authorization letter, RFP-1749, State Contract, Cost Proposal, Response from McGinley, Cost Proposal, 40CFR Part 31, CERCLA: Section 104(k)2

Prepared By: Sandy Scott, Purchasing and Contracts Coordinator

Reviewed By:



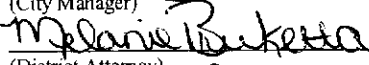
(Public Works)

Date: 10-27-09



(City Manager)

Date: 10-27-09



(District Attorney)

Date: 10-27-09



(Finance Director)

Date: 10/27/09

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)



Reno Office
815 Maestro Drive
Reno, NV 89511

ph: 775.829.2245
fax: 775.829.2213
www.mcglin.com

Las Vegas Office
8275 South Eastern Avenue
Suite 220
Las Vegas, NV 89123

ph: 702.990.8392
fax: 702.938.1049

October 15, 2009

Carson City Nevada
Consolidated Municipality and State Capital
3505 Butti Way
Carson City, NV 89701-3498

ATTN: Mr. Darren Selby
Operations Manager – Environmental

RE: STATE OF NEVADA BROWNFIELDS CONTRACT AND MCGINLEY & ASSOCIATES INC.

Mr. Selby:

Per our recent conversation, this correspondence is submitted to grant permission and acknowledge the adjoining of Carson City to the State of Nevada Brownfields contract between the State of Nevada through its Department of Conservation and Natural Resources, Environmental Protection and McGinley & Associates, Inc.

The subject contract is referenced by the State of Nevada as RFP/Contract No. 1749 and was approved by the Deputy Attorney General for Attorney General –NDEP on May 8, 2009 and was approved by the Nevada Board of Examiners on June 17, 2009.

All terms and conditions of the contract will remain in-place as stipulated in the subject contract.

Please contact me at your convenience should you have any questions. We appreciate the opportunity and look forward to working with Carson City in near future.

Respectfully submitted,
McGinley & Associates, Inc.

Joseph M. McGinley, PE, PG, CEM
President



SUBJECT: No. 2 to Request for Proposal No. 1749
DATE OF AMENDMENT: February 5, 2009
DATE OF RFP RELEASE: December 23, 2008
DATE AND TIME OF OPENING: February 18, 2009 @ 2:00 p.m.
AGENCY CONTACT: Dave Jones, Purchasing Officer

The following shall be a part of RFP No. 1749 for The Nevada Brownfields Program. If a vendor has already returned a proposal and any of the information provided below changes that proposal, please submit the changes along with this amendment. You need not re-submit an entire proposal prior to the opening date and time.

Section I – Amended Language

1. *Page 29, Section 10, Part I, Paragraph 2: Delete subparagraph h. Contractor's License.*

Section II - Questions With Answers

1. Can a State of Nevada Engineering License act as the applicable license in place of the State of Nevada Contractor's license for the Prime Vendor?

No.

2. Is the State of Nevada Contractor's license required of the Prime Contractor, or only those sub-contractors providing services which a contractor's license would be required (i.e., construction/remediation).

A contractor license is not required for the prime contractor on the Brownfields Contract. However, sub-contractors who perform services pursuant to NRS 624 and in regards to this contract are required to have the applicable contractor's license.

3. If the State of Nevada Contractor's license is only required for those sub-contractors performing services requiring a contractor's license, can the prime vendor provide the State with a copy of any sub-contractor's Nevada contractor's license prior to

work approval or is it requirement of the proposal? Depending upon the types of sites being remediated, the lists of qualified remediation sub-contractors could be large and acquiring licenses for those all the different firms prior to submittal would be logistically challenging.

Vendor's are not required to submit potential subcontractor's licenses with the proposal. The Primary Vendor will be required to present all applicable subcontractor licenses to the Department of Conservation and Natural Resources, Division of Environmental Protection prior to performing any Brownfields related contract work.

4. We are requesting further clarification in reference to question number 19 on Amendment No. 1 1749 for the Brownfields RFP, the question reads: "Page #22 Section 7.17 Mentions a license. Which license are you referring to or requesting information be provided on? Further clarification is required." The answer was "A State of Nevada Contractors license."

Our question has two parts.

Part one: We have held this contract in previous years and have not been required to have a contractor's license to perform the work required under this contract. We are a licensed engineering firm in the state of Nevada. NRS 625.050 defines practice of professional engineering to include: (a) Any professional service which involves the application of engineering principles and data, such as consultation, investigation, evaluation, planning and design, or responsible supervision of construction or operation in connection with any public or private utility, structure, building, machine, equipment, process, work or project and (b) such other services as are necessary to the planning, progress and completion of any engineering project or to the performance of any engineering service. In contrast, NRS 624.020(1) indicates that a licensed contractor is synonymous with a "builder." NSR 624.020(2) also indicates that a licensed contractor is other than an architect or engineer. A licensed contractor cannot properly or lawfully perform the skills of an engineer. NRS 624.031 exempts work performed by any representative of the State of Nevada from the licensing requirements of the construction contractor. The successful bidder will execute the work as a representative of the State thereby eliminating the need for the contractor's license.

The RFP Scope of Work section addresses skills properly attributable to a licensed engineer, not a licensed contractor.

Based on this information, do we still need to have a Nevada contractor's license?

A contractor license is not required for the prime contractor on the Brownfields Contract. However, sub-contractors who perform services pursuant to NRS 624 and in regards to this contract are required to have the applicable contractor's license.

Part two: If the answer is yes will you accept documentation in our proposal that we are

in the process of obtaining the license and will have a Contractor's license by the time work on the contract begins?

A contractor license is not required for the prime contractor on the Brownfields Contract. However, sub-contractors who perform services pursuant to NRS 624 and in regards to this contract are required to have the applicable contractor's license.

Vendor's are not required to submit potential subcontractor's licenses with the proposal. The Primary Vendor will be required to present all applicable subcontractor licenses to the Department of Conservation and Natural Resources, Division of Environmental Protection prior to performing any Brownfields related contract work.

ALL ELSE REMAINS THE SAME.

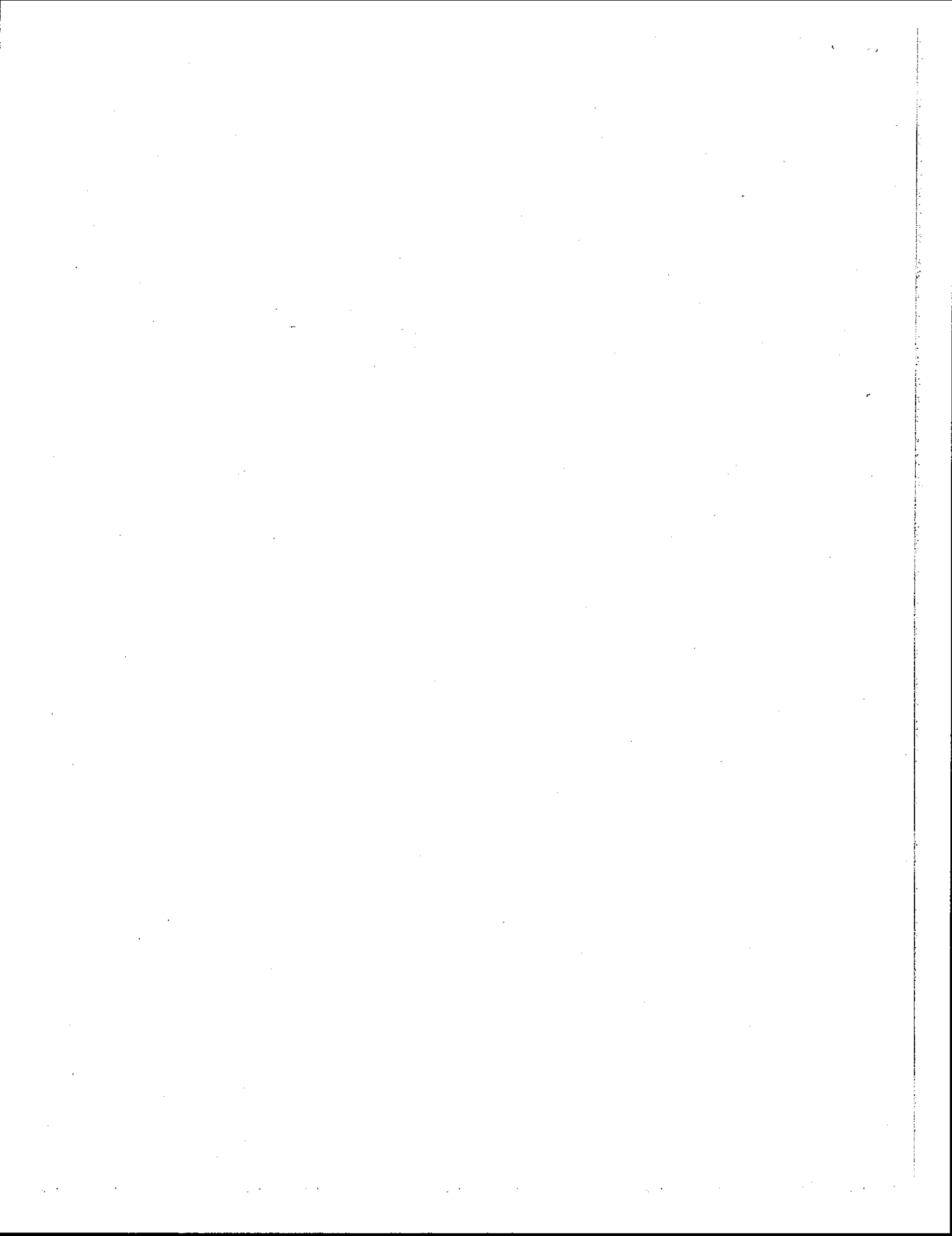
Vendor shall sign and return this amendment with proposal submitted.

NAME OF VENDOR _____

AUTHORIZED SIGNATURE _____

TITLE _____ DATE _____

This document must be submitted in the "State Documents" section/tab of vendors' technical proposal





SUBJECT: No. 1 to Request for Proposal No. 1749
DATE OF AMENDMENT: January 27, 2009
DATE OF RFP RELEASE: December 23, 2008
DATE AND TIME OF OPENING: February 18, 2009 @ 2:00 p.m.
AGENCY CONTACT: Dave Jones, Purchasing Officer

The following shall be a part of RFP No. 1749 for **The Nevada Brownfields Program**. If a vendor has already returned a proposal and any of the information provided below changes that proposal, please submit the changes along with this amendment. You need not re-submit an entire proposal prior to the opening date and time.

Section I – Amended Language

1. *Pg 1, Cover Page: Change Title From “The Nevada Brownsfields Program” To “The Nevada Brownfields Program”.*

Section II – Questions With Answers

1. Do you have an example of a Brownfield's sites have you developed in Nevada that the department is particularly proud of to date?

The Reno-Sparks Indian Colony is a great example because of the cooperation of so many different agencies, funding mechanisms and the far-reaching positive economic impact of the cleanup. Information on the site is available at http://ndep.nv.gov/bca/brownfield_rsic.htm

2. Do you have sites or certain communities (towns) in mind that the RFP would be used for the RFP?

No, we intend to utilize the funding throughout the state.

3. Does the current administration have a focus for the Brownfields program in Nevada? Like Redevelopment and Sustainability?

The NDEP receives funding from the US EPA; the vision of the US EPA can be found at <http://epa.gov/brownfields/>.

4. What firms had this contract in the recent past?

AMEC, Kleinfelder, MACTEC

5. Subcontractors: no markup allowed (just "considering" one). Still true, or can you indicate a percentage?

The NDEP prefers that the firms with winning proposals do the Brownfields work themselves rather than subcontracting most services. That being said, it is important to utilize local labor in some brownfields projects – in these cases, a 5% markup is allowed.

6. Invoicing/receivables: cannot bill NDEP until we have paid vendors in full. I'm guessing there is no room for change on this one; correct?

No changes to this requirement will be made.

7. Scoping meetings: not reimbursable. True, or are there caveats or exceptions?

Scoping meetings for larger projects are reimbursable, provided that an approved scope of work has been obtained.

8. Preparing scopes of work: not reimbursable. True, or are there caveats or exceptions?

The exceptions would include larger projects or those that require specialized knowledge and will be determined on a case by case basis. For example, developing a SOW for a Phase I Environmental Assessment would not likely be reimbursable expense.

9. Mandatory workshops and conference attendance: not reimbursable. True, or are there caveats or exceptions?

One exception. The NDEP may ask contractors to represent the states Brownfields program at a conference if staff are not available to attend. In this case, the contractors attendance is a qualifying expense.

10. Main vendor rates: locked in for 2 years and 2 more if renewed. True, or will NDEP consider renewing every one or two years?

Rates will be locked for 2 years and 2 more if renewed.

11. This concerns a non-cost issue: Main vendor: must have a contractor's license. True, or are there caveats or exceptions?

No exceptions.

12. Page 14, Cost Accounting and Record keeping section last Paragraph. The Awarded Vendor agrees to provide testimony and expert witness services during cost recovery and actions. Question: After the contract has expired, what will be the obligations of the previous contractor to recover expenses for labor and time for the professional services and expert witness testimony for the State of Nevada when requested by NDEP or USEPA at a future time past the original contract period. Will there be a method to provide cost recovery for expert witness labor hours, travel, per diem expenses and review of documents for court testimony?

This will depend upon the specific case. In some instances the NDEP will reimburse the contractor for expert witness service. This has never occurred.

13. Pg 18, first paragraph. A 5% mark up will be allowed for subcontractor services in certain situations. Will this be applied to subcontractors who will perform hazardous waste clean up, drum removal and other associated hazmat activities and using their personnel to perform clean up work? Furthermore the next paragraphs says that a vendor submitting a proposal that incorporates a team approach will be heavily penalized if there are markups attached to these services. The previous paragraph allows for 5% markup then the next paragraph appears to contradict the subcontractor services accounting method. To further clarify this, what if the prime vendor uses their labor rates for the services of subcontractors (thereby getting a discount from their subcontractors on their normal rates)? Then if the rates charged by the subcontractor to the prime vendor are discounted from their normal rates, would this be considered to be a cause for a penalty?

Markups will be allowed on a case-by-case basis, but the NDEP prefers that the prime contractor actually perform the work that they are capable of performing. In general, the labor rate of the prime vendor is higher than those of a contractor that they use as a subcontractor, so this particular circumstance would be rare.

14. In addition, the paragraph specifies that laboratory services will not be allowed any mark up. We routinely are given discounts for bulk analyses, then charge the standard rates for tests. Will this be allowed? If not, then does the State of Nevada have a preferred laboratory and a contract in place that can be used when submitting samples for analyses?

A 5 percent markup from the actual cost would be appropriate in this case.

15. Pg 39 Mail all insurance documents: Certificate of Insurance The insurance coverage limits required by the State of Nevada may not be in place at the time of the RFP is submitted. Will the State allow for proof of the higher matching insurance limits after an award is made to the prime vendor so that a bidder who is not awarded the contract does not incur an unnecessary expense of increased insurance coverage? If so, when will the coverage be expected to be in place? Currently, our company has insurance in all categories but the limits are in the standard \$1 and \$2 million ranges not the \$2 and \$4 million ranges required.

The State of Nevada requires that the vendors provide the State of Nevada agency the proof of insurance satisfying all requirements including types and the limits before the vendor begins work. The State request a current Certificate of Insurance to accompany the vendor's proposal. The vendors may not begin work until all insurance requirements are met. Yes, in this case, the higher insurance may be purchased after the award is made.

16. Is the subcontractor information requested solely for teaming partners? Or are we required to submit subcontractor information for all potential laboratories and drilling companies as part of this submittal?

Solely for teaming partners.

17. Who are the current incumbent consulting firms on this contract?

AMEC and Kleinfelder.

18. Section 7.7 asks that the proposal should be presented in a format that corresponds to and references sections outlined within the RFP. Should Part I be laid out in order of section 4 plus requested forms?

Yes.

19. Page #22 Section 7.17 Mentions a license. Which license are you referring to or requesting information be provided on? Further clarification is required.

A State of Nevada Contractor's license.

20. Page #29 Part II, Required # of Cost proposals per submittal instructions refers to what section? Provide further clarification of which cost proposals. Are you referring to our list of salaries for employees? Does the other refer to a list of equipment costs. Please clarify.

Refer to Section 5, Costs.

21. Is there a page limitation on the Technical Proposal?

No.

22. On page 29, Section 10 Submission Checklist, Part 1, Number 2 State Documents requires that Primary Vendor Information and Subcontractor information (items e and f) are to be included in the tabbed State Documents section. Is that referring to Section 4.1 through 4.3 of the RFP (pages 14 through 16)?

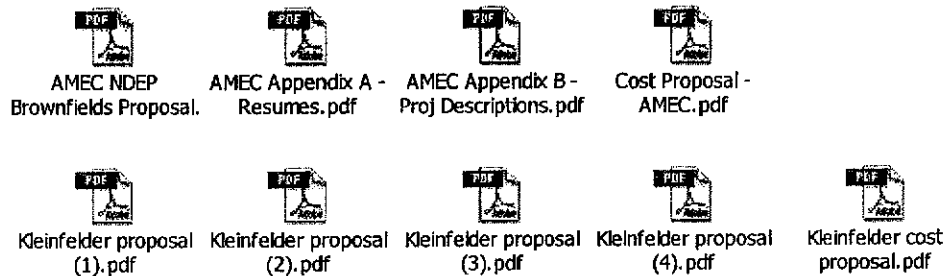
Section 10 is a checklist; the RFP requires other State documents and other Vendor and subcontractor information.

23. What specific scopes of work were issued in the last 4 years of the contract and what scopes of work are anticipated under this contract?

For a list of projects funded over the past several years, refer to our website: http://ndep.nv.gov/bca/brownfld_projects.htm NDEP anticipates similar types of projects in the next 4 years, however, it is difficult to predict.

24. Based on our examination of the RFP, both Section 9.18 (page 25) and Attachment A (page 30) indicate that technical and cost proposals submitted for consideration are considered public information after award. It is our understanding that this contract has been awarded for prior contract cycles. We are interested in reviewing the successful proposal(s) in the previous RFP. If this is not possible, we would appreciate the names of the Contractor(s) currently under contract for The Nevada Brownsfields Program.

Current contractors are AMEC and Kleinfelder.



25. What sites have you developed to date?

Project summaries are available on our website at http://ndep.nv.gov/bca/brownfld_projects.htm

26. Do you have sites in mind for the RFP?

No. Site owners (non-profits, cities, counties, etc.) generally approach the NDEP for services. In many instances, the vendor will 'nominate' a site that he is familiar with.

27. What is the current administration's focus for the Brownfields program in Nevada?

Refer to Question #3.

28. We are *subcontractor* who provides Environmental Analytical Laboratory support on soils and waters. Do we need to do this under the direction of the primary contractor?

Yes.

If so can we be provided a list of respondents to this RFP/RFQ.

Yes. The RFP opening is a public opening and the names of the vendors who responded are available at this time upon request.

If not, would we volunteer all of our labs capabilities and services, as there is no request for information on specific and potential parameters required.

The State will not offer to, be responsible for communicating with or require potential vendors to use subcontractors for this RFP.

ALL ELSE REMAINS THE SAME.

Vendor shall sign and return this amendment with proposal submitted.

NAME OF VENDOR _____

AUTHORIZED SIGNATURE _____

TITLE _____ DATE _____

This document must be submitted in the "State Documents" section/tab of vendors' technical proposal



Division of Purchasing
Request For Proposal No. 1749
for

THE NEVADA BROWNSFIELDS PROGRAM

Release Date: December 23, 2008
Deadline for Submission and Opening Date and Time: February 18, 2009 @ 2:00 PM

For additional information, please contact:
Dave Jones, Purchasing Officer
(775) 684-5812
(TTY for the Deaf and Hard of Hearing: 1-800-326-6868.
Ask the relay agent to dial 1-775-684-5812/V.)

This document must be submitted in the "State Documents" section/tab of vendors' technical proposal

See Page 19, for instructions on submitting proposals.

Contact Information

Company Name _____

Address _____ City _____ State _____ Zip _____

Telephone (____) _____ Fax (____) _____

E-Mail Address: _____

Prices contained in this proposal are subject to acceptance within _____ calendar days.

Contact Person _____

Print Name & Title _____

Page 1 of 59

TABLE OF CONTENTS

1. OVERVIEW OF PROJECT	3
2. ACRONYMS/DEFINITIONS	5
3. SCOPE OF WORK	7
4. COMPANY BACKGROUND AND REFERENCES.....	14
5. COST	16
6. PAYMENT	18
7. SUBMITTAL INSTRUCTIONS.....	18
8. PROPOSAL EVALUATION AND AWARD PROCESS.....	22
9. TERMS, CONDITIONS AND EXCEPTIONS.....	23
10. SUBMISSION CHECKLIST	29
Attachment A	30
Attachment B	32
Attachment C	34
Attachment D	46
Attachment E	49
Attachment F.....	52
Attachment G.....	54
Attachment H.....	55
Attachment I.....	59

A Request for Proposal process is different from an Invitation to Bid. The State expects vendors to propose creative, competitive solutions to the agency's stated problem or need, as specified below. Vendors may take exception to any section of the RFP. Exceptions should be clearly stated in Attachment B (Certification of Indemnification and Compliance with Terms and Conditions of RFP) and will be considered during the evaluation process. The State reserves the right to limit the Scope of Work prior to award, if deemed in the best interest of the State NRS §333.350(1).

1. OVERVIEW OF PROJECT

The Nevada State Purchasing Division, on behalf of the Nevada Division of Environmental Protection (NDEP), is requesting proposals from Certified Environmental Managers to provide consulting services to be performed under the Nevada Brownfields Program contract. Qualified small, minority, women's businesses, and other similar businesses are encouraged to submit proposals.

On January 11, 2002, the President signed into law the *Small Business Liability Relief and Brownfields Revitalization Act*, which set forth various initiatives and provisions to aid in the identification, assessment, and remediation of properties where expansion, reuse, or redevelopment has been complicated due to the presence, or potential presence, of a hazardous substance, pollutant, or contaminant. These properties are hereafter referred to as "brownfield sites" or more generally "brownfields." Under the *Brownfields Revitalization Act*, the US Environmental Protection Agency (EPA) has been empowered to provide grants to eligible entities through a national competitive process and also directly to States through dedicated State cleanup program enhancement funding. Funds from both of these grant processes may be used to conduct site-specific assessment and cleanup activities at eligible brownfield sites.

The NDEP operates its Nevada Brownfields Program with dedicated federal funding through the state cleanup program enhancement capabilities of the *Brownfields Revitalization Act*. It is also anticipated that the NDEP may receive site-specific grant funds for projects where the State applies on behalf of an eligible entity as part of the national Brownfields grant competition. A significant portion of the federal funds received by the NDEP have been slated for use in site-specific environmental assessment and cleanup activities, for which the NDEP is seeking to contract qualified firms, which are certified in the State of Nevada to provide these services.

The Nevada Brownfields Program operates under funds received through CERCLA Section 128, which is a dedicated source of enhancement funding for State cleanup programs. The Nevada Division of Environmental Protection receives approximately \$750,000 per year through this source. This funding source and the level of funding is considered to be extremely stable. Of the total amount received, the Nevada Brownfields Program typically allots \$300,000 per year for the performance of brownfield assessment and cleanup activities through the use of its contractors. This stable source of funding may be augmented by yearly competitive grants submitted by the NDEP to the US EPA on behalf of local communities lacking the resources to compete for and administer a Federal Brownfields grant; this source of funding may add as much as \$200,000 per year for additional assessment activities.

Project budgets, are on a site basis, and are entirely dependent upon the type of site under investigation or undergoing cleanup; however, the Nevada Brownfields Program must observe a project cap set by the US EPA. The US EPA has capped allowable grant expenditures per site at

\$200,000 for an assessment project and \$200,000 for cleanup projects. Though it has not been an issue in past projects, the funds expended on a single project may exceed the established cap through the use of matching funds contributed by the grant recipient/property owner.

The primary services being sought under this Request for Proposal include those activities necessary for the completion of environmental assessments and cleanups that satisfy applicable state and federal requirements. These services, which are anticipated to occur at various project locations across the entire State, should include:

- preparation of site-specific Scopes of Work detailing assessment or cleanup project activities and budgets;
- preparation of site-specific Sampling and Analysis Plans for submittal to and review by US EPA quality assurance officers;
- collection of environmental samples including soil, sediment, surface water, groundwater, and air;
- performance of data quality verification and independent validation;
- preparation of environmental assessment reports that satisfy "all appropriate inquiry" rules developed by the EPA and which meet appropriate state requirements;
- development of Corrective Action Plans consistent with State of Nevada cleanup requirements under Nevada Administrative Code 445A and 459; and
- conducting site remediation activities including excavation of contaminated soils and installation of groundwater treatment systems.

A vendor selected under this RFP may also be responsible for performing other secondary activities that are deemed necessary for the implementation and augmentation of the Nevada Brownfields Program, including the identification and inventorying of potential Brownfields sites across the state, the conductance of public outreach activities, and coordination of public involvement during all phases of site revitalization.

The Nevada Brownfields Program does not currently have a policy of identifying and designating Brownfield sites, so the total number of sites in the State meeting the definition of a "brownfield" is unknown. Rather, sites are designated as Brownfields only once they have entered either a Federal or State program and receive grant or loan-assistance funding. Currently, the Nevada Brownfields Program addresses approximately seven sites per year with the grant funds administered through this contract.

Two (2) year contracts will be written for a period of time from approximately July 1, 2009 through June 30, 2011. Specific contract services to be performed will be contingent upon availability of annual Federal funding. The contract and Scope of Services may be modified by written agreement. It is the intent of the Division to contract with two (2) or more vendors under this Request for Proposal for the purposes of covering a workload that may encompass several concurrent projects across the State. The contract(s) may be extended for an additional two (2) year period upon mutual agreement.

All work products shall be consistent with the applicable sections of the Nevada Revised Statute (NRS) and the Nevada Administrative Code (NAC), as well as in conformance with the US EPA federal regulations under Title 40 of the US Code of Federal Regulations Part 30, 21, 32, 33, and 35, 276(a) and the Office of Management and Budget Circular A-87 and A-133.

Awarded vendors agree that bid documents for subcontractors for services shall include at least 25% Fair Share percentages for Women Business Enterprises and a 7% Fair Share percentage for Minority Business Enterprises.

As a requirement on the federal funding received by the Nevada Brownfields Program, the Program is required to demonstrate that it has met "fair share" requirements in the use of minority-owned and women-owned businesses. This requires the tracking of Minority-owned Business Expenditures and Women-owned Business Expenditures (MBE/WBE). In order to meet these requirements, expenditures by the selected firms through subcontracts and support services will need to be tracked and reported to the NDEP. The use of minority-owned or women-owned business by a vendor may be required by the Program, if it is determined that these "fair share" requirements are not being substantially met through other means.

2. ACRONYMS/DEFINITIONS

For the purposes of this RFP, the following acronyms/definitions will be used:

<i>Awarded Vendor</i>	The organization/individual that is awarded and has an approved contract with the State of Nevada for the services identified in this RFP.
<i>Brownfields</i>	1) Real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant 2) The Federal grant program developed to help promote the reuse and redevelopment of brownfields
<i>CEM</i>	Certified Environmental Manager NAC 459.9719 requires that consulting services involving response, assessment, or cleanup of a hazardous substance release that are conducted for a fee must be performed under the direction and responsible control of a Nevada Certified Environmental Manager. Information on the NDEP Certification Program can be obtained by contacting Certification Program staff at 775-687-9368 or at the Certification Program website at http://ndep.nv.gov/bca/certhome.htm .
<i>CERCLA</i>	Comprehensive Environmental Response, Compensation, and Liability Act
<i>Confidential Information</i>	Any information relating to the amount or source of any income, profits, losses or expenditures of a person, including data relating to cost or price submitted in support of a bid or proposal. The term does not include the amount of a bid or proposal. See NRS §333.020(5)(b).
<i>Contractor</i>	Any contractor providing services in the State of Nevada must have a valid Nevada contractor's license.
<i>Division</i>	Department of Conservation and Natural Resources, Division of Environmental Protection.

<i>Evaluation Committee</i>	An independent committee comprised of a majority of State officers or employees established to evaluate and score proposals submitted in response to the RFP pursuant to NRS §333.335.
<i>LOI</i>	Letter of Intent - notification of the State's intent to award a contract to a vendor, pending successful negotiations; all information remains confidential until the issuance of the formal notice of award.
<i>May</i>	Indicates something that is not mandatory but permissible.
<i>NAC</i>	Nevada Administrative Code
<i>NRS</i>	Nevada Revised Statutes
<i>NOA</i>	Notice of Award- formal notification of the State's decision to award a contract, pending Board of Examiners' approval of said contract, any non-confidential information becomes available upon written request.
<i>Proprietary Information</i>	Any trade secret or confidential business information that is contained in a bid or proposal submitted on a particular contract.
<i>Public Record</i>	All books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential (see NRS §333.333 and NRS §600A.030(5)) 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>RFP</i>	Request for Proposal - a written statement which sets forth the requirements and specifications of a contract to be awarded by competitive selection NRS §333.020(7).
<i>SAP</i>	Sampling and Analysis Plan
<i>Shall/Must/Will</i>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of a proposal as non-responsive.
<i>Should</i>	Indicates something that is recommended but not mandatory. If the vendor fails to provide recommended information, the State may, at its sole option, ask the vendor to provide the information or evaluate the proposal without the information.
<i>State</i>	The State of Nevada and any agency identified herein.
<i>Subcontractor</i>	Third party, not directly employed by the vendor, who will provide services identified in this RFP. This does not include third parties who provide support or incidental services to the vendor.
<i>Trade Secret</i>	Means 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.

US EPA United States Environmental Protection Agency

Vendor Organization/individual submitting a proposal in response to this RFP.

3. **SCOPE OF WORK**

The Nevada Brownfields Program seeks to empower communities and local governments to assess, remediate, and promote the sustainable reuse of brownfields. The Program is part of a national perspective whose intent is the redevelopment and economic restoration of abandoned, underutilized, or vacant properties that are contaminated, or potentially contaminated, with hazardous substances. The successful implementation of the program involves the coordination of environmental and economic development initiatives, as well as extensive partnering with community groups, financial and business communities, real estate professionals, developers, lenders, and state and local economic and environmental agencies.

The awarded vendors shall provide, directly or through subcontractors, the services described in this section. The scope of services required under this RFP may be very broad and variable; as such, a specific project scope cannot be provided. Instead, all activities will be conducted under site-specific scopes of work developed by the awarded vendors at the direction of the NDEP at the start of each project. In general, however, the capabilities in the following sections are anticipated to be required. By no means is this to be considered a comprehensive description of required services.

3.1 **Brownfields Special Instructions**

The awarded vendors selected under this RFP will need to be mindful of the unique perspectives, which differentiate a successful brownfield project from typical remediation efforts conducted in the State. These perspectives include both a strong national/federal component and an active local involvement. These are in addition to those requirements placed on all environmental cleanups conducted across the state through state statutes and regulations.

From a national perspective, all brownfield projects receiving funding from federal sources (which the Nevada Brownfields Program fully relies on) must serve the objectives of the brownfields concept spelled out in federal law (see Attachment H). Each project should also be a model that promotes the unity of environmental and economic interests, meeting standards that satisfy both interests, including professionalism, timeliness, and innovation. Many features of the Nevada Brownfields Program are intended to meet these national standards, and these requirements are passed onto those awarded vendors who would be performing environmental assessments and

cleanup activities under this RFP. Some of the Program features that result from adherence to these national standards include:

- data quality requirements beyond those required by State law,
- additional record-keeping, project tracking, and reporting necessary to support numeric evaluations of successful national and regional brownfield programs,
- the efficient and appropriate use of tax-payer funds to leverage private development money and interest, and
- significant community notification and involvement.

Therefore, awarded vendors shall perform all work required by the Nevada Brownfields Program in conformance with US EPA statute, regulation and guidance. Awarded vendors will also be required to remain informed on national brownfield issues through participation in national, regional, or local conferences and workshops; the NDEP will not be responsible either financially or managerially in these necessary capability-building activities.

Ultimately, the Nevada Brownfields Program has been developed with the goal of being an efficient tool for use by local governments across the state. Almost all work conducted by the Nevada Brownfields Program is done at the direction and for the benefit of local and municipal governments who are seeking to deal with historic environmental conditions that are serving as a barrier to economic development. Work conducted for local governments must meet environmental standards set by State law but should always be mindful of local economic needs. As such, the Nevada Brownfields Program maintains a policy of encouraging the use of local labor and resources when available, especially in rural communities, to promote the strengthening of local economies. Awarded vendors doing work for the Nevada Brownfields Program must be knowledgeable of and responsive to local issues during all assessment and cleanup projects and will need to serve as technical representatives in any community notification efforts.

3.2 Project Scoping

When a project has been accepted into the Nevada Brownfields Program, an initial scoping meeting will be coordinated by NDEP staff to be attended by all site stakeholders including property owners, local government representatives, Nevada Brownfields Program staff and consultant, and possibly the US EPA Project Officer. Usually the NDEP will have selected a single consultant from among contracted firms based on project considerations including work load, geography, and site conditions, but in some instances, where it is felt to be beneficial to the Program, more than one of the contracted firms may be invited to attend. When more than one firm is invited to attend the initial project scoping meeting, the NDEP may determine the project firm(s) by:

- Assessing the participating firms' capabilities;
- Establishing a shared work effort; or,

- Requesting firms provide a bid indicating scope tasks, timelines, and costs. This option will only apply to projects exceeding \$10,000.00. (See Attachment I)

Project scoping meetings will be held prior to initiating any assessment or cleanup project. Where a site is qualified for both assessment and cleanup funding, a scoping meeting will be held prior to each phase of work. The intent of the initial scoping meeting will be the familiarization of all stakeholders with the site and issues, the assessment of project needs, and the development of project tasks and timelines. Most initial project scoping meetings will involve a site visit except in situations where this is impractical or unnecessary.

Participation in an initial project-scoping meeting by the Nevada Brownfields consultants will occur prior to the approval of a site-specific scope of work establishing a project budget. In most instances, the involvement of the awarded vendor in the initial project scoping will be solely for the purposes of familiarizing the awarded vendor with the site issues and determining the awarded vendors capabilities and sufficiency; these will not be reimbursable activities under this RFP. However, where geographic considerations result in attendance at a scoping meeting requiring significant travel, the NDEP will ensure that participation becomes a reimbursable activity.

3.3 Development of Site Specific Scopes of Work

Based on the discussions held at the initial scoping meeting, the selected consultant will be directed to develop a site-specific Scope of Work, which will lay out tasks, timelines, and costs to complete an assessment or cleanup project, or an agreed-to portion of that project as dictated by the NDEP. The site specific Scope of Work will be the primary document defining the role of the consultant in a brownfield project and should include all tasks anticipated to be undertaken by the selected firm or by anyone subcontracted by the selected firm.

The awarded vendor will need to remain in contact with the Nevada Brownfields Program during development of the Scope of Work in order to clarify any issues resulting from the initial project meeting and to ensure that project tasks being developed are consistent with NDEP conceptions of assessment or cleanup efforts.

The detailing of anticipated project costs will be an integral component to the development of site-specific scopes of work. The Scope of Work will set a not-to-exceed estimate of total project costs. The NDEP will provide guidance, for each Scope of Work, on the amount of documentation required to support the submitted not-to-exceed proposal; the amount of detail necessary in each proposal will be dependent on the amount of funding available to the NDEP at any one time, the size of the project being considered, and the number of other projects being funded or anticipated to be funded. In some instances, a reasonable dollar figure for a relatively small assessment effort can be approved without a detailed scope of work.

While certain costs will be set in the contract between the NDEP and the selected firms, specifically staff salary, overhead, profit, and travel rates, a detailed scope of work may need to identify numbers of hours budgeted under each approved salary rate. Detailed

scopes of work may also need to include cost figures received through the bidding of work elements to subcontractors or any other figures which should be obtained in order to develop an accurate project cost estimate. Costs for each major activity will be negotiated by the NDEP and the contractor in accordance with Federal and State regulations where those costs have not been previously detailed in the contract.

Change orders to increase project budgets will be entertained only to cover those costs which were not anticipated or considered during the development of the not-to-exceed proposal in the original Scope of Work.

Costs associated with the development of a site-specific Scope of Work will not typically be reimbursable because these activities are primarily devoted to cost and project negotiations. However, where the NDEP requests an extremely detailed Scope of Work that involves significant efforts to develop accurate timelines and to obtain detailed cost figures, the NDEP will entertain fair reimbursable expenses for these activities.

3.4 Plan Development

Prior to the initiation of any field sampling or cleanup activities, the awarded vendor will need to submit a detailed plan for approval by the Nevada Brownfields Program. Any plan for activities involving the collection and reporting of environmental data will also need to be approved by the US EPA Region IX quality assurance office prior to initiation. The development of these plans will always be a reimbursable expense. No plan will be required for approval prior to conducting a Phase I or an "all appropriate inquiry" investigation that does not involve a Field Sampling and Analysis Plan in accordance with the Quality Assurance Project Plan.

For environmental site assessments involving the collection of field samples, the consultant must prepare a Field Sampling and Analysis Plan (SAP) using the approved template developed by NDEP and the EPA Region IX Quality Assurance Office. The template SAP has been developed for use as a site-specific Quality Assurance Project Plan that meets EPA guidance for data quality objectives on brownfield sites in accordance with the "National EPA Quality Assurance Guidance for Conducting Brownfields Site Assessments (available on NDEP Website)." In general terms, the SAP should outline the technical rationale for the assessment including: the total number of soil and/or groundwater samples to be collected, proposed sampling locations, field protocols, sampling procedures, chemical analyses to be performed, and laboratory QA/QC information and reporting requirements.

The Nevada Brownfields Program contract is considered to be a "large undertaking" in the sense that many of the projects undertaken will require considerable attention from project awarded vendors. Awarded vendors will need to be familiar with a wide variety of assessment and remediation techniques for nearly all forms of petroleum and hazardous substance contamination. Most assessments conducted under the Brownfields Program are conducted to eliminate any uncertainties associated with the site; therefore, a large number of samples are usually generated for each site for all media present. Also, sampling conducted under the Brownfields Program must observe strict Quality

Assurance procedures, which require an additional commitment of time and experience from project award vendors.

The Nevada Brownfields Program will focus its review of a field SAP in determining whether the sampling meets projects goals and state regulatory requirements. All sampling plans should satisfy assessment requirements under the State's corrective action cleanup program (NAC 445A.226 to 445A.22755). This means that the assessment should be consistent with standards established by the American Society for Testing and Materials for either ASTM E-1903-97: *Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process* or ASTM E-1739-95: *Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites and US EPA All Appropriate Inquiry Rule 40 CFR Part 312*. The NDEP will review SAPs to determine whether they will adequately characterize the extent and level of contaminants in environmental media and will help to establish an appropriate action level for eventual cleanup activities.

The US EPA Region IX Quality Assurance Office will review SAPs prepared by the consultant to ensure that all data generated will meet appropriate Quality Assurance requirements. All data collection will be done through approved Standard Operating Procedures; all laboratory analyses will be performed using established protocols. In addition to these Quality Assurance activities, all data will be required to undergo a Tier 3 data validation process consistent with EPA Region IX protocols. This will include independent data validation of an appropriate number of samples as established in the SAP. The awarded vendor will submit the SAP, prepared from the approved template, for review by the US EPA and will make any changes or recommendations which are thereby provided. The awarded vendor will allow for and calculate project timelines based on a review period of at least 4 weeks for SAP approval.

On Brownfield projects where cleanup activities are being undertaken, the awarded vendor will submit a corrective action plan, as required in NAC 445A.226 to 445A.22755, prior to any field activities. The Nevada Brownfields Program will have the ultimate authority to approve proposed cleanup actions through the review of a corrective action plan submitted by the consultant. The US EPA will not have a role in the review of corrective action plans; however, where cleanups involve the collection of confirmation or additional monitoring samples, QA procedures will still need to be documented and reviewed by the EPA Quality Assurance Officer. This will involve either the revision of a previously approved SAP for projects where brownfields assessment activities have already occurred or the development of a novel SAP to cover data generation during cleanup activities.

A health and safety plan for Phase II assessment and cleanup field work shall be prepared as part of the SAP or corrective action plan to ensure health and safety for on-site workers and other personnel. Awarded vendors will comply with all applicable laws and will advise all employees and subcontractors of any potentially hazardous conditions they may be exposed to while performing activities.

3.5 Assessment and Cleanup Field Work

Awarded vendors will be responsible for conducting ASTM Phase I Environmental Site Assessments on sites accepted into the Nevada Brownfields Program as directed by the NDEP. The goal of the Phase I will be to document previous and current uses of sites, identify the potential for contamination at the site due to current or historical uses, and determine if migration to or from surrounding properties has occurred. Awarded vendors performing Phase I Environmental Site Assessment from funds received through the Nevada Brownfields Program will also need to be compliant with "all appropriate inquiry" standards developed by the US EPA. "All appropriate inquiry" has been mandated through the CERCLA amendments passed in the *Small Business Liability Relief and Brownfields Revitalization Act*.

Phase II Environmental Site Assessments performed by consultants and funded by the Nevada Brownfields Program will be compliant with ASTM E-1903-97 standards and US EPA All Appropriate Inquiry Rule 40 CFR Part 312. The selected firm will need capabilities for sampling all environmental media which may be encountered at contaminated sites discussed in the previous section, these environmental site assessments will need to be conducted in accordance with approved Field Sampling and Analysis Plans. The awarded vendor shall prepare and implement recognized QA/QC procedures and Safety Programs to ensure all environmental sampling is properly performed and documented and to ensure the safety of persons, property, and the environment. All field activities will be properly documented, and any deviations from the approved SAP taken in the field shall be properly recorded and justified.

Awarded vendors shall undertake corrective action for the cleanup of hazardous substances and contaminants at brownfield sites entered in the Nevada Brownfields Program. These activities may include, but are not limited to, excavation of contaminated soil, in-situ treatment of contaminated soils, installation of groundwater treatment systems, management of solid wastes, abatement of asbestos containing materials, and stabilization of mining waste units. All cleanup activities will be undertaken as described in an approved corrective action plan and will satisfy requirements in NAC 445A.226 to 445A.22755 or any other applicable state laws.

3.6 Preparation of Assessment and Cleanup Closure Reports

All field or investigative activities conducted by the selected firm on behalf of the Nevada Brownfields Program will be documented and submitted in a final report either of Phase I, Phase II, or cleanup activities. Final reports will need to be consistent with accepted professional standards since they will serve as documents supporting regulatory, site decision-making. A draft of the final report will be submitted to the NDEP for review, and the awarded vendor will make any changes recommended prior to issuance of the final report.

In addition to the reporting of sampling procedures and results, any report documenting the collection of field samples should include all supporting QA/QC documentation. Where this supporting documentation is considered extensive, the information shall be provided in an electronic format where appropriate. Copies of all final reports should be

delivered to the Nevada Brownfields Program for maintenance in the state files; other copies of the finalized reports should be distributed to the property owner and any appropriate local officials.

Final reports on cleanup activities will be developed in a format that will allow the NDEP to issue no further action on a brownfield project. This will include documentation of soil disposal or treatment and sufficient groundwater sampling to support closure under State law. Again, as with assessment reports, supporting QA/QC documentation for all collected environmental data will need to be provided.

The consultant shall, upon the NDEP's request, provide such additional information or supplemental reports as needed by the Nevada Brownfields Program. All plans, specifications, reports, studies, tracings, maps, and other documents prepared or obtained by the consultant in the course of performing the work shall be the property of the NDEP. All work products and/or purchases are public information, unless otherwise determined to be confidential in accordance with State law, and are the property of the NDEP. All written submittals which present environmental information will be certified by a Certified Environmental Manager (CEM) as true and correct in accordance with State regulations NAC 459.970 to 459.9729.

3.7 Community Outreach and Technical Assistance

The awarded vendor will serve as a resource to the NDEP for the purposes of community outreach. A representative will be required at any and all meetings, at the request of NDEP, for support as a technical expert. The awarded vendor may also be responsible for general community relations or involvement through support activities such as the preparation of fact sheets, brochures, site signage, etc. The awarded vendor will serve as a technical expert and provide information to the NDEP Brownfields staff for the purpose of 1) providing information at community Town Hall meetings, 2) aligning redevelopment with local master plans, 3) informing local political officials, 4) providing information to Economic Development Organizations, and 5) preparing a formal community relations plan or at any event which the NDEP deems to be important to the community outreach element of this program. The intent of these meetings will be to provide the community with status reports on the progress of the Brownfields site. Information supplied by the consultant may be utilized as educational materials, publications and media releases, or to prepare fact sheets or computer generated presentations explaining the results of sampling or other environmental assessments or plans.

3.8 Program Management

The selected firms will be responsible for certain program management activities necessary for the continued and efficient operation of the Nevada Brownfields Program. The selected firms may be required to attend program meetings with the NDEP and the US EPA to discuss various program management issues and to help shape program procedures. The awarded vendors will also be responsible for certain necessary tracking issues, such as the development of site statistics for both environmental and economic factors. Minority owned business and women owned business (MBE/WBE) expenditures

will be tracked by the awarded vendors and reported to the NDEP on an annual basis. Awarded vendors shall also participate in mid-contract and end-of-contract reviews.

3.9 Cost Accounting and Record Keeping

The selected firms will be required to follow established cost accounting and invoicing practices developed by the NDEP Office of Personnel and Fiscal Management. Billings for work, reimbursable under an approved, project-specific Scope of Work, shall be submitted in a timely manner with complete supporting documentation attached. The NDEP will provide brief invoice training at the beginning of the project to demonstrate appropriate billing formats, retentions, and timeframes. Where changes in billing procedures arise, such as changes to the Statewide *per diem* and travel rates, the awarded vendors and their accounting personnel will be notified.

The awarded vendor shall maintain records, documents, and billings as specified in federal regulations and guidance for Brownfields projects. This shall include maintaining the following records for a minimum of three (3) years:

- Timesheets and certified payrolls;
- Work orders, invoices and payment vouchers;
- Subcontract agreements, cost breakdowns;
- Change orders;
- Progress reports;
- Documentation concerning claims, disputes or noncompliance action of subcontractors;
- Travel and per diem expenses.

The awarded vendor also agrees to provide testimony/expert witness services during cost recovery actions or provide other information regarding these contracted activities when requested by the NDEP or US EPA. The contractor also must provide the NDEP and US EPA with access to all files and documents relating to the contract, upon request.

4. COMPANY BACKGROUND AND REFERENCES

4.1 PRIMARY VENDOR INFORMATION

Vendors must provide a company profile. Information provided shall include:

4.1.1 Company ownership (sole proprietor, partnership, etc).

4.1.1.1 Incorporated companies must identify the state in which the company is incorporated and the date of incorporation. **Please be advised**, pursuant to NRS §80.010, incorporated companies must register with the State of Nevada, Secretary of State's Office as a foreign corporation before a contract can be executed between the State of Nevada and the awarded vendor, unless specifically exempted by NRS §80.015.

4.1.1.2 The selected vendor, prior to doing business in the State of Nevada, must be appropriately licensed by the Department of Taxation, in accordance with NRS §360.780.

- 4.1.2 Disclosure of any alleged significant prior or ongoing contract failures, contract breaches, any civil or criminal litigation or investigation pending which involves the vendor or in which the vendor has been judged guilty or liable with the State of Nevada.
- 4.1.3 Location(s) of the company offices and location of the office that will provide the services described in this RFP.
- 4.1.4 Is your firm a resident of Nevada or a resident of another state? If so, please list the state of residence. Does your resident state apply a preference, which is not afforded to bidders or vendors who are residents in the state of Nevada? This information may be utilized in determining whether an inverse preference applies pursuant to NRS §333.336.
- 4.1.5 Number of employees both locally and nationally.
- 4.1.6 Location(s) from which employees will be assigned.
- 4.1.7 Name, address and telephone number of the vendor's point of contact for a contract resulting from this RFP.
- 4.1.8 Company background/history and why vendor is qualified to provide the services described in this RFP.
- 4.1.9 Length of time vendor has been providing services described in this RFP to the **public and/or private sector**. Please provide a brief description.
- 4.1.10 Has the vendor ever been engaged under contract by any State of Nevada agency?
 Yes No If "Yes," specify when, for what duties, and for which agency.
- 4.1.11 Is the vendor or any of the vendor's employees employed by the State of Nevada, any of its political subdivisions or by any other government?
 Yes No If "Yes," is that employee planning to render services while on annual leave, compensatory time, sick leave, or on his own time?
- 4.1.12 Resumes for key staff to be responsible for performance of any contract resulting from this RFP.
- 4.1.13 **Financial information and documentation to be included in Part III of your response in accordance with the Submittal Instructions.**
 - 4.1.13.1 Dun and Bradstreet number
 - 4.1.13.2 Federal Tax Identification Number
 - 4.1.13.3 The last two - (2) years and current year interim:
Profit and Loss Statement
Balance Statement

4.2 REFERENCES

Vendors should provide a minimum of three (3) references from similar projects performed for private, state and/or large local government clients within the last three years. ***The State will not accept references from the Nevada Division of Environmental Protection.*** References may include letters of recommendation or other similarly arranged formats; however, those references not following the structure of the Reference Questionnaire contained in Appendix D must include, at a minimum, the information listed in Section 4.2 of the RFP. The submittal of all references (including Reference Questionnaires and Letters of Recommendation) should still be conducted in the manner detailed in Part B of Appendix D. Letters of recommendation may either be emailed to the Nevada State Purchasing Division at djones@purchasing.state.nv.us or transmitted via facsimile at 775-684-0188; submittals must indicate the appropriate RFP number for

proper handling. **Vendors are required to submit Attachment D, Reference Form to the business references they list. The business references must submit the Reference Form directly to the Purchasing Division.** It is the vendor's responsibility to ensure that completed forms are received by the Purchasing Division on or before the proposal submission deadline for inclusion in the evaluation process. Business References not received, or not complete, may adversely affect the vendor's score in the evaluation process. The Purchasing Division may contact any or all business references for validation of information submitted.

- 4.2.1 Client name;
- 4.2.2 Project description;
- 4.2.3 Project dates (starting and ending);
- 4.2.4 Staff assigned to reference engagement that will be designated for work per this RFP;
- 4.2.5 Client project manager name, telephone number, fax number and e-mail address.

4.3 SUBCONTRACTOR INFORMATION

4.3.1 Does this proposal include the use of subcontractors?

Yes _____ No _____ Unknown _____

If "Yes", vendor must:

- 4.3.1.1 Identify specific subcontractors and the specific requirements of this RFP for which each proposed subcontractor will perform services.
- 4.3.1.2 Provide the same information for any proposed subcontractors as requested in the Primary Vendor Information section.
- 4.3.1.3 References as specified above must be provided for any proposed subcontractors.
- 4.3.1.4 The State may require that the awarded vendor provide proof of payment to any subcontractors used for this project. Proposals should include a plan by which, at the State's request, the State will be notified of such payments.
- 4.3.1.5 Primary vendor shall not allow any subcontractor to commence work until all insurance required of the subcontractor is provided to the using agency.
- 4.3.1.6 Primary vendor must notify the using agency of the intended use of any subcontractors not identified within their response and receive agency approval prior to subcontractor commencing work.

5. COST

Note: All Cost Proposals shall be submitted to the State as a separate, sealed package and clearly marked: "Cost Proposal in Response to RFP No. 1749", please refer to the Submittal Instructions for further instruction.

Vendors must provide detailed fixed prices for all costs associated with the responsibilities and related services, structured to address the following:

Staff Cost	Base Rate	Direct Labor	Profit	Total Cost
Personnel Direct Costs				
a) Principal				
b) Senior Associate				
c) Associate				
d) Senior Project				
e) Project				
f) Senior Staff				
g) Staff				
h) Technician				
i) Clerical				
j) Expert Witness				

Services associated with testimony and expert witness are not anticipated under the contract; however, since they remain a possibility, these costs should be included.

A vendor submitting a proposal under this RFP will have some leeway in submitting cost proposals which meet the format contained in Section 5.0 as long as a sufficiently detailed explanation which accounts for the cost proposal is submitted. The Base Rate column is intended to serve for reporting the base hourly rate paid for any employee in the appropriate category. This base rate, as envisioned, does not include fringe benefits or overhead costs calculated by the firm. Direct Labor was intended to represent a calculated cost derived from the base hourly rate and a reasonable factor for fringe benefits to represent the total direct labor charged for services accounted on an hourly basis.

Indirect costs, including overhead charges for company costs such as rent, copying pools, office supplies, etc. need to be stated in the cost proposal. How these costs are accounted for should also be included in the cost proposal. An additional column may be added to the table to allow for indirect costs to be accounted for as part of the calculation of total costs to be charged on an hourly basis for services performed by vendor personnel. If indirect costs and profits are charged on all equipment or services which are not also a part of the hourly accounting system represented by the table provided in the RFP, this needs to be clearly stated in the cost proposal.

In some cases, vendors provide a Base Rate, which already includes fringe benefit calculations. These types of deviation from the example cost structure table in the RFP are acceptable as long as all charges are detailed and explained in the cost proposal and a Total Cost is given which will represent a true figure the vendor will adhere to in billing for services on a per hour basis.

The Nevada Brownfields Program is considering allowing subcontractor markups of 5% maximum in certain situations. Specifically, the Nevada Brownfields Program may allow subcontractor markups in those instances where it is deemed vital to supporting our policy of promoting the use of local labor and resources in the completion of Brownfields projects. The NDEP will not allow subcontractor markups for laboratory or drilling services routinely employed under this contract since these are considered to be supporting or incidental, third-party services which do not meet the definition of "subcontractor" under this RFP; rather, subcontractor markups may be considered in those instances where the Nevada Brownfields Program specifically requests a contractor to use local excavation or other significant, non-technical services during the completion of a project. The allowable use of subcontractor markups will need to be determined on a project-specific basis.

A vendor submitting a proposal that involves a team-based approach to cover essential services through the use of subcontractors will be heavily penalized if a subcontractor markup is attached to those services.

All costs associated with travel expenses will be required to be submitted following the project and will comply with approved state rates. Additionally, equipment costs must be submitted as part of the cost proposal. All equipment will be charged *at cost*, as approved by the Division in a project-specific scope of work.

In addition to direct costs detailed above, vendors must submit indirect cost information in addition to any subcontractor mark-ups anticipated as an essential responsibility or related service under this RFP.

6. PAYMENT

Payment for the contracted service will be within 30 days upon receipt of an invoice and the using agency's approval. Payment will be tied to an hourly rate or on an "as needed basis." As such, the State will pay for services billed upon receipt of an invoice generally on a monthly or semi-monthly basis. A time sheet for the completion of work activities will be required along with supporting documentation for all costs that are to be invoiced to the Division.

Invoices must identify:

- Labor;
- Subcontracts;
- Travel; and
- Other Indirect expenses;
- Other cost as agreed upon between the Department and the awarded Vendor.

Vendors may propose an alternative payment option; alternative payment options must be listed on Attachment B of the RFP. Alternative payment options will be considered if deemed in the best interest of the State, project or service solicited herein. The State does not issue payment prior to receipt of goods or services.

7. SUBMITTAL INSTRUCTIONS

- 7.1 In lieu of a pre-proposal conference, the Purchasing Division will accept questions and/or comments in writing, received by e-mail regarding this RFP as follows:

Questions must reference the identifying RFP number and be addressed to the State of Nevada, Purchasing Division, Attn: Dave Jones, Purchasing Officer, e-mailed to svrpurch@purchasing.state.nv.us The deadline for submitting questions is January 20, 2009, 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 January 27, 2009. Please provide company name, address, phone number, e-mail address, fax number, and contact person when submitting questions.

7.2 RFP Timeline

<i>TASK</i>	<i>DATE/TIME</i>
Deadline for submitting questions	January 20, 2009 @ 2:00 p.m.
Answers to all questions submitted available on or about	January 27, 2009
Deadline for submittal of Reference Questionnaires	February 16, 2009
<u>Deadline for submission and opening of proposals</u>	<u>February 18, 2009 @ 2:00 p.m.</u>
Evaluation period	February 19 – March 11, 2009
Presentations	April 1 & 2, 2009
Selection of vendor	April 8, 2009

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.

7.3 Proposal submission requirements:

- 7.3.1 Vendors shall submit their response in three (3) parts as designated below:

Part I: Technical Proposal

- One (1) original marked "MASTER"
- Eight (8) identical copies
- One (1) identical copy on CD (Note: CD must be labeled accordingly and in a case.)

THE TECHNICAL PROPOSAL MUST INCLUDE A SEPARATE TAB/SECTION LABELED "**STATE DOCUMENTS**" WHICH SHALL INCLUDE:

- Page 1 of RFP
- All Amendments to the RFP
- All Attachments requiring signature
- Certificate of Insurance

Technical Proposal must not include cost or confidential information.

Technical Proposal shall be submitted to the State in a sealed package and be clearly marked:

“Technical Proposal in Response to RFP No. 1749”

Part II: Cost Proposal:

One (1) original marked “MASTER”
Eight (8) identical copies
One (1) identical copy on CD (Note: CD must be labeled accordingly and in a case.)

Cost Proposal shall be submitted to the State in a sealed package and be clearly marked:

“Cost Proposal in Response to RFP No. 1749”

Part III: Confidential Information:

One (1) original marked “MASTER”
One (1) identical copy

Confidential Information shall be submitted to the State in a sealed package and be clearly marked:

“Confidential Information in Response to RFP No. 1749”

If the separately sealed proposal, marked as required above, are enclosed in another container for mailing purposes, the outermost container must fully describe the contents of the package and be clearly marked:

REQUEST FOR PROPOSAL NO.: 1749

PROPOSAL OPENING DATE: February 18, 2009 @ 2:00 PM

FOR: The Nevada Brownfields Program

7.3.2 **Proposal must be received at the address referenced below no later than 2:00 Pacific Time, February 18, 2009.** Proposals that do not arrive by proposal opening time and date WILL NOT BE ACCEPTED. Vendors may submit their proposal any time prior to the above stated deadline.

7.3.3 **Proposal shall be submitted to:**

State of Nevada, Purchasing Division
Dave Jones, Services Purchasing
515 E. Musser Street, Suite 300
Carson City, NV 89701

7.4 The State will not be held responsible for proposal envelopes mishandled as a result of the envelope not being properly prepared. Facsimile, e-mail or telephone proposals will NOT be considered; however, at the State’s discretion, the proposal may be submitted all or in part on electronic media, as requested within the RFP document. Proposal may be modified by facsimile, e-mail or written notice provided such notice is received prior to the opening of the proposals.

- 7.5 Although it is a public opening, only the names of the vendors submitting proposals will be announced NRS §333.335(6). Technical and cost details about proposals submitted will not be disclosed. Assistance for handicapped, blind or hearing-impaired persons who wish to attend the RFP 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.
- 7.6 If discrepancies are found between two or more copies of the proposal, the master copy will provide the basis for resolving such discrepancies. If one copy of the proposal is not clearly marked "MASTER," the State may reject the proposal. However, the State may at its sole option, select one copy to be used as the master.
- 7.7 For ease of evaluation, the proposal should be presented in a format that corresponds to and references sections outlined within this RFP and should be presented in the same order. Responses to each section and subsection should be labeled so as to indicate which item is being addressed. Exceptions to this will be considered during the evaluation process.
- 7.8 If complete responses cannot be provided without referencing confidential information, such confidential information must be provided in accordance with submittal instructions and specific references made to the tab, page, section and/or paragraph where the confidential information can be located.
- 7.9 Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.
- 7.10 Descriptions on how any and all equipment and/or services will be used to meet the requirements of this RFP shall be given, in detail, along with any additional information documents that are appropriately marked.
- 7.11 The proposal must be signed by the individual(s) legally authorized to bind the vendor, see NRS §333.337.
- 7.12 For ease of responding to the RFP, vendors are encouraged, but not required, to request an electronic copy of the RFP. Electronic copies are available in the following formats: Word 2003 via e-mail, diskette, or on the State Purchasing Division's website in PDF or Word format at <http://purchasing.state.nv.us>. When requesting an RFP via e-mail or diskette, vendors should contact the Purchasing Division for assistance. In the event vendors choose to receive the RFP on CD, the vendor will be responsible for providing a blank CD; unless vendors provide a Federal Express, DHL, etc. account number and appropriate return materials, the CD will be returned by first class U.S. mail.

- 7.13 Vendors utilizing an electronic copy of the RFP in order to prepare their proposal should place their written response in *an easily distinguishable font* immediately following the applicable question.
- 7.14 *For purposes of addressing questions concerning this RFP, the sole contact will be the Purchasing Division. Upon issuance of this RFP, other employees and representatives of the agencies identified in the RFP will not answer questions or otherwise discuss the contents of this RFP with any prospective vendors or their representatives. Failure to observe this restriction may result in disqualification of any subsequent proposal NAC §333.155(3).* This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.
- 7.15 Vendor who believes proposal requirements or specifications are unnecessarily restrictive or limit competition may submit a request for administrative review, in writing, to the Purchasing Division. To be considered, a request for review must be received no later than the deadline for submission of questions.

The Purchasing Division shall promptly respond in writing to each written review request, and where appropriate, issue all revisions, substitutions or clarifications through a written amendment to the RFP.

Administrative review of technical or contractual requirements shall include the reason for the request, supported by factual information, and any proposed changes to the requirements.

- 7.16 If a vendor changes any material RFP language, vendor's response may be deemed non-responsive. NRS §333.311.
- 7.17 Vendors are cautioned that some services may contain licensing requirement(s). Vendors shall be proactive in verification of these requirements prior to proposal submittal. Proposals, which do not contain the requisite licensure, may be deemed non-responsive. However, this does not negate any applicable Nevada Revised Statute (NRS) requirements.

8. PROPOSAL EVALUATION AND AWARD PROCESS

- 8.1 Proposals shall be consistently evaluated and scored in accordance with NRS §333.335(3) based upon the following criteria:
- Demonstrated competence
 - Experience in performance of comparable engagements
 - Conformance with the terms of this RFP
 - Expertise and availability of key personnel
 - Reasonableness of cost
- Presentations - Following the scoring procedure specified above, up to five vendors who submitted the best scoring proposals may be asked to provide presentations to the evaluation team and State staff. These presentations will be scored: presentation

scores will be added to the initial scores to determine the awarded vendors. Presentations must not exceed one hour.

Note: Financial stability will be scored on a pass/fail basis

Proposals shall be kept confidential until a contract is awarded.

- 8.2 The evaluation committee may also contact the references provided in response to the Section identified as Company Background and References; contact any vendor to clarify any response; contact any current users of a vendor's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process. The evaluation committee shall not be obligated to accept the lowest priced proposal, but shall make an award in the best interests of the State of Nevada NRS § 333.335(5)
- 8.3 Each vendor must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, contract breaches, any civil or criminal litigation or investigations pending which involves the vendor or in which the vendor has been judged guilty or liable. Failure to comply with the terms of this provision may disqualify any proposal. The State reserves the right to reject any proposal based upon the vendor's prior history with the State or with any other party, which documents, without limitation, unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet contract milestones or other contractual failures. See generally, NRS §333.335.
- 8.4 Clarification discussions may, at the State's sole option, be conducted with vendors who submit proposals determined to be acceptable and competitive NAC §333.165. Vendors shall be accorded fair and equal treatment with respect to any opportunity for discussion and/or written revisions of proposals. Such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing vendors.
- 8.5 A Notification of Intent to Award shall be issued in accordance with NAC §333.170. Any award is contingent upon the successful negotiation of final contract terms and upon approval of the Board of Examiners, when required. Negotiations shall be confidential and not subject to disclosure to competing vendors unless and until an agreement is reached. If contract negotiations cannot be concluded successfully, the State upon written notice to all vendors may negotiate a contract with the next highest scoring vendor or withdraw the RFP.
- 8.6 Any contract resulting from this RFP shall not be effective unless and until approved by the Nevada State Board of Examiners (NRS 284.173).

9. **TERMS, CONDITIONS AND EXCEPTIONS**

- 9.1 Performance of vendors will be rated semi-annually following contract award and then annually for the term of the contract by the using State agency in six categories: customer

service; timeliness; quality; technology; flexibility; and pricing. Vendors will be notified in writing of their rating.

- 9.2 In accordance with Nevada Revised Statute 333.336, if a vendor submitting a proposal in response to this solicitation is a resident of another state, and with respect to contracts awarded by that state, applies to vendors who are residents of that state a preference, which is not afforded to vendors or contractors who are residents of the State of Nevada, the State of Nevada, Purchasing Division shall, insofar as is practicable, increase the out of state vendor's proposal by an amount that is substantially equivalent to the preference that the other state of which the vendor is a resident denies to vendors or contractors who are residents of the State of Nevada.
- 9.3 This procurement is being conducted in accordance with NRS chapter 333 and NAC chapter 333.
- 9.4 The State reserves the right to alter, amend, or modify any provisions of this RFP, or to withdraw this RFP, 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.
- 9.5 The State reserves the right to waive informalities and minor irregularities in proposals received.
- 9.6 The State reserves the right to reject any or all proposals received prior to contract award (NRS §333.350).
- 9.7 The State shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the State of Nevada after all factors have been evaluated (NRS §333.335).
- 9.8 Any irregularities or lack of clarity in the RFP should be brought to the Purchasing Division designee's attention as soon as possible so that corrective addenda may be furnished to prospective vendors.
- 9.9 Proposals must include any and all proposed terms and conditions, including, without limitation, written warranties, maintenance/service agreements, license agreements, lease purchase agreements and the vendor's standard contract language. The omission of these documents renders a proposal non-responsive.
- 9.10 Alterations, modifications or variations to a proposal may not be considered unless authorized by the RFP or by addendum or amendment.
- 9.11 Proposals which appear unrealistic in the terms of technical commitments, lack of technical competence, or are indicative of failure to comprehend the complexity and risk of this contract, may be rejected.
- 9.12 Proposals from employees of the State of Nevada will be considered in as much as they do not conflict with the State Administrative Manual, NRS Chapter §281 and NRS Chapter §284.

- 9.13 Proposals may be withdrawn by written or facsimile notice received prior to the proposal opening time. Withdrawals received after the proposal opening time will not be considered except as authorized by NRS §333.350(3).
- 9.14 The price and amount of this proposal must have been arrived at independently and without consultation, communication, agreement or disclosure with or to any other contractor, vendor or prospective vendor. Collaboration among competing vendors about potential proposals submitted pursuant to this RFP is prohibited and may disqualify the vendor.
- 9.15 No attempt may be made at any time to induce any firm or person to refrain from submitting a proposal or to submit any intentionally high or noncompetitive proposal. All proposals must be made in good faith and without collusion.
- 9.16 Prices offered by vendors in their proposals are an irrevocable offer for the term of the contract and any contract extensions. The awarded vendor agrees to provide the purchased services at the costs, rates and fees as set forth in their proposal in response to this RFP. No other costs, rates or fees shall be payable to the awarded vendor for implementation of their proposal.
- 9.17 The State is not liable for any costs incurred by vendors prior to entering into a formal contract. Costs of developing the proposal or any other such expenses incurred by the vendor in responding to the RFP, are entirely the responsibility of the vendor, and shall not be reimbursed in any manner by the State.
- 9.18 All proposals submitted become the property of the State, selection or rejection does not affect this right; proposals will be returned only at the State's option and at the vendor's request and expense. The master technical proposal, the master cost proposal and Confidential Information of each response shall be retained for official files. Only the master technical and master cost will become public record after the award of a contract. The failure to separately package and clearly mark Part III – which contains Confidential Information, Trade Secrets and/or Proprietary Information shall constitute a complete waiver of any and all claims for damages caused by release of the information by the State.
- 9.19 A proposal submitted in response to this RFP must identify any subcontractors, and outline the contractual relationship between the awarded vendor and each subcontractor. An official of each proposed subcontractor must sign, and include as part of the proposal submitted in response to this RFP, a statement to the effect that the subcontractor has read and will agree to abide by the awarded vendor's obligations.

Drilling companies and laboratories are considered to be "third parties who provide support or incidental services to the vendor," and therefore do not meet the definition of a subcontractor under this RFP. We are not requesting that vendors submit information as part of this RFP for firms providing these services; instead, considerations of drilling services and laboratory analyses will be part of any site-specific project budget development, since the selection of these services will be dependent upon project specific

factors, including the geographic location of project sites, the contaminants of concern, and the impacted media.

Subcontractor information should be provided only for those instances where a vendor must demonstrate its ability to satisfy the substantial requirements of this RFP through the use of a team-based approach. Instances which fall into this category may include regional vendors who routinely use a subcontractor to perform services outside of their operating region (i.e. a firm who only maintains offices in Southern Nevada may show that they have substantial state-wide coverage for the purposes of this RFP by subcontracting with a firm that can provide services in Northern Nevada). Also to be included in this category are subcontractors retained to perform essential services for which the applying vendor does not have sufficient in-house resources, especially in terms of asbestos surveys/abatement and community involvement/participation.

Though the two listed instances do not represent the full-range of team-building approaches that a vendor may use to meet the criteria of this RFP, they represent the most likely scenarios. Please note that one of the criteria to be used in the evaluation of proposals will be the "ability to perform assessments and cleanups with minimal subcontractor assistance;" however, this is only one of the evaluation criteria to be used, and a successful team-building approach may help a vendor score higher in other categories if they lack the in-house resources which may be available to larger firms.

- 9.20 The awarded vendor will be the sole point of contract responsibility. The State will look solely to the awarded vendor for the performance of all contractual obligations which may result from an award based on this RFP, and the awarded vendor shall not be relieved for the non-performance of any or all subcontractors.
- 9.21 The awarded vendor must maintain, for the duration of its contract, insurance coverages as set forth in the Insurance Schedule of the contract form appended to this RFP. Work on the contract shall not begin until after the awarded vendor has submitted acceptable evidence of the required insurance coverages. Failure to maintain any required insurance coverage or acceptable alternative method of insurance will be deemed a breach of contract.

Notwithstanding any other requirement of this section, the State reserves the right to consider reasonable alternative methods of insuring the contract in lieu of the insurance policies required by the below-stated Insurance Schedule. It will be the awarded vendor's responsibility to recommend to the State alternative methods of insuring the contract. Any alternatives proposed by a vendor should be accompanied by a detailed explanation regarding the vendor's inability to obtain insurance coverage as described below. The State shall be the sole and final judge as to the adequacy of any substitute form of insurance coverage.

- 9.22 Each vendor must disclose any existing or potential conflict of interest relative to the performance of the contractual services resulting from this RFP. Any such relationship that might be perceived or represented as a conflict should be disclosed. By submitting a proposal in response to this RFP, vendors affirm that they have not given, nor intend to give at any time hereafter, any economic opportunity, future employment, gift, loan,

gratuity, special discount, trip, favor, or service to a public servant or any employee or representative of same, in connection with this procurement. Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest will automatically result in the disqualification of a vendor's proposal. An award will not be made where a conflict of interest exists. The State will determine whether a conflict of interest exists and whether it may reflect negatively on the State's selection of a vendor. The State reserves the right to disqualify any vendor on the grounds of actual or apparent conflict of interest.

- 9.23 The State will not be liable for Federal, State, or Local excise taxes NRS §372.325.
- 9.24 Attachment B of this RFP shall constitute an agreement to all terms and conditions specified in the RFP, including, without limitation, the Attachment C contract form and all terms and conditions therein, except such terms and conditions that the vendor expressly excludes. Exceptions will be taken into consideration as part of the evaluation process.
- 9.25 The State reserves the right to negotiate final contract terms with any vendor selected NAC §333.170. The contract between the parties will consist of the RFP together with any modifications thereto, and the awarded vendor's proposal, together with any modifications and clarifications thereto that are submitted at the request of the State during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, the RFP, any modifications and clarifications to the awarded vendor's proposal, and the awarded vendor's proposal. Specific exceptions to this general rule may be noted in the final executed contract.
- 9.26 Vendor understands and acknowledges that the representations above are material and important, and will be relied on by the State in evaluation of the proposal. Any vendor misrepresentation shall be treated as fraudulent concealment from the State of the true facts relating to the proposal.
- 9.27 No announcement concerning the award of a contract as a result of this RFP can be made without the prior written approval of the State.
- 9.28 The Nevada Attorney General will not render any type of legal opinion regarding this transaction.
- 9.29 Any unsuccessful vendor may file an appeal in strict compliance with NRS 333.370 and chapter 333 of the Nevada Administrative Code.
- 9.30 Local governments (as defined in NRS §332.015) are intended third party beneficiaries of any contract resulting from this RFP and any local government may join or use any contract resulting from this RFP 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 RFP.
- 9.31 Any person who requests or receives a Federal contract, grant, loan or cooperative agreement shall file with the using agency a certification that the person making the

declaration has not made, and will not make, any payment prohibited by subsection (a) of 31 U.S.C. §1352.

10. SUBMISSION CHECKLIST

This checklist is provided for vendor's convenience only and identifies documents that must be submitted with each package in order to be considered responsive. Any proposals received without these requisite documents may be deemed non-responsive and not considered for contract award.

Part I: Completed

- 1. Required number of Technical proposals (per Submittal Instructions) _____
- 2. **Required Forms to be submitted with technical proposal under section/tab labeled "State Documents";**
 - a. Page 1 of the RFP completed _____
 - b. All Amendments completed and signed _____
 - c. Primary Vendor Attachments A & B signed _____
 - d. Subcontractor Attachment A & B signed (if applicable) _____
 - e. Primary Vendor Information provided _____
 - f. Subcontractor Information provided (if applicable) _____
 - g. Certificate of Insurance _____
 - h. Contractor's License _____
 - i. Environmental Manager Certification _____
 - j. Attachment F Certification Regarding Lobbying _____

Part II:

- 1. Required number of Cost proposals (per Submittal Instructions) _____
- 2. (other) _____

Part III:

- 1. Required number of Confidential Information (per Submittal Instructions and defined in Acronyms/Definitions) _____
- 2. Financial Information _____

REMINDERS:

- 1. Send out Reference forms for Primary Vendor (with Part A completed) _____
- 2. Send out Reference forms for Subcontractors (with Part A completed) (if applicable) _____

Attachment A
CONFIDENTIALITY OF PROPOSALS AND
CERTIFICATION OF INDEMNIFICATION
PRIMARY VENDOR

Submitted proposals, which are marked "confidential" in their entirety, or those in which a significant portion of the submitted proposal is marked "confidential" **will not** be accepted by the State of Nevada. Pursuant to NRS §333.333, only specific parts of the proposal may be labeled a "trade secret" as defined in NRS §600A.030(5). All proposals are confidential until the contract is awarded; at which time, both successful and unsuccessful vendors' technical and cost proposals become public information. In accordance with the Submittal Instructions of this document, vendors are requested to submit confidential information in a separate envelope or binder marked "confidential."

The State will not be responsible for any information contained within the proposal should vendors not comply with the labeling and packing requirements, proposals will be released as submitted. In the event a governing board acts as the final authority, there may be public discussion regarding the submitted proposals that will be in an open meeting format, the proposals will remain confidential.

By signing below, I understand it is my responsibility as the vendor to act in protection of the labeled information and agree to defend and indemnify the State of Nevada for honoring such designation. I duly realize failure to so act will constitute a complete waiver and all submitted information will become public information; additionally, failure to label any information that is released by the State shall constitute a complete waiver of any and all claims for damages caused by the release of the information.

This proposal contains either Confidential Information, Trade Secrets and/or Proprietary information as defined in Section 2 "ACRONYMS/DEFINITIONS."

YES _____ (if Confidential Information is contained within this proposal vendor must indicate each confidential item in the table below)

Proposal Page #	Proposal Section #	Justification for confidential status

NO _____

SIGNATURE _____
Primary Vendor

_____ Date

PRINT NAME _____
Primary Vendor

This document must be submitted in the "State Documents" section/tab of vendors' technical proposal

Attachment A
CONFIDENTIALITY OF PROPOSALS AND
CERTIFICATION OF INDEMNIFICATION
SUBCONTRACTOR

Submitted proposals, which are marked "confidential" in their entirety, or those in which a significant portion of the submitted proposal is marked "confidential" **will not** be accepted by the State of Nevada. Pursuant to NRS §333.333, only specific parts of the proposal may be labeled a "trade secret" as defined in NRS §600A.030(5). All proposals are confidential until the contract is awarded; at which time, both successful and unsuccessful vendors' technical and cost proposals become public information. In accordance with the Submittal Instructions of this document, vendors are requested to submit confidential information in a separate envelope or binder marked "confidential."

The State will not be responsible for any information contained within the proposal should vendors not comply with the labeling and packaging submission requirements, proposal will be released as submitted. In the event a governing board acts as the final authority, there may be public discussion regarding the submitted proposal that will be in an open meeting format, the proposals will remain confidential.

By signing below, I understand it is my responsibility as the vendor to act in protection of the labeled information and agree to defend and indemnify the State of Nevada for honoring such designation. I duly realize failure to so act will constitute a complete waiver and all submitted information will become public information; additionally, failure to label any information that is released by the State shall constitute a complete waiver of any and all claims for damages caused by the release of the information.

This proposal contains either Confidential Information, Trade Secrets and/or Proprietary information as defined in Section 2 "ACRONYMS/DEFINITIONS."

YES _____ (if Confidential Information is contained within this proposal vendor must indicate each confidential item in the table below)

Proposal Page #	Proposal Section #	Justification for confidential status

NO _____

SIGNATURE _____

Subcontractor

Date

PRINT NAME _____

Subcontractor

This document must be submitted in the "State Documents" section/tab of vendors' technical proposal

Attachment B
CERTIFICATION OF COMPLIANCE WITH
TERMS AND CONDITIONS OF RFP
PRIMARY VENDOR

I have read, understand and agree to comply with the terms and conditions specified in this Request for Proposal.

Checking "YES" indicates acceptance of all terms and conditions, while checking "NO" denotes non-acceptance and vendor's exceptions should be detailed below. In order for any exceptions to be considered they **MUST** be documented.

YES _____ I agree. NO _____ Exceptions below:

SIGNATURE _____
Primary Vendor

_____ Date

PRINT NAME _____
Primary Vendor

EXCEPTION SUMMARY FORM

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

Attach additional sheets if necessary. Please use this format.

This document must be submitted in the "State Documents" section/tab of vendors' technical proposal

**Attachment B
 CERTIFICATION OF COMPLIANCE WITH
 TERMS AND CONDITIONS OF RFP
SUBCONTRACTOR**

I have read, understand and agree to comply with the terms and conditions specified in this Request for Proposal.

Checking "YES" indicates acceptance of all terms and conditions, while checking "NO" denotes non-acceptance and vendor's exceptions should be detailed below. In order for any exceptions to be considered they **MUST** be documented.

YES _____ I agree. NO _____ Exceptions below:

SIGNATURE _____
Subcontractor

_____ Date

PRINT NAME _____
Subcontractor

EXCEPTION SUMMARY FORM

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

Attach additional sheets if necessary. Please use this format.

This document must be submitted in the "State Documents" section/tab of vendors' technical proposal

Attachment C

CONTRACT FORM

The following State Contract Form is provided as a courtesy to vendors interested in responding to this RFP. Please review the terms and conditions in this form, as this is the standard contract used by the State for all services of independent contractors. It is not necessary for vendors to complete the Contract Form with their proposal responses.

All vendors are required to submit a Certificate of Insurance in the "State Documents tab/section of their technical proposal identifying the coverages and minimum limits currently in effect.

Please pay particular attention to the insurance requirements, as specified in paragraph 16 and Attachment BB of the attached contract.

As with all other requirements of this RFP, vendors may take exception to any of the terms in the Contract Form, including the required insurance limits. Exceptions will be considered during the evaluation process.

Unless specified as above, the insurance minimum limits will be negotiated at the time the State issues a Letter of Intent to Award.

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTORA Contract Between the State of Nevada
Acting By and Through Its

(NAME, ADDRESS, PHONE AND FACSIMILE NUMBER OF CONTRACTING AGENCY)

and

(NAME, CONTACT PERSON, ADDRESS, PHONE, FACSIMILE NUMBER OF INDEPENDENT CONTRACTOR)

WHEREAS, NRS 284.173 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners, services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada;
NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.

2. **DEFINITIONS.** "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307. "Independent Contractor" means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year.

3. **CONTRACT TERM.** This Contract shall be effective from _____ subject to Board of Examiners' approval (anticipated to be _____) to _____, unless sooner terminated by either party as specified in paragraph ten (10).

4. **NOTICE.** Unless otherwise specified, termination shall not be effective until ____ 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 personally in hand, by telephonic facsimile with simultaneous 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.

5. **INCORPORATED DOCUMENTS.** The parties agree that the scope of work shall be specifically described. This Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT AA: STATE SOLICITATION OR RFP # _____ and AMENDMENT(S) # _____;

ATTACHMENT BB: INSURANCE SCHEDULE; AND

ATTACHMENT CC: ADDITIONAL TERMS AND CONDITIONS TO CONTRACT SERVICES TO INDEPENDENT CONTRACTOR CONTRACT CONTROL #DEP

ATTACHMENT DD: CONTRACTOR'S RESPONSE

A Contractor's Attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract:

6. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in paragraph five (5) at a cost of \$ _____ per _____ (state the exact cost or hourly, daily, or weekly rate exclusive of travel or per diem expenses) with the total Contract or installments payable: _____, not to exceed \$ _____. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

7. **ASSENT.** The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. TIMELINESS OF BILLING SUBMISSION. The parties agree that timeliness of billing is of the essence to the contract and recognize that the State is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the State no later than the first Friday in August of the same year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject the Contractor to an administrative fee not to exceed one hundred dollars (\$100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the State of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to the Contractor.

9. INSPECTION & AUDIT.

a. Books and Records. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the State Auditor, the relevant state agency or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three (3) years, and for five (5) years if any federal funds are used pursuant to the Contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. CONTRACT TERMINATION.

a. 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.

b. State Termination for Non-appropriation. The continuation of this 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 this Contract, and Contractor 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.

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

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

ii. 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 Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or

iv. If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or

v. 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 Contractor, or any agent or representative of Contractor, 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

vi. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph four (4), 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.

e. Survival of Provisions Upon Termination. In the event of termination of this Contract for any reason, the provisions of this paragraph survive termination.

- i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this 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;
- ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
- iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
- iv. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph twenty-one (21).

11. **REMEDIES.** Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation one hundred and twenty-five dollars (\$125.00) per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190.

12. **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. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed one hundred and fifty percent (150%) of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

13. **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.

14. **INDEMNIFICATION.** To the fullest extent permitted by law Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

15. **INDEPENDENT CONTRACTOR.** Contractor is associated with the State only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the State whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the State; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, nor representatives shall be considered employees, agents, or representatives of the State. The State and Contractor shall evaluate the nature of services and the term of the Contract negotiated in order to determine "independent contractor" status, and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

	<u>Contractor's Initials</u>	
	YES	NO
1. Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?	_____	_____
2. Will the Contracting Agency be providing training to the independent contractor?	_____	_____

- 3. Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses? _____
- 4. Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada? _____
- 5. Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)? _____
- 6. Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform? _____
- 7. Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State? _____

16. INSURANCE SCHEDULE. Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance and pay all taxes and fees incident hereunto. Policies shall meet the terms and conditions as specified within this Contract along with the additional limits and provisions as described in Attachment BB, incorporated hereto by attachment. The State shall have no liability except as specifically provided in the Contract.

The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and
- 2) The State has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

Insurance Coverage: The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum limits as specified in Attachment BB, incorporated hereto by attachment. Unless specifically stated herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until:

- 1. Final acceptance by the State of the completion of this Contract; or
 - 2. Such time as the insurance is no longer required by the State under the terms of this Contract;
- Whichever occurs later.

Any insurance or self-insurance available to the State shall be in excess of, and non-contributing with, any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

General Requirements:

- a. **Additional Insured:** By endorsement to the general liability insurance policy evidenced by Contractor, the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.
- b. **Waiver of Subrogation:** Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 for losses arising from work/materials/equipment performed or provided by or on behalf of the Contractor.
- c. **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. **Deductibles and Self-Insured Retentions:** Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed fifty thousand dollars (\$50,000.00) per occurrence, unless otherwise approved by the Risk Management Division.

Policy Cancellations: Except for a 30-day notice of non-renewal of premium, each insurance policy shall be canceled to state without notice 30 days prior to non-renewal. If the State of Nevada or Contracting Agency has policy shall not be canceled, non-renewed or coverage and/or limits reduced or materially altered, and shall provide

that notices required by this paragraph shall be sent by certified mailed to the address shown on page one (1) of this contract:

- f. Approved Insurer: Each insurance policy shall be:
- 1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and
 - 2) Currently rated by A.M. Best as "A-VII" or better.

Evidence of Insurance:

Prior to the start of any Work, Contractor must provide the following documents to the contracting State agency:

1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor. The certificate must name the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 as the certificate holder. The certificate should be signed by a person authorized insurer to bind coverage on its behalf. The state project/contract number; description and contract effective dates shall be noted on the certificate, and upon renewal of the policies listed Contractor shall furnish the State with replacement certificates as described within Insurance Coverage, section noted above.

Mail all required insurance documents to the State Contracting Agency identified on page one of the contract.

2) Additional Insured Endorsement: An Additional Insured Endorsement (CG 20 10 11 85 or CG 20 26 11 85), signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per General Requirements, subsection a above.

3) Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlier Schedule from the Umbrella or Excess insurance policy may be required.

Review and Approval: Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

17. COMPLIANCE WITH LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

18. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

19. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this 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 this Contract unenforceable.

20. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this 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 this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations nor duties under this Contract without the prior written consent of the State.

21. STATE OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its

subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

22. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

23. CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.

24. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:

a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

25. LOBBYING. The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

a. Any federal, state, county or local agency, legislature, commission, counsel or board;

b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or

c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

26. WARRANTIES.

a. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multi-century formulas and data values and date data interface values that reflect the century.

27. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

28. GOVERNING LAW JURISDICTION. This Contract and the rights and obligations of the parties hereunder shall be governed by, and construed according to, the laws of the State of Nevada. It shall not be subject to any principle of conflict of laws.

would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this Contract.

29. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

_____ Independent Contractor's Signature	_____ Date	_____ Independent's Contractor's Title
_____ Signature	_____ Date	_____ Title
_____ Signature	_____ Date	_____ Title
_____ Signature	_____ Date	_____ Title

Signature - Board of Examiners

APPROVED BY BOARD OF EXAMINERS

Approved as to form by:

On _____
(Date)

Deputy Attorney General for Attorney General

On _____
(Date)

Form Approved 05/08/02
Revised 11-07

ATTACHMENT BB
INSURANCE SCHEDULE

INDEMNIFICATION:

Contractor shall indemnify, hold harmless and, not excluding the State's right to participate, defend the State and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all liabilities, claims, actions, damages, losses, or expenses including without limitation reasonable attorneys' fees and costs, and costs of claim processing, investigation and litigation) (hereinafter collectively referred to as "claims") for bodily injury or personal injury including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State.

Contractor (as "Indemnitor") shall indemnify, hold harmless and, not excluding the State's right to participate, defend the State and its officers, officials, agents and employees (as "Indemnitee") from and against any and all demands, claims, complaints, losses, damages, actions or causes of action, assessments, liabilities, costs or expenses including, without limitation, interest, penalties and reasonable attorney's fees and reasonable expenses of investigation and remedial work (including investigations and remediation by engineers, environmental consultants and similar technical personnel) asserted against or imposed upon or incurred by Indemnitee arising in connection with, or resulting from, any Environmental Law, including but not limited to, any use, generation, storage, spill, release, discharge or disposal of any Hazardous Substance that is now or comes to be located on, at, about or under the property or because of, or in connection with, the violation of any Environmental Law (hereinafter collectively referred to as "Claims") to the extent that such Claims are caused by the Fault of the Indemnitor, its officers, officials, agents, employees, contractors, volunteers, tenants, subtenants, invitees or licensees. As used in this section: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal, state or local laws and regulations, including common law, that relate to health, safety or environmental protection; and (c) "Fault" means those nonculpable acts or omissions giving rise to strict liability under any Environmental Law pertaining to Hazardous Substances, as well as culpable conduct (negligence or willful misconduct). In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State.

INSURANCE REQUIREMENTS:

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase such additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. Commercial General Liability - Occurrence Basis
Policy shall include bodily injury, property damage and broad form contractual liability and XCU coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".
- b. The policy shall include coverage for pollution arising from products liability for environmental control equipment, manufacturers and distributors.

2. 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

- a. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor".

3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. Policy shall contain a waiver of subrogation against the State of Nevada.
- b. This requirement shall not apply when a contractor or subcontractor is exempt under N.R.S., AND when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

4. Contractor's Pollution Liability (Including Errors and Omissions)

For losses caused by pollution conditions that arise from the operations of the Contractor as described in the Scope of Services section of this Contract.

Per Occurrence	\$2,000,000
General Aggregate	\$4,000,000

- a. The policy shall provide for complete professional service coverage, including coverage for pollution liability that is the result of a breach of professional duties.
- b. The policy shall provide for protection against claims for third-party bodily injury, property damage, or environmental damage caused by pollution conditions resulting from general contracting activities for which the Contractor is legally liable.
- c. The policy shall provide for cleanup costs when mandated by governmental entities, when required by law, or as a result of third-party claims.
- d. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

5. Pollution Legal Liability (only if work involves the transportation of hazardous materials or regulated substances)

If the Scope of Services in this Contract requires the transportation of any hazardous material or regulated substances, the Contractor shall provide coverage with limits of at least:

Per Occurrence	\$2,000,000
General Aggregate	\$4,000,000

- a. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

- b. If the Scope of Services in the Contract requires the transportation of any hazardous materials or regulated substances, then the policy shall provide coverage for claims resulting in bodily injury, property damage or cleanup costs associated with a pollution condition from transported cargo.

6. **Pollution Legal Liability For Disposal Site Operator**

If the Scope of Services in this Contract requires the disposal of any hazardous materials from the job site, Contractor shall obtain a certificate of insurance for Pollution Legal Liability from the disposal site operator.

Per Occurrence	\$2,000,000
General Aggregate	\$4,000,000

- B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies are to contain, or be endorsed to contain, the following provisions:

1. On insurance policies where the State of Nevada is named as an additional insured, the State of Nevada shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

- C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the State, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to (State of Nevada Department Representative's Name & Address).

- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Nevada and with an "A.M. Best" rating of not less than A- VII. The State in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State with certificates of insurance (ACORD form or equivalent approved by the State) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the State before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to (State Department Representative's Name and Address). The State project/contract number and project description are to be noted on the certificate of insurance. The State reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

- F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies or Contractor shall furnish to the State separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract must have prior approval from the State of Nevada Attorney General's Office or the Risk Manager, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

Independent Contractor's Signature	Date	Independent's Contractor's Title
Signature- State of Nevada	Date	Title

Attachment BB Page 1 of 4

RMIns rev 03/08

Attachment D

REFERENCE QUESTIONNAIRE

The State of Nevada, as a part of the RFP process, requires proposing vendors to submit business references as required within this document. The purpose of these references is to document the experience relevant to the scope of work and provide assistance in the evaluation process.

The proposing vendor or subcontractor is required to complete Part A and send the following reference form to each business reference listed for completion of Part B. The business reference, in turn, is requested to submit the Reference Form directly to the State of Nevada, Purchasing Division by the requested deadline for inclusion in the evaluation process. The business reference may be contacted for validation of the response.



**RFP # 1749 REFERENCE QUESTIONNAIRE
FOR:**

Part A:

_____ (Name of company requesting reference)

- As Primary Vendor
 As Subcontractor of _____

Name of Primary Vendor

Part B:

This form is being submitted to your company for completion as a business reference for the company listed above. This form is to be returned to the State of Nevada, Purchasing Division, via e-mail at srvpurch@purchasing.state.nv.us or facsimile at (775) 684-0188, no later than **February 16, 2009**, and **must not** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the State of Nevada Purchasing Division, Services Procurement Section by telephone at (775) 684-0170 or by e-mail at srvpurch@purchasing.state.nv.us. When contacting us, please be sure to include the Request for Proposal number listed at the top of this page.

CONFIDENTIAL INFORMATION WHEN COMPLETED

Company providing reference:	
Contact name and title/position	
Contact telephone number	
Contact e-mail address	

QUESTIONS:

- In what capacity have you worked with this vendor in the past?
COMMENTS:
- How would you rate this firm's knowledge and expertise?
____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:
- How would you rate the vendor's flexibility relative to changes in the project scope and timelines?
____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

4. What is your level of satisfaction with hard-copy materials produced by the vendor?
_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

5. How would you rate the dynamics/interaction between the vendor and your staff?
_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

6. Who were the vendor's principal representatives involved in your project and how would you rate them individually? Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating?

(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

Name: _____ Rating: _____

Name: _____ Rating: _____

Name: _____ Rating: _____

Name: _____ Rating: _____

COMMENTS:

7. How satisfied are you with the products developed by the vendor?
_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

8. With which aspect(s) of this vendor's services are you most satisfied?

COMMENTS:

9. With which aspect(s) of this vendor's services are you least satisfied?

COMMENTS:

10. Would you recommend this vendor's services to your organization again?

COMMENTS:

Attachment E
SAMPLE SCORE SHEET

STATE OF NEVADA, PURCHASING DIVISION
RFP 1749

The Nevada Brownfields Program
Proposal Opening Date: February 18, 2009

VENDOR NAME: _____

Evaluator Initials: _____

Item	Evaluation Criteria	Weight	Score (1-10)	Revised Score (1-10)
1.	Demonstrated Competence			
2.	Experience in performance of comparable engagements			
3.	Conformance with the terms of this RFP			
4.	Expertise and availability of key personnel			
5.	Reasonableness of cost			
Following the scoring up to five vendors will be selected to perform presentations.				
	Presentations			
	Total			

After reading vendor proposals, assign a score for each criterion above between 1 and 10, with 1=Poor and 10=Excellent, per the *Evaluation Guidelines* included in your packet. The Revised Score column should be left blank until the scheduled evaluation meeting.

Below is a brief description of the issues related to each factor.

1. Demonstrated competence.

- a) Familiarity with the hydro-geologic, hydrologic, geologic (including soils), and climatologic conditions within the State of Nevada;
- b) Knowledge and understanding of all the Federal and State Brownfields Initiatives and programs;
- c) Demonstrated commitment to the US EPA Brownfields Program through attendance at Brownfields courses, conferences, and workshops and through active participation as a speaker or presenter at the National or Tri-Regional Brownfields Conference and

d) Familiarity with Nevada's State and Local government structures and procedures.

2. **Experience in performance of comparable engagements.**

a) Relevant experience in the EPA National or Regional Brownfield Programs to include considerations of performance of Brownfields assessments, preparation of approved Brownfield Sampling and Analysis Plans, Brownfields cleanups, and involvement with Brownfields redevelopment; and

b) Previous experience with environmental operations, including assessments and cleanups, conducted by local and municipal governments in the State of Nevada.

3. **Conformance with the terms of this RFP.**

a) Proper number of references provided;

b) Narrative/technical proposal and cost proposal packaged separately; and

c) Master and eight (8) identical copies submitted

4. **Expertise and availability of key personnel.**

a) Ability to perform assessments and cleanups with minimal subcontract assistance and to conduct activities concurrently in all regions of the State;

b) Specific experience in conducting assessments or performing cleanups of mine-scarred lands or lands and structures contaminated by controlled substances; "controlled substance" has the meaning ascribed to it in section 102 of the federal Controlled Substances Act (21 U.S.C. 802);

c) Experience within the State of Nevada in asbestos-abatement projects overseen by either local governments or the US Environmental Protection Agency; and

d) Qualifications, experience, and availability of staff who would work on brownfield sites throughout Nevada.

5. **Reasonableness of cost.**

a) Cost proposal complies with the federal Executive Service Level 4 (U.S. Code) daily rate (exclusive of fringe benefits).

> **Presentations.**

a) Vendor understanding of the type of work to be performed.

b) Vendor experience to include:

- Two largest environmental projects performed.
- Number of environmental projects performed.
- Range of environmental projects performed.
- Locations of environmental projects performed.
- Public agencies served.

c) Company assets available – specifically equipment types and the locations of each:

d) Quality control program.

Attachment F

Certification Regarding Lobbying

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By: _____ Date: _____
(Signature of Official Authorized to Sign Application)

For: _____
Name of Independent Contractor

Title of Project

This document must be submitted in the "State Documents" section/tab of vendors' technical proposal

Attachment G

LIST OF FEDERAL LAWS AND AUTHORITIES

ENVIRONMENTAL:

1. Archeological and Historic Preservation Act of 1974, PL 93-291
2. Clean Air Act, 42 U.S.C. 7506(c)
3. Endangered Species Act 16 U.S.C. 1531, ET seq.
4. Executive Order 11593, Protection and Enhancement of the Cultural Environment.
5. Executive Order 11988, Floodplain Management
6. Executive Order 11990, Protection of Wetlands
7. Farmland Protection Policy Act, 7 U.S.C. 4201 ET seq.
8. Fish and Wildlife Coordination Act, PL 85-624, as amended
9. National Historic Preservation Act of 1966, PL 89-665, as amended
10. Safe Drinking Water Act, Section 1424(e), PL 92-523, as amended

ECONOMIC:

1. Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended
2. Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans
3. Davis Bacon Act 40 U.S.C. Sec. 276a

SOCIAL LEGISLATION

1. Age Discrimination Act, PL 94-135
2. Civil Rights Act of 1964, PL 88-352
3. Section 13 of PL 92-500; Prohibition against sex discrimination under the Federal Water Pollution Control Act
4. Executive Order 11246, Equal Employment Opportunity
5. Executive Orders 11625 and 12138, Women's and Minority Business Enterprise
6. Rehabilitation Act of 1973, PL 93, 112

MISCELLANEOUS AUTHORITY:

1. Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646
2. Executive Order 12580 - Debarment and Suspension

Attachment H

**Additional Agency Terms & Conditions
To Contract for Services of Public Agency
Contract Control #DEP**

**ATTACHMENT H:
ADDITIONAL AGENCY TERMS & CONDITIONS
TO CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
CONTRACT CONTROL # DEP**

1. For contracts utilizing federal funds, the Nevada Division of Environmental Protection (NDEP) shall pay no more compensation per individual (including any subcontractors) than the federal Executive Service Level 4 (U.S. Code) daily rate (exclusive of fringe benefits): This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. The current Level 4 rate is \$71.39 per hour.
2. *NDEP shall only reimburse the Contractor for actual cash disbursed.* Original invoices (facsimiles are not acceptable) must be received by NDEP no later than forty (40) calendar days after the end of a month or quarter except at the end of the fiscal year of the State of Nevada (June 30th), at the expiration date of the grant, or the effective date of the revocation of the contract, at which times original invoices must be received by NDEP no later than thirty-five (35) calendar days after this date. Failure of the Contractor to submit billings according to the prescribed timeframes authorizes NDEP, in its sole discretion, to collect or withhold a penalty of ten percent (10%) of the amount being requested for each week or portion of a week that the billing is late. The Contractor shall provide with each invoice a detailed fiscal summary that includes the approved contract budget, expenditures for the current period, cumulative expenditures to date, and balance remaining for each budget category. If match is required pursuant to paragraph 3 below, a similar fiscal summary of match expenditures must accompany each invoice. The Contractor shall obtain prior approval to transfer funds between budget categories if the funds to be transferred are greater than ten percent (10%) cumulative of the total Contract amount.
3. The Contractor shall, as part of its approved scope of work and budget under this Contract, provide third party match funds of not less than: \$ N/A. If match funds are required, the Contractor shall comply with additional record-keeping requirements as specified in 48 CFR 31.2 and Attachment N/A (Third Party Match Record-Keeping Requirements) which is attached hereto and by this reference is incorporated herein and made part of this Contract.
4. Unless otherwise provided in Attachment A (Scope of Work), the Contractor shall submit quarterly reports or other deliverables within ten (10) calendar days after the end of each quarter.
5. All payments under this Contract are contingent upon the receipt by NDEP of sufficient funds, necessary to carry out the purposes of this Contract, from either the Nevada Legislature or an agency of the United States. NDEP shall determine if it has received the specific funding necessary for this Contract. If funds are not received from either source for the specific purposes of this Contract, NDEP is under no obligation to supply funding for this Contract. The receipt of sufficient funds as determined by NDEP is a condition precedent to NDEP's obligation to make payments under this Contract. Nothing in this Contract shall be construed to provide the Contractor with a right of payment over any other entity. If any payments that are otherwise due to the Contractor under this Contract are deferred because of the unavailability of sufficient funds, such payments will promptly be made to the Contractor if sufficient funds later become available.
6. Notwithstanding the terms of paragraph 5, at the sole discretion of NDEP, payments will not be made by NDEP unless all required reports or deliverables have been submitted to and approved by NDEP within the schedule stated in Attachment A.
7. Any funds obligated by NDEP under this Contract that are not expended by the Contractor shall automatically revert back to NDEP upon the completion, termination or cancellation of this Contract. NDEP shall not have any obligation to re-award or to provide, in any manner, such unexpended funds to the Contractor. The Contractor shall have no claim of any sort to such unexpended funds.
8. For contracts utilizing federal funds, the Public Agency shall ensure, to the fullest extent possible, that at least the "fair share" percentages as stated below for prime contracts for construction, services, supplies or equipment are made available to organizations owned or controlled by socially and economically disadvantaged individuals (Minority Business Enterprise (MBE) or Small Business Enterprise (SBE)), women (Women Business Enterprise (WBE)) and historically black colleges and universities.

	<u>MBE/SBE</u>	<u>WBE</u>
Construction	12%	10%
Services	07%	25%
Supplies	13%	28%
Equipment	11%	23%

The Public Agency agrees and is required to utilize the following seven affirmative steps:

- a. Include in its bid documents applicable "fair share" percentages as stated above and require all of its prime contractors to include in their bid documents for subcontracts the "fair share" percentages;
- b. Include qualified Small Business Enterprises (SBEs) Minority Business Enterprises (MBEs), and Women Business Enterprises (WBEs) on solicitation lists;
- c. Assure that SBEs, MBEs, and WBEs are solicited whenever they are potential sources;
- d. Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of SBEs, MBEs, and WBEs;
- e. Establish delivery schedules, where the requirements of the work permit, which will encourage participation by SBEs, MBEs, and WBEs;
- f. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency, U.S. Department of commerce as appropriate; and
- g. If a subcontractor awards contracts/procurements, require the subcontractor to take the affirmative steps in subparagraphs a. through e. of this condition.

9. The Contractor shall complete and submit to NDEP a Minority Business Enterprise/Woman Business Enterprise (MBE/WBE) Utilization Report (Standard Form 334) within fifteen (15) calendar days after the end of each federal fiscal year (September 30th) for each year this Contract is in effect and within fifteen (15) calendar days after the termination date of this Contract.

10. The books, records, documents and accounting procedures and practices of the Contractor or any subcontractor relevant to this Contract shall be subject to inspection, examination and audit by the State of Nevada, the Division of Environmental Protection, the Attorney General of Nevada, the Nevada State Legislative Auditor, the federal or other funding agency, the Comptroller General of the United States or any authorized representative of those entities.

11. All books, reports, studies, photographs, negatives, annual reports or other documents, data, materials or drawings prepared by or supplied to the Contractor in the performance of its obligations under this Contract shall be the exclusive property of NDEP. Such items must be retained by the Contractor for a minimum of three years from the date of final payment by NDEP to the Contractor, and all other pending matters are closed. If requested by NDEP at any time within the retention period, any such materials shall be remitted and delivered by the Contractor, at the Contractor's expense, to NDEP. NDEP does not warrant or assume any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, report or product of any kind that the Contractor may disclose or use for purposes other than the performance of the Contractor's obligations under this Contract. For any work outside the obligations of this Contract, the Contractor must include disclaimer that the information, report or products are the views and opinions of the Contractor and do not necessarily state or reflect those of NDEP nor bind NDEP.

12. Unless otherwise provided in Attachment A, when issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with funds provided under this Contract, the Contractor shall clearly state that funding for the project or program was provided by the Nevada Division of Environmental Protection and, if applicable, the U.S. Environmental Protection Agency. The Contractor will insure that NDEP is given credit in all official publications relative to this specific project and that the content of such publications will be coordinated with NDEP prior to being published.

13. Unless otherwise provided in Attachment A, all property purchased with funds provided pursuant to this Contract is the property of NDEP and shall, if NDEP elects within four (4) years after the completion, termination or cancellation

of this Contract or after the conclusion of the use of the property for the purposes of this Contract during its term, be returned to NDEP at the Contractor's expense. Such property includes but is not limited to vehicles, computers, software, modems, calculators, radios, and analytical and safety equipment. The Contractor shall use all purchased property in accordance with local, state and federal law, and shall use the property only for Contract purposes unless otherwise agreed to in writing by NDEP. For any unauthorized use of such property by the Contractor, NDEP may elect to terminate the Contract and to have the property immediately returned to NDEP by the Contractor at the Contractor's expense. To the extent authorized by law, the Contractor shall indemnify and save and hold the State of Nevada and NDEP harmless from any and all claims, causes of action or liability arising from any use or custody of the property by the Contractor or the Contractor's agents or employees or any subcontractor or their agents or employees.

14. The Contractor shall use recycled paper for all reports that are prepared as part of this Contract and delivered to NDEP. This requirement does not apply to standard forms.

15. The Contractor, to the extent provided by Nevada law, shall indemnify and save and hold the State of Nevada, its agents and employees harmless from any and all claims, causes of action or liability arising from the performance of this Contract by the Contractor or the Contractor's agents or employees or any subcontractor or their agents or employees. NDEP, to the extent provided by Nevada law, shall indemnify and save and hold the Contractor, its agents and employees harmless from any and all claims, causes of action or liability arising from the performance of this Contract by NDEP or NDEP's agents or employees.

16. The Contractor and any subcontractors shall obtain any necessary permission needed, before entering private or public property, to conduct activities related to the work plan (Attachment A). The property owner will be informed of the program, the type of data to be gathered, and the reason for the requested access to the property.

17. This Contract shall be construed and interpreted according to the laws of the State of Nevada and conditions established in OMB Circular A-102. Nothing in this Contract shall be construed as a waiver of sovereign immunity by the State of Nevada. Any action brought to enforce this contract shall be brought in the First Judicial District Court of the State of Nevada. The Contractor and any of its subcontractors shall comply with all applicable local, state and federal laws in carrying out the obligations of this Contract, including all federal and state accounting procedures and requirements established in OMB Circular A-87 and A-133. The Contractor and any of its subcontractors shall also comply with the following:

- a. 40 CFR Part 7 - Nondiscrimination In Programs Receiving Federal Assistance From EPA
- b. 40 CFR Part 29 - Intergovernmental Review Of EPA Programs And Activities.
- c. 40 CFR Part 31 - Uniform Administrative Requirements For Grants And Cooperative Agreements To State and Local Governments;
- d. 40 CFR Part 32 - Governmentwide Debarment And Suspension (Nonprocurement) And Governmentwide Requirements For Drug-Free Workplace (Grants);
- e. 40 CFR Part 34 - Lobbying Activities;
- f. 40 CFR Part 35, Subpart O - Cooperative Agreements And Superfund State Contracts For Superfund Response Actions (Superfund Only); and
- g. The Hotel And Motel Fire Safety Act of 1990.

18. The Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of NDEP.

Attachment I
Internal Bid Form

Nevada Brownfields Program
Internal Bid Form
For Scopes of Work exceeding \$10,000.00

Vendor Name: _____

Date prepared: _____

Services Provided. Please describe the service that will be provided under this SOW. Separate into distinct tasks if warranted. Include key personnel, specific deliverables, how tasks relate to the goal of the SOW, and costs for each deliverable. Attach separate sheets as necessary.

Timeline. Include a goal for the completion date(s) of each task.

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A Contract Between the State of Nevada
Acting By and Through Its

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, ENVIRONMENTAL PROTECTION DIVISION

901 S. Stewart Street
Carson City, Nevada 89701
Phone: (775) 687-9381 Facsimile: (775) 687-8335
Point of Contact: Sam Jackson

And

McGinley and Associates, Inc.
425 Maestro Drive, Suite 202
Reno, Nevada 89511
Phone: (775) 829-2245 Facsimile: (775) 829-2213
Point of Contact: Joseph McGinley

WHEREAS, NRS 284.173 authorizes elective officers, heads of departments, boards, commissions or institutions to engage, subject to the approval of the Board of Examiners, services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. REQUIRED APPROVAL. This Contract shall not become effective until and unless approved by the Nevada State Board of Examiners.
2. DEFINITIONS. "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307. "Independent Contractor" means a person or entity that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract. "Fiscal Year" is defined as the period beginning July 1 and ending June 30 of the following year.
3. CONTRACT TERM. This Contract shall be effective from July 1, 2009 subject to Board of Examiners' approval (anticipated to be June 9, 2009) to June 30, 2011, unless sooner terminated by either party as specified in paragraph ten (10).
4. NOTICE. Unless otherwise specified, termination shall not be effective until 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 personally in hand, by telephonic facsimile with simultaneous 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.
5. INCORPORATED DOCUMENTS. The parties agree that the scope of work shall be specifically described. This Contract incorporates the following attachments in descending order of constructive precedence:
ATTACHMENT AA: STATE SOLICITATION OR RFP #1749 and AMENDMENTS #1 & #2;
ATTACHMENT BB: INSURANCE SCHEDULE;

#132

ATTACHMENT CC: ADDITIONAL TERMS AND CONDITIONS TO CONTRACT SERVICES
TO INDEPENDENT CONTRACTOR CONTRACT CONTROL #DEP; AND
ATTACHMENT DD: CONTRACTOR'S RESPONSE

A Contractor's Attachment shall not contradict or supersede any State specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract:

6. CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph five (5) at a cost of see Attachment DD (state the exact cost or hourly, daily, or weekly rate exclusive of travel or per diem expenses) with the total Contract or installments payable: upon the agency's approval of received invoice, not to exceed \$428,908. The contractual authority, as identified by the not to exceed amount, does not obligate the State of Nevada to expend funds or purchase goods or services up to that amount; the purchase amount will be controlled by the individual using agency's purchase orders or other authorized means of requisition for services and/or goods as submitted to and accepted by the contractor. The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

The State does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

7. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. TIMELINESS OF BILLING SUBMISSION. The parties agree that timeliness of billing is of the essence to the contract and recognize that the State is on a fiscal year. All billings for dates of service prior to July 1 must be submitted to the State no later than the first Friday in August of the same year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject the Contractor to an administrative fee not to exceed one hundred dollars (\$100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the State of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to the Contractor.

9. INSPECTION & AUDIT.

a. Books and Records. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the State Auditor, the relevant state agency or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three (3) years, and for five (5) years if any federal funds are used pursuant to the Contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. CONTRACT TERMINATION.

- a. 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.
- b. State Termination for Non-appropriation. The continuation of this 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 this Contract, and Contractor 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.
- c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:
- i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
 - ii. 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 Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
 - iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
 - iv. If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or
 - v. 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 Contractor, or any agent or representative of Contractor, 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
 - vi. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.
- d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph four (4), 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.
- e. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:
- i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this 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;
 - ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;
 - iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;
 - iv. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph twenty-one (21).

11. REMEDIES. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation one hundred and twenty-five dollars (\$125.00) per hour for State-employed attorneys. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190.

12. 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. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal

year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed one hundred and fifty percent (150%) of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

13. 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.

14. INDEMNIFICATION. To the fullest extent permitted by law Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

15. INDEPENDENT CONTRACTOR. Contractor is associated with the State only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the State whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the State shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the State; (4) participation or contributions by either Contractor or the State to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the State. Contractor shall indemnify and hold State harmless from, and defend State against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, nor representatives shall be considered employees, agents, or representatives of the State. The State and Contractor shall evaluate the nature of services and the term of the Contract negotiated in order to determine "independent contractor" status, and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

		<u>Contractor's Initials</u>	
		YES	NO
1.	Does the Contracting Agency have the right to require control of when, where and how the independent contractor is to work?	_____	JMM
2.	Will the Contracting Agency be providing training to the independent contractor?	_____	JMM
3.	Will the Contracting Agency be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?	_____	JMM
4.	Are any of the workers who assist the independent contractor in performance of his/her duties employees of the State of Nevada?	_____	JMM
5.	Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?	_____	JMM
6.	Will the State of Nevada incur an employment liability if the independent contractor is terminated for failure to perform?	_____	JMM
7.	Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the State?	_____	JMM

16. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the State, Contractor, as an independent contractor and not an employee of the State, must carry policies of insurance and pay all taxes and fees incident hereunto. Policies shall meet the terms and conditions as specified within this Contract along with the additional limits and provisions as described in Attachment BB, incorporated hereto by attachment. The State shall have no liability except as specifically provided in the Contract.

The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Contracting Agency of the State, and
- 2) The State has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the State shall be a condition precedent to any payment of consideration under this Contract and the State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

Insurance Coverage: The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum limits as specified in Attachment BB, incorporated hereto by attachment. Unless specifically stated herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until:

1. Final acceptance by the State of the completion of this Contract; or
 2. Such time as the insurance is no longer required by the State under the terms of this Contract;
- Whichever occurs later.

Any insurance or self-insurance available to the State shall be in excess of, and non-contributing with, any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

General Requirements:

- a. **Additional Insured:** By endorsement to the general liability insurance policy evidenced by Contractor, the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.
- b. **Waiver of Subrogation:** Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 for losses arising from work/materials/equipment performed or provided by or on behalf of the Contractor.
- c. **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. **Deductibles and Self-Insured Retentions:** Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed fifty thousand dollars (\$50,000.00) per occurrence, unless otherwise approved by the Risk Management Division.
- e. **Policy Cancellation:** Except for ten (10) days notice for non-payment of premium, each insurance policy shall be endorsed to state that without thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address shown on page one (1) of this contract.
- f. **Approved Insurer:** Each insurance policy shall be:
 - 1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and
 - 2) Currently rated by A.M. Best as "A-VII" or better.

Evidence of Insurance:

Prior to the start of any Work, Contractor must provide the following documents to the contracting State agency:

1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor. The certificate must name the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 as the certificate holder. The certificate should be signed by a person authorized insurer to bind coverage on its behalf. The state project/contract number, description and contract effective dates shall be noted on the certificate, and upon renewal of the policies listed Contractor shall furnish the State with replacement certificates as described within Insurance Coverage, section noted above.

Mail all required insurance documents to the State Contracting Agency identified on page one of the contract.

2) Additional Insured Endorsement: An Additional Insured Endorsement (CG 20 10 11 85 or CG 20 26 11 85), signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per General Requirements, subsection a above.

3) Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

Review and Approval: Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

17. COMPLIANCE WITH LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. The State may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.

18. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

19. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this 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 this Contract unenforceable.

20. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this 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 this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations nor duties under this Contract without the prior written consent of the State.

21. STATE OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended

to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

22. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

23. CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.

24. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:

- a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
- b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.
- c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

25. LOBBYING. The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

- a. Any federal, state, county or local agency, legislature, commission, counsel or board;
- b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or
- c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

26. WARRANTIES.

- a. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.
- b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the State. This warranty includes, without limitation, century recognition, calculations that accommodate same century and multi-century formulas and data values and date data interface values that reflect the century.

27. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the State Board of Examiners and only for the

period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

28. 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, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this Contract.

29. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

Joseph McFadden 5-7-09 PRESIDENT
Independent Contractor's Signature Date Independent Contractor's Title

T. W. A. For 5/8/09 Dep Administrator
Leo Drozdoff - Signature Date Title

Stephanie Day For APPROVED BY BOARD OF EXAMINERS
Signature - Board of Examiners

Approved as to form by: On 6-17-09
(Date)

Janet Nies On May 8, 2009
Deputy Attorney General for Attorney General - NDEP (Date)

Form Approved 05/08/02
Revised 11/07

**ATTACHMENT BB
INSURANCE SCHEDULE**

INDEMNIFICATION:

Contractor shall indemnify, hold harmless and, not excluding the State's right to participate, defend the State and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all liabilities, claims, actions, damages, losses, or expenses including without limitation reasonable attorneys' fees and costs, and costs of claim processing, investigation and litigation) (hereinafter collectively referred to as "claims") for bodily injury or personal injury including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State.

Contractor (as "Indemnitor") shall indemnify, hold harmless and, not excluding the State's right to participate, defend the State and its officers, officials, agents and employees (as "Indemnitee") from and against any and all demands, claims, complaints, losses, damages, actions or causes of action, assessments, liabilities, costs or expenses including, without limitation, interest, penalties and reasonable attorney's fees and reasonable expenses of investigation and remedial work (including investigations and remediation by engineers, environmental consultants and similar technical personnel) asserted against or imposed upon or incurred by Indemnitee arising in connection with, or resulting from, any Environmental Law, including but not limited to, any use, generation, storage, spill, release, discharge or disposal of any Hazardous Substance that is now or comes to be located on, at, about or under the property or because of, or in connection with, the violation of any Environmental Law (hereinafter collectively referred to as "Claims") to the extent that such Claims are caused by the Fault of the Indemnitor, its officers, officials, agents, employees, contractors, volunteers, tenants, subtenants, invitees or licensees. As used in this section: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal, state or local laws and regulations, including common law, that relate to health, safety or environmental protection; and (c) "Fault" means those nonculpable acts or omissions giving rise to strict liability under any Environmental Law pertaining to Hazardous Substances, as well as culpable conduct (negligence or willful misconduct). In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State.

INSURANCE REQUIREMENTS:

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase such additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability and XCU coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".
- b. The policy shall include coverage for pollution arising from products liability for environmental control equipment, manufacturers and distributors.

2. **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

- a. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor".

3. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. Policy shall contain a waiver of subrogation against the State of Nevada.
- b. This requirement shall not apply when a contractor or subcontractor is exempt under N.R.S., AND when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

4. **Contractor's Pollution Liability (Including Errors and Omissions)**

For losses caused by pollution conditions that arise from the operations of the Contractor as described in the Scope of Services section of this Contract.

Per Occurrence	\$2,000,000
General Aggregate	\$4,000,000

- a. The policy shall provide for complete professional service coverage, including coverage for pollution liability that is the result of a breach of professional duties.
- b. The policy shall provide for protection against claims for third-party bodily injury, property damage, or environmental damage caused by pollution conditions resulting from general contracting activities for which the Contractor is legally liable.
- c. The policy shall provide for cleanup costs when mandated by governmental entities, when required by law, or as a result of third-party claims.
- d. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

5. **Pollution Legal Liability (only if work involves the transportation of hazardous materials or regulated substances)**

If the Scope of Services in this Contract requires the transportation of any hazardous material or regulated substances, the Contractor shall provide coverage with limits of at least:

Per Occurrence	\$2,000,000
General Aggregate	\$4,000,000

- a. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".
- b. If the Scope of Services in the Contract requires the transportation of any hazardous materials or regulated substances, then the policy shall provide coverage for claims resulting in bodily injury, property damage or cleanup costs associated with a pollution condition from transported cargo.

6. **Pollution Legal Liability For Disposal Site Operator**

If the Scope of Services in this Contract requires the disposal of any hazardous materials from the job site, Contractor shall obtain a certificate of insurance for Pollution Legal Liability from the disposal site operator.

Per Occurrence	\$2,000,000
General Aggregate	\$4,000,000

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies are to contain, or be endorsed to contain, the following provisions:

1. On insurance policies where the State of Nevada is named as an additional insured, the State of Nevada shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the State, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to **(State of Nevada Department Representative's Name & Address)**.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Nevada and with an "A.M. Best" rating of not less than A- VII. The State in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State with certificates of insurance (ACORD form or equivalent approved by the State) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the State before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to **(State Department Representative's Name and Address)**. The State project/contract number and project description are to be noted on the certificate of insurance. The State reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

- F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies or Contractor shall furnish to the State separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract must have prior approval from the State of Nevada Attorney General's Office or the Risk Manager, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

<u>Joseph McCarty</u>	<u>5-7-09</u>	<u>PRESIDENT</u>
Independent Contractor's Signature	Date	Independent's Contractor's Title
<u>J. McCarty</u>	<u>6/8/09</u>	<u>Dep Administrator</u>
Signature- State of Nevada	Date	Title

Attachment BB

RMIns rev 03/08



McGinley & Associates

Reno Office

425 Maestro Dr.
Suite 202
Reno, NV 89511
Ph: 775.829.2245
Fax: 775.829.2213

Las Vegas Office

8275 S. Eastern Ave.
Suite 220
Las Vegas, NV 89123
Ph: 702.990.8392
Fax: 702.938.1049

www.mcgin.com

| Environmental Site Assessments

| Soil and Groundwater Remediation

| Regulatory Compliance

| Environmental Audits

| Hydrogeology

COST PROPOSAL IN RESPONSE TO RFP NO. 1749 THE NEVADA BROWNFIELDS PROGRAM

Prepared for:



*State of Nevada, Purchasing Division
Dave Jones, Services Purchasing
515 E. Musser Street, Suite 300
Carson City, NV 89701*

“MASTER”

February 18, 2008

1. INTRODUCTION

If awarded the NDEP Brownfields Program contract, McGinley & Associates Inc. (MGA) will be responsible for submittal of invoices, task budget control, site specific accounting (accrued professional hours, travel expenditures, equipment costs, etc.) and payment of subcontractors. Our proposed cost/rate structure, along with a description of our site-specific and task-specific accounting is provided herein.

2. COST/RATE STRUCTURE

In accordance with the RFP instructions, MGA's proposed cost/rate structure is provided in Table 1.

TABLE 1 - MGA's PROPOSED COST STRUCTURE					
Staff Cost	Base Rate	Direct Labor	Indirect Costs	Profit (12%)	Total Cost
<i>Personnel Direct Costs</i>					
a) Principal	\$52.88	\$18.51	\$71.39	\$17.13	\$159.91
b) Senior Associate	\$43.27	\$15.14	\$58.41	\$14.02	\$130.84
c) Associate	\$42.31	\$14.81	\$57.12	\$13.71	\$127.95
d) Senior Project Manager	\$37.90	\$13.27	\$51.17	\$12.28	\$114.62
e) Project Manager	\$31.25	\$10.94	42.19	\$10.13	\$94.51
f) Senior Staff	\$31.25	\$10.94	42.19	\$10.13	\$94.51
g) Staff	\$28.11	\$9.84	\$37.95	\$9.11	\$85.01
h) Technician	\$25.00	\$8.75	\$33.75	\$8.10	\$75.60
i) Clerical	\$18.27	\$6.40	\$24.67	\$5.92	\$55.26
j) Expert Witness	\$52.88	\$18.51	\$71.39	\$17.13	\$159.91

Note: Hourly rates are subject to annual cost of living increases.

3. TRAVEL AND EQUIPMENT

3.1 Travel

All costs associated with travel expenses will be billed at the approved state rates. This includes but is not limited to per diem, mileage and hotels.

3.2 Equipment

All equipment costs will be billed in accordance with the standard McGinley & Associates, Inc. Equipment Cost schedule. The 2009 schedule is provided in Appendix A.

4. MARKUPS

It is our understanding that the NDEP Brownfields Program will not allow subcontractor markups for laboratory or drilling services routinely employed under this contract since these are considered to be supporting or incidental, third party services which do not meet the definition of "subcontractor" under the RFP. However, the Nevada Brownfields Program is considering allowing subcontractor markups of 5% where the NDEP specifically requests a local contractor for certain services.

5. PROOF OF PAYMENT

To demonstrate that all subcontractors have been paid in full, copies of checks made payable to the subcontractor will be provided with each invoice.

6. INVOICES

Invoices will be submitted to the NDEP on a monthly basis within five business days following month's end. Each invoice will include:

- Description of site-specific and/or task-specific services performed
- Reference to NDEP site-specific and/or task-specific authorization
- Billing period
- Personnel charges with hours and base rate/overhead itemized
- Profit itemization
- Subcontractor invoicing as back-up
- Proof of subcontractor payment
- Equipment/material charges with equipment usage logs as back-up
- Expense reimbursement forms
- Time sheets

Each invoice will be supplemented with:

- Billings to date
- Remaining budget amount

7. SITE-SPECIFIC AND/OR TASK-SPECIFIC ACCOUNTING

Site-specific accounting and detailed task-specific invoicing are a critical component of the project to ensure the completion of assigned tasks on budget. Personnel assigned to this project have the requisite expertise with site/task specific cost control and tracking through our extensive experience on other NDEP sponsored contracts including the LUST program, EMAR program and the BMI Complex Technical Oversight program. In addition to the

NDEP programs, our cost control and accounting procedures have proven extremely effective in managing hundreds of thousands of dollars for multiple site assessment and remediation projects for entities such as Boeing and the University of Nevada Reno.

An important aspect of cost control is detailing the project cost and identifying the specific tasks to be completed for each specific Brownfields Program site. The MGA team has established the following successful steps based on extensive experience with prior projects.

- Each specific Brownfields Program site and/or task will be assigned a unique identification number. All services, equipment, subcontractors, purchase orders, per diem, travel will be carefully tracked using this identification. The site-specific identification number will be clearly incorporated into all timesheets, reports, invoices, daily job forms, etc.
- As the work begins and progresses on a specific site, the Project Manager is provided with project detail reports on a weekly basis. These reports of actual cost of work performed for each specific site are compared to the NDEP approved cost to maintain cost control and identify any potential problem areas.
- Should additional hours or increased expenditures arise due to unforeseen circumstances, the Project Coordinator will immediately inform the NDEP in writing and obtain written authorization prior to commencing with the additional services.
- The Project Coordinator reviews each site-specific budget with the Project Manager on a weekly basis for quality assurance/quality control ensuring that the project is progressing on time and on budget.

8. CLOSING

We trust that your review of our cost proposal meets the requirements of the RFP. Please do not hesitate to contact McGinley & Associates, Inc. should you have any questions regarding our proposal.

Respectfully submitted,

McGinley & Associates, Inc.

Joseph M. McGinley, PE, PG, CEM
President

APPENDIX A

Equipment Cost Schedule



**SCHEDULE OF FEES
Equipment Costs 2009**

Description	Rate
Oil/water interface probe	\$50/day
Water level meter	\$20/day
PH/Conductivity/Temp. meter	\$20/day
Dissolved Oxygen (DO) meter	\$20/day
Data logger/Transducer	\$125/day
PID/OVM	\$100/day
Generator	\$45/day
HazCat kit	\$100/day min, \$15/sample
PetroFlag kit	\$20/sample
Bailers	\$9 each
Level B PPE	\$500/day
Level C PPE	\$45/day
Sampling tubes, brass	\$7 each
Submersible pump	\$25/day
Peristaltic pump	\$25/day
Tyvex coveralls	\$9 each
55-gallon drum	\$50 each
Sampling kit	\$15 each