Nevada Public Employees' Deferred Compensation Program
Request for Proposal for Consulting Services

Nevada Deferred Compensation Program
Nevada State Library & Archives Bldg.
100 N. Stewart St. Suite 210
Carson City, NV 89701
775.684.3397 775.684.3399 FAX

NOTICE TO PROPOSERS

There may be one or more amendments to this proposal solicitation. If your company desires to receive copies or notices of any such amendments, you must provide the information requested below to Tara Hagan by e-mail at tarahagan@defcomp.nv.gov.

Company name _____

Mailing address _____

_____

_____

Phone number _____

Fax number _____

Contact person _____

E-mail address _____

Send amendments by (check one): ☐ fax

☐ E-mail

Any alterations to the document made by the proposer may be grounds for rejection of proposal, cancellation of any subsequent award, or any other legal remedies available to the State of Nevada.

There should be no communication, either in person, in writing, or by phone and email between any proposer and any (1) Deferred Compensation Committee Member, (2) Program Staff, (3) Program consultants (4) elected officials or their staff members or (5) any other person in position to influence the decision of the Committee Members at any time during the RFP process, and until the Committee makes its decision, except at a time specified for the pre bid question process and oral presentations by selected proposers. Direct communication in an attempt to influence the awarding of the RFP shall be considered grounds for disqualification.

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Purpose/Objective
The Nevada Public Employees' Deferred Compensation Program (PROGRAM) is seeking competitive proposals from qualified consulting firms (CONSULTANT) to assist and advise the PROGRAM in fulfilling its fiduciary duties. The consulting services will include, but are not limited to, the following areas: quarterly performance measurement and plan reporting, compliance review every other year, investment option addition/replacements, record keeping scenarios (i.e. potential for third-party administration, plan design, participant communication, education and fee structuring). In addition, the PROGRAM is seeking assistance with its Provider search, as the current provider contracts expire 12-31-12. This CONSULTANT will assist the PROGRAM and Staff with the Request for Proposal (RFP) and in the evaluation of the Provider proposals. Upon selection of the successful bidder(s), the CONSULTANT will assist the PROGRAM in the negotiation of the contract(s).

Background
Nevada Revised Statutes 287.250 et seq. provides an Internal Revenue Code Section 457(b) Deferred Compensation Program to the State and local government employees. The PROGRAM is administered by an Executive Officer under the governance and direction of a five-member Committee appointed by the Governor. The PROGRAM is currently serviced under a dual provider arrangement with Hartford and ING. As of December 31, 2010, total Plan assets were valued at **$539 million**. The Hartford maintains **$444 million** in assets and ING maintains **$95 million** in assets. Political subdivisions of the State (a city, county or other local unit) may adopt the terms of the PROGRAM through an interlocal agreement. The assets of the **44 participating** local government groups total **$107 million** and are included in the above asset total.

Nevada has approximately **17,000** state government employees throughout the State. All regular full-time and part-time employees are eligible to participate. The Deferred Compensation Plan also is made available to all employees of the Nevada System of Higher Education. An additional **15,800** employees in this group potentially have the option of participating in the 457 Deferred Compensation Plan. In addition, the local governments have approximately **7,800** eligible employees. Currently, the Plan has approximately 12,836 participants in the full-time PROGRAM, including 7,665 who are actively contributing.

A FICA Alternative Plan is offered to those part-time, temporary and seasonal employees who are not eligible for the Nevada Public Employees' defined benefit program. This Plan also is serviced by Hartford and ING. Total FICA Plan assets as of December 31, 2010 were $15.34 million, with Hartford maintaining $10.6 million of those assets and ING with $4.7 million. This amount is in addition to the 457 Plan assets in the State's PROGRAM.

For more information regarding the Nevada Deferred Compensation Program, including the Plan Document, Investment Policy Statement and other references, please visit the Program web site at http://defcomp.state.nv.us.

Schedule of Events
The following Schedule of Events represents the PROGRAM'S best estimate of the schedule that shall be followed. Unless otherwise specified, the time of day for the following events shall be between 8:00 a.m. and 5:00 p.m. Pacific Daylight Time. The PROGRAM reserves the right, at its sole discretion, to adjust this schedule as it deems necessary.

Event Description	**Date**
RFP Issued	April 18, 2011
Deadline for Submitting Questions	April 25, 2011
Answers to all Questions Available on	May 2, 2011
Proposals Due	May 13, 2011
Selection process – RFP Review Phase	June 9, 2011
Selection/Finalist Presentation	August 18, 2011
Completion of Final Contract	October 2011
Final Contract to Board of Examiners	November 2011
Implementation Begins	January 2, 2012

MINIMUM QUALIFICATIONS

The CONSULTANT must be a firm capable of serving as investment consultant for a Deferred Compensation 457(b) Plan and must have experience with governmental 457(b) clients with plan assets of at least $400 million.

SCOPE OF SERVICES

The PROGRAM seeks to obtain Plan Consulting Services through this RFP. The CONSULTANT is expected to provide the following:

Investment selection, measurement, monitoring and reporting

1. Provide an annual review of the Statement of Investment Policy

2. Ensure well defined procedures in the Statement of Investment Policy are in place for the review, maintenance, and monitoring of investment funds.

3. Measure, monitor and report quarterly performance of investments against industry benchmarks and peer group indices. Present quarterly investment reports to the Committee and Staff.

4. Continuously monitor investment funds used in the Plan for adverse events such as key person departures, significant changes in organizational ownership, significant client losses and other negative product concerns. Advise PROGRAM as to the continuing appropriateness of a Plan investment manager or fund or option when concerns are identified.

5. Recommend elimination/addition of investment options as appropriate.

6. Recommend elimination/addition of PROGRAM Providers as appropriate.

7. Keep Staff/Committee abreast of current investment trends and issues in the governmental defined contribution industry.

8. Monitor and provide independent alerts to impending risks that may impact Providers, fund manager and fund performance.

9. Evaluate new investment opportunities upon request.

10. Attend quarterly Nevada Deferred Compensation Committee meetings and its annual strategic planning session.

11. Conduct Fund searches and make recommendations to PROGRAM regarding hiring of any investment manager

12. Analyze, summarize and communicate general market trends.

General Plan Consulting

1. Conduct a compliance review of the plan every other year, beginning in fiscal year 2014.
2. Provide expert advice and analysis with respect to the following:
    a. Proposed or actual Federal legislation and regulations affecting 457 plans
    b. Potential modification of plan's provisions
    c. Questions which may arise in the administration of the Plan concerning the interpretation of Federal rules and policies and their applicability to the PROGRAM
3. Provide general advice and assistance regarding the current communication and enrollment materials
4. Assist with an action plan to resolve any administrative issues or deficiencies that may require a solution.
5. Provide recommendations to ensure fulfilling fiduciary responsibilities.
6. Contractually agree to a co-fiduciary relationship with the PROGRAM
7. Assist PROGRAM with all aspects of Provider search, including but not limited to appropriate plan design, creation of RFP, evaluation of third-party administration, if appropriate, bid evaluation and contract negotiation.
8. Other non-routine items as requested by Staff.

PROPOSAL INFORMATION REQUIRED

Firms desiring consideration should fully respond to the following items. The PROGRAM reserves the right to include any, all, or none of the listed items or services in any consultant agreement resulting from this Request for Proposal process.

FIRM ORGANIZATION

1. Provide the complete name of the organization, web address, physical address, telephone and fax number.

2. Describe any citations your firm has received or threatened to receive within the last ten years by federal or state regulators for violations of any state or federal law or regulation.

3. Describe any litigation involving the business of your firm with relation to its deferred compensation or defined contribution services in the past ten years. Exclude routine matters involving participants and beneficiaries that do not reflect on the performance of your agreement.

4. Within the past three-years, have there been significant developments in your organization, such as changes in ownership, restructuring, or personnel reorganizations? Do you anticipate future significant changes in your organization? If yes, please describe.

5. Are there any circumstances specifically related to your investment consulting activities under which your firm, its parent, affiliate, joint venture, its directors, officers or employees receives direct or indirect compensation from investment managers? If so, describe in detail.

6. Disclose any other affiliations, strategic alliances, joint ventures, and referrals arrangements, if not previously disclosed in your response to this RFP.

7. Describe any relationship with mutual fund vendors and any revenue reimbursements received from the mutual fund vendors.

Employees

8. Provide biographies of the key individuals who would be assigned to provide investment consulting services to the PROGRAM. Please include descriptions of their qualifications such as education, years with firm and years working with 457 plans.

9. List senior staff hires and departures over the past three years.

10. Provide data related to turnover ratios of your investment management research staff over the past three years.

11. Do any of your investment consulting employees have portfolio management or plan sponsor experience? Please provide details and identify such individuals.

CONSULTING CAPABILITIES

12. Outline your firm's approach to the development of an investment policy. Provide a sample of your response.

13. What role does passive management play in your firm's general view of the asset allocation process for your clients?

14. Describe your experience and capabilities for evaluating performance of investment options within 457 plans. Please include a sample performance measurement report for a 457 plan with similar assets.

Investment Manager Research

15. Give an overview of your firm's criteria and approach for ranking investment managers. Differentiate among the rankings.

16. Has your investment manager ranking framework ever been tested for its efficacy?

17. How does your firm provide investment manager research?

    - Does your firm maintain an in-house database of investment managers?
    - If not, what vendor provides this information to you?
    - How many mangers, by asset class and subcategory, are contained in the database?

18. What is your firm's investment manager research process? Describe how your firm or your firm's vendor(s) gathers, verifies, updates and maintains the data collected on investment managers for the database.

19. Describe the process used by your firm to evaluate new, prospective investment managers before they are included in the database.

20. Does your firm have individuals in-house dedicated to investment manger research? If so, describe their qualifications, number and location.

21. Describe your firm's policy regarding frequency of on-site investment manager visits. Describe their role in the investment manager search process.

22. Describe in detail your firm's process for evaluation and selection of investment managers. Include an actual investment manager search report with your response.

Research

23. Describe the internal structure and organization of your firm's research department. If no separate department exists, describe how this function is performed.

24. Include in your response three recent research reports on special topics generated by your firm.

457 ADMINISTRATION AND DEVELOPMENT OF REQUEST FOR SERVICE PROVIDER PROPOSALS

- Provide examples of innovative approaches you have initiated or assisted in developing with respect to 457 design concepts with plans of comparable size to the PROGRAM. These examples may relate to the organization of administrative services, the structure of investment option menus, the expansion/enhancement of related program types or services, etc.

- Describe the resources you can make available to the Plan for the purpose of expert technical review of 457 statutes and regulations. Provide some background on your experience with respect to Section 457 regulations.

- Describe any experience your firm has in either pre-testing for an Internal Revenue Service (IRS) audit or assisting plan sponsors in navigating an actual IRS audit for clients of comparable size to the PROGRAM.

- Discuss your experience in the design of requests for proposal for 457 plan administration (including recordkeeping, communication and enrollment services). Provide some background on your development process for this type of requests for proposals, including the gathering of plan data, establishing timelines, etc.

- In the last three years, how many 457 requests for proposals has your company helped develop? For each, please indicate the plan, approximate number of participants and assets. Describe the resources utilized in generating and reviewing questions related to such requests and summarizing results for clients.

CURRENT CLIENTS

Describe your firm's experience in providing consulting services to 457 plans.

- Provide three references of public sector clients of comparable size to the PROGRAM which your firm provides 457(b) investment and compliance consulting. Include a contact name, title, and phone number.

- Please provide the names of all 457 clients who have terminated your firm's services in the last three years. In each case, detail the reason for termination and the services that were provided.

- Describe average consultant to client ratio for clients of comparable size to the PROGRAM.

FEES

Please provide a quote of your firm's proposed fees, in hard dollars, for the annual fee for full-service consulting services, including itemized costs for the compliance audit and provider request for proposal. Please detail the scope of services to be provided under such an arrangement and provide quotes for any additional services not covered under the annual fees. Please note you should anticipate four (4) PROGRAM Committee meetings and one (1) PROGRAM strategic planning session.

SUBMISSION CONDITIONS

Proposals must meet the PROGRAM's minimum requirements and may be rejected if they are conditional or incomplete. The PROGRAM reserves the right to reject any or all proposals, to allow a submitter to clarify or cure any defect in their submission, or to elect not to award any contract as a result of this competitive evaluation/selection process. Firms submitting proposals must agree to the following conditions and indicate this agreement in their submission to the PROGRAM:

1. Late submissions will not be accepted.
2. All costs incurred in preparing or submitting qualifications are the firm's sole responsibility. The PROGRAM will not reimburse any vendor for any costs incurred.
3. The PROGRAM will treat all information submitted as available for public inspection once the deadline for submitting has expired.

CONTRACTUAL REQUIREMENTS

The initial contract term for general investment consulting services will be three years. The contract may, at the discretion of the PROGRAM, be renewed for one additional two-year period.

Any CONSULTANT selected through this process will be required to agree to the standard PROGRAM contract stipulations. Execution of Exhibit A of this RFP shall constitute an agreement to all terms and conditions specified in the RFP, including, without limitation, the Exhibit B 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.

INSURANCE REQUIREMENTS

The selected CONSULTANT must maintain, for the duration of the contract, insurance coverage 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 coverage.

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 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 above. The State shall be the sole and final judge as to the adequacy of any substitute form of insurance coverage.

PROPOSAL EVALUATIONS

All written submissions that conform to the requirements outlined in this Request for Proposal will be reviewed and evaluated by the PROGRAM. The PROGRAM, in its sole discretion, reserves the right to interview any, all or none of the CONSULTANTS submitting qualifications. The PROGRAM may skip the interview phase and directly enter into service agreement negotiations with any submitter determined by the PROGRAM to be the best-qualified CONSULTANT based solely on written responses received pursuant to this Request for Proposal process. Interviews, if required, are tentatively scheduled to occur on or about August 18, 2011.

The CONSULTANT will be selected based on:

1. Responses to the specific points outlined in the Request for Proposal;
2. Experience in providing similar deferred compensation consulting services;
3. Information gathered from the references;
4. Responses to interview questions, if applicable;
5. Costs or fees for services identified.

Based upon the above criteria, the Nevada Deferred Compensation Plan Committee will choose the firm that it judges to be the most highly qualified. The PROGRAM will enter into an agreement with the selected CONSULTANT, unless the selected CONSULTANT and the PROGRAM are unable to reach mutually agreeable contract terms. If mutually agreeable contract terms cannot be reached, the PROGRAM may award the agreement to another CONSULTANT.

SUBMISSION REQUIREMENTS

Each Bidder must submit a total of eight [**8**] bound copies and one (1) electronic copy by **3:00 p.m. Pacific Daylight Time, on Friday, May 13, 2011** in accordance with the following**:**

One original copy marked "master" and 7 identical copies to:

Tara Hagan

Executive Officer

Nevada Public Employees Deferred Compensation Program

Nevada State Library & Archives Bldg.

100 N. Stewart Street, Suite 210

Carson City, NV 89701

tarahagan@defcomp.nv.gov

Tel. 775.684.3397 Fax 775-684.3399

In addition to the hard copy proposals, bidders must also provide a copy of their proposals in an electronic format to Tara Hagan: tarahagan@defcomp.nv.gov

Exhibit A
CERTIFICATION OF COMPLIANCE WITH TERMS AND CONDITIONS OF RFP

I have read, understand and agree to comply with the terms and conditions specified in this Request for Proposal. Checking "YES" indicates acceptance, while checking "NO" denotes non-acceptance and should be detailed below. Any exceptions **MUST** be documented.

YES _____ NO _____ SIGNATURE _____

EXCEPTIONS: Attach additional sheets if necessary. Please use this format.

EXCEPTION SUMMARY FORM

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

Exhibit B

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. Please pay particular attention to the insurance requirements, as specified on page 23.

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. It is not necessary for vendors to complete the Contract Form with their proposal responses.

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A 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 333.700 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 RFP #_____ and AMENDMENT(S) #___;
ATTACHMENT BB: INSURANCE SCHEDULE; AND
ATTACHMENT CC: 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. 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:

		Contractor's Initials	
		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.
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 Accord 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, council or board;

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

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

_____ _____

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

_____ _____

Signature Date Title

_____ _____

Signature Date Title

_____ _____

Signature Date Title

_____ APPROVED BY BOARD OF EXAMINERS

Signature - Board of Examiners

On _____

Approved as to form by: (Date)

_____ On _____

Deputy Attorney General for Attorney General (Date)

ATTACHMENT BB
INSURANCE SCHEDULE

INDEMNIFICATION CLAUSE:

Contractor shall indemnify, hold harmless and, not excluding the State's right to participate, defend the State, its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys' fees and costs, (hereinafter referred to collectively 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.

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 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 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".

2. **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.

2. Professional Liability (Errors and Omissions Liability)

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	$1,000,000
Annual Aggregate	$2,000,000

a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, 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 shall 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**. DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATES RISK MANAGEMENT DIVISION.**

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 shall be made by the 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

RMIns rev 03/08