

**NEBRASKA LOTTERY
REQUEST FOR PROPOSALS FOR
UNIFORMED SECURITY OFFICER SERVICES FOR
NEBRASKA LOTTERY FACILITIES**

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Additionally, Nebraska Lottery Statutes, Regulations and Annual Financial Reports are available upon request.

**NEBRASKA LOTTERY
REQUEST FOR PROPOSALS FOR
UNIFORMED SECURITY OFFICERS AND RELATED
SERVICES FOR THE NEBRASKA LOTTERY**

Section 1 outlines the purpose, definitions, background, contact person, and relevant dates of the Request for Proposals. Section 2 outlines the technical requirements of this RFP. Section 3 outlines the Compensation Proposal required. Section 4 outlines the RFP process and the objectives, assumptions, expectations, and requirements of the Nebraska Lottery and the Nebraska Department of Revenue.

SECTION 1: TERMS AND CONDITIONS

1.1 Purpose

The purpose for issuing this Request for Proposals (“RFP”) is to secure proposals and competitive bids from qualified Vendor(s) to provide the Nebraska Lottery with Uniformed Security Officer Services for the continuing operations of the Nebraska Lottery. The contract awarded as a result of this request will be for a four (4)-year period beginning July 1, 2017, with four (4) one-year (1-year) options (potentially eight (8) years total), which may be exercised, dependent upon availability of funds, at the discretion of the Nebraska Lottery and with the approval of the Tax Commissioner. Optional period renewals shall be automatic unless the Nebraska Lottery gives ninety (90) days’ written notice.

The Nebraska Lottery requires uniformed security officers to perform security control functions at the Instant Ticket Facility, currently located at 4700 Bair Avenue, Suite B, Lincoln, Nebraska. Security systems that need to be monitored by uniformed security officers are in place at the Instant Ticket Facility. The security systems include building access, card access, interior and exterior cameras, monitors, time lapse recorders, intrusion devices, annunciation panels, and other security systems.

1.1.1 The integrity of the Nebraska Lottery is essential. The Nebraska Lottery must maintain control over all of its functions and activities to assure that they are performed to provide the greatest long-term benefit to the State of Nebraska and the greatest integrity to the Nebraska Lottery in a manner consistent with the dignity of the State of Nebraska. The Contractor must perform its activities in such a way as to maintain the public’s trust and confidence in the Nebraska Lottery and its operation. This RFP outlines the services that must be provided by Contractor that are committed to maintaining the integrity and success of the Nebraska Lottery.

1.1.2 Prospective Contractors are expected to provide the Nebraska Lottery with information and evidence that will make possible the evaluation of the information in expectation of awarding a contract in a manner that best serves the interests of the Nebraska Lottery. The Nebraska Lottery reserves the right to make use of any and all ideas presented in reply to this RFP.

- 1.1.3** The Nebraska Lottery reserves the right to award a contract based solely on what it considers to be the best response to the RFP, if a contract award appears to be in the Nebraska Lottery's best interests.
- 1.1.4** Qualified Vendors meeting the requirements and specifications contained in this RFP shall take into consideration all associated costs of the Uniformed Security Officer Services required in this RFP and offered in their proposal. Any additional cost incurred either in the preparation of the Vendor's response or in the execution of the Contractor's responsibilities under this RFP and any subsequent contract will not be the responsibility of the Nebraska Lottery.
- 1.1.5** The Nebraska Lottery has the following objectives in issuing this RFP and entering into a contract with the selected Contractor:
 - 1.1.5.1** To secure cost-effective Uniformed Security Officer Services from a reputable and experienced firm;
 - 1.1.5.2** To effectively and efficiently provide Uniformed Security Officer Services with the highest levels of dignity and integrity;
 - 1.1.5.3** To contract with a firm that is sufficiently flexible to adapt to the Nebraska Lottery's changing needs over the term of the contract;
 - 1.1.5.4** To maximize the sale of Nebraska Lottery tickets and revenues to the State of Nebraska by maintaining positive public awareness of the Nebraska Lottery's games and operations;
 - 1.1.5.5** To maintain all Nebraska Lottery expenses and operational costs at the lowest cost possible while still maintaining effective operations;
 - 1.1.5.6** To operate the Nebraska Lottery in the most efficient and secure manner possible;
 - 1.1.5.7** To maintain the public's trust and confidence in the Nebraska Lottery and its operation;
 - 1.1.5.8** To ensure meaningful minority participation in all aspects of the Nebraska Lottery including Nebraska Lottery Contractors; and
 - 1.1.5.9** To limit the number of Nebraska Lottery employees.

1.2 Definitions

For purposes of this Request for Proposals (“RFP”), the following terms shall be defined as described below, unless the context clearly requires otherwise:

- 1.2.1** Act shall mean the State Lottery Act, NEB. REV. STAT. § 9-801 et seq.
- 1.2.2** Contractor shall mean a Vendor or Vendor Group that has been awarded a contract by the Nebraska Lottery as a result of a proposal submitted pursuant to this RFP, and shall also include the Contractor’s agents and employees, any subcontractor, and its employees or agents.
- 1.2.3** Department shall mean the Nebraska Department of Revenue.
- 1.2.4** Director shall mean the Director of the Nebraska Lottery.
- 1.2.5** Instant Ticket Facility shall mean the facility used by a third party, which party is under contract with the Nebraska Lottery, for the storage and distribution of instant lottery tickets, and all associated office and warehouse space located on-site. The Instant Ticket Facility is currently located at 4700 Bair Avenue, Suite B, Lincoln, Nebraska.
- 1.2.6** Lottery Security shall mean the investigative branch of the Nebraska Lottery.
- 1.2.7** Nebraska Lottery or Lottery shall mean the Lottery Division of the Nebraska Department of Revenue.
- 1.2.8** Vendor shall mean any person or entity or group of entities that has submitted a proposal to the Nebraska Lottery pursuant to this RFP.

1.3 Background of the Nebraska Lottery

The Nebraska Lottery, which is a Division of the Nebraska Department of Revenue, began selling scratch ticket games on September 11, 1993. On July 21, 1994, the Nebraska Lottery commenced on-line game sales. As of June 30, 2016, the Nebraska Lottery has sold in excess of \$2.3 billion in lottery tickets and provided in excess of \$607 million to benefit the legislatively designated educational, environmental, and compulsive gambling assistance funds. The Nebraska Lottery’s headquarters are located at 1800 ‘O’ Street, Suite 101, Lincoln, Nebraska, and will be located at 1700 West ‘O’ Street, Lincoln, Nebraska, beginning on July 1, 2017. Complete Annual Reports of the Nebraska Lottery through 2016 are available at nelottery.com.

1.4 Contact Person and Issuing Office

1.4.1 This RFP is issued by the Nebraska Lottery.

1.4.2 The Nebraska Lottery is the sole point of contact with regard to all procurement and contractual matters relating to this RFP. The Nebraska Lottery is the only office authorized to clarify, modify, amend, alter, or withdraw the specifications, terms, and conditions of this RFP and any contract awarded as a result of this RFP. The Nebraska Lottery welcomes communications with all interested Vendors and will assist prospective Vendors in interpreting RFP specifications. All communications regarding this procurement must be addressed to:

Mike Olsen
Lottery Security Director
1800 'O' Street, Suite 101
Lincoln, NE 68508
(402) 471-5948
Fax: (402) 471-6108
mike.olsen@nebraska.gov

The Nebraska Lottery will only respond officially to written communications or oral communications that are followed up in writing. Requested information and answers to written questions will be provided in writing to all Vendors.

1.4.3 If a Vendor discovers any ambiguity, conflict, discrepancy, exclusionary specifications, omission, or other error in this RFP, it shall immediately notify, in writing, the point of contact as indicated in Section 1.4.2. If a Vendor fails to notify the point of contact of any known error, ambiguity, conflict, discrepancy, exclusionary specification, or omission, the Vendor shall submit a response at its own risk, and, if awarded a contract, the Contractor shall not be entitled to additional compensation, relief, or time by reason of the error or its later correction.

1.5 Dates Relevant to Award

The time schedule for the awarding and execution of a contract under this RFP is shown below. The Nebraska Lottery reserves the right to amend the schedule at its discretion. If changes are made, all known potential Vendors will be notified.

- 1.5.1** RFP Issued: **March 15, 2017.**
- 1.5.2** Deadline for Written Request for Tour of Lottery and Warehouse Facilities (may be submitted via email or fax as provided below): 4:00 P.M. C.T. **March 24, 2017.**
- 1.5.3** Deadline for Written or Oral Questions: 4:00 p.m. C.T., **March 31, 2017.**
- 1.5.4** Nebraska Lottery's Response to Questions Mailed or faxed: **April 7, 2017.**
- 1.5.5** Proposal Due: 10:00 a.m. C.T., **May 12, 2017.**
- 1.5.6** Proposal Opening (not public): 10:00 a.m. C.T., **May 12, 2017.**
- 1.5.7** Nebraska Lottery Evaluation Committee to Make Recommendations: no later than **June 2, 2017.**
- 1.5.8** Recommendation from Director to the Tax Commissioner: no later than **June 8, 2017.**
- 1.5.9** Announcement of the initially selected vendor: no later than **June 9, 2017.**
- 1.5.10** Contract Negotiations Begin: no later than **June 12, 2017.**
- 1.5.11** Proposals Open to Public: no later than 9:00 a.m. C.T., **June 12, 2017.**
- 1.5.12** Provision of Uniformed Security Officer Services: **by July 1, 2017.**

1.6 Requests to Tour Instant Ticket Facility

Vendors may make a written request to tour the Instant Ticket Facility. Written requests for a tour must be submitted to the Nebraska Lottery prior to the deadline of 4:00 p.m. C.T., March 24, 2017. Telephone requests will not be accepted. Written requests may be faxed or emailed to Mike Olsen, Lottery Security Director, Nebraska Lottery, 1800 'O' Street, Suite 101, Lincoln, NE 68508, (402) 471-5948, FAX (402) 471-6108, email: mike.olsen@nebraska.gov. Written, non-written, or oral communications received from prospective vendors during their tours may be disregarded by the Nebraska Lottery in making its decision. Prospective vendors must include all relevant information within their written proposal to receive Nebraska Lottery consideration during its selection process.

1.7 Additional Inquiries

- 1.7.1** Written and oral inquiries concerning this RFP must be received by the Nebraska Lottery prior to 4:00 p.m. C.T., March 31, 2017. All inquiries and answers will be included in the Nebraska Lottery's April 7, 2017 response. Questions may also be submitted by fax or email. Written and oral inquiries received after 4:00 p.m., C.T., on March 31, 2017 will be considered late questions and will not be responded to. Written and oral inquiries must be addressed to Mike Olsen,

Lottery Security Director, 1800 'O' Street, Suite 101, Lincoln, NE 68509-8901, (402) 471-5948, Fax: (402) 471-6108, Email: mike.olsen@nebraska.gov. Oral inquiries must be followed up by inquiries in writing. Only oral communications which are followed up in writing, and written inquiries will receive official written responses. The Nebraska Lottery reserves the right to answer or not answer inquiries it receives. Inquiries received and answers that the Nebraska Lottery chooses to provide will be provided to all known prospective Vendors. Answers will be mailed, emailed, or faxed by April 7, 2017. The specific Vendors making the inquiries will not be identified. The Nebraska Lottery will be bound only by its written responses to questions concerning this RFP. At the Vendor's written request and expense, answers to questions may be sent by a service such as Federal Express.

- 1.7.2** This inquiry procedure provides the only means by which a Vendor may request information on the business, contractual, procedural, and technical requirements of this RFP.
- 1.7.3** Vendors are cautioned that an inquiry must be phrased in generic terms and must not contain a compensation proposal. The inclusion of a compensation proposal in an inquiry may, at the discretion of the Nebraska Lottery, result in the Vendor's disqualification.
- 1.7.4** Vendors are to make no unsolicited contact with the Tax Commissioner, Nebraska Department of Revenue, or any Nebraska Lottery personnel or Nebraska Lottery Contractors regarding this RFP. The only acceptable contact person regarding the bidding process and through the conclusion of the evaluation period is Mike Olsen. Extraordinary requests for exceptions to the prohibition against contact with Nebraska Lottery personnel may be directed to Mike Olsen. Failure to observe this restriction may, at the discretion of the Nebraska Lottery, result in disqualification of the Vendor's proposal.

This prohibition does not extend to contacts with Nebraska Lottery and Nebraska Lottery Contractor personnel within the normal course of Nebraska Lottery business and unrelated to this RFP.

1.8 Visits to Vendor Site(s)

The Nebraska Lottery may, at its discretion, elect to visit a Vendor's facilities during the evaluation process. Following the submission of the proposal, the Nebraska Lottery Evaluation Committee will determine whether Vendor site visits will be required. Vendor site visits would be performed during hours acceptable to management of the vendor facility. Vendor site visits will be at the expense of the visited Vendor. Vendors will pay for all reasonable and necessary expenses, including travel (round-trip), meals, and lodging, for up to two (2) individuals designated by the Nebraska Lottery for the purpose of conducting these visits. Vendor site visits covered in this section are distinct from on-site inspections that may be required in conducting background investigation(s) of the Vendors. Information obtained during these Vendor site visits, if any, will be used by the Evaluation Committee in making its recommendations.

All materials submitted in writing and other information gained during site visitation will be considered as part of the Vendor's Proposal and will be considered in making the award.

SECTION 2: REQUIRED SERVICES

2.1 PURPOSE

This section of the RFP provides a general description of the uniformed security officer services required by the Nebraska Lottery. In addition, this section includes an overview of the major functions which could be affected and must be considered in any Bid for these services.

The Nebraska Lottery has attempted to prepare this RFP in a manner that will provide Vendors with the flexibility to develop a response that will be cost efficient, while still providing the Nebraska Lottery with the support required to operate with integrity and security.

All provisions of this RFP describing Contractor requirements shall be automatically incorporated into, and become contractual components of, any eventual Agreement unless otherwise specifically modified in that Agreement.

Any Vendor exceptions to the described requirements must be clearly stated in the Vendor's Proposal referencing the appropriate section headings.

Each Vendor shall provide a written statement of its understanding of the services requested herein.

2.2 FACILITY DESCRIPTIONS

The Nebraska Lottery Headquarters is currently located at 1800 "O" Street, Suite 101, and the Instant Ticket Facility is currently located at 4700 Bair Avenue, Suite B. Both addresses are in Lincoln, Nebraska.

2.3 CONTRACTOR'S RESPONSIBILITIES

The Contractor will be required to provide uniformed security officer services which include, but are not limited to, those which are set forth in the remainder of this section. The contract, if any, awarded as a result of this RFP will require the Contractor to meet the uniformed security officer services needs of the Nebraska Lottery during the period of the contract and any extensions thereof. Delivery time is critical.

2.3.1 GENERAL REQUIREMENTS

The Nebraska Lottery requires the Contractor to provide one (1) uniformed security officer, twenty-four (24) hours per day, seven (7) days per week, including holidays, at the Instant Ticket Facility. The uniformed security officer services must be in place by **July 1, 2017**.

Uniformed security guards will be required to remain at their respective stations at all times, with exceptions made for restroom breaks, security rounds, escorts, and other job-related functions. All facilities associated with the Nebraska Lottery are non-smoking environments.

Any uniformed security officer being considered for an assignment to the Lottery contract must first pass a background investigation, which will be conducted by Lottery Security. The investigation will include, but not be limited to, a criminal history and fingerprint check, credit history check, civil and criminal court record check, and individual income tax record check. In addition, the Lottery Security Manager shall review the qualifications and approve all uniformed security officers assigned to Lottery facilities.

Due to the specific training necessary to conduct their duties, a pool of at least six (6) to eight (8) regular full time employees who can perform the duties at the various sites is required.

The Nebraska Lottery shall have the right to have an employee of the Contractor removed from the Lottery's contract for any reason. When pricing a proposal, Vendors must take into consideration the level of skill employees must possess to staff the security stations.

Additional personnel may be required periodically to perform security functions for special events or in the event the security system is not fully operational. The contractor must be capable of supplying two additional security officers within twenty-four (24) hours' notice and a total of four security officers within forty-eight (48) hours' notice.

2.3.2 SPECIFIC REQUIREMENTS

2.3.2.1 The Nebraska Lottery requires the Contractor to provide the uniformed security officer services at the following facilities during the specified hours:

The Instant Ticket Facility, currently located at 4700 Bair Avenue, Suite B, one officer, 24 hours per day, 7 days per week, including holidays.

2.3.2.2 Backup security officers must be on call for at least one (1) hour at the beginning of each shift to allow confirmation of on-duty security officer's arrival for work. Contractor agrees that any additional cost(s) incurred by Contractor to maintain back-up security officers will be paid by Contractor.

2.3.3 Contractor shall meet regularly with the Lottery Security Director or his or her designee to establish work plans, implementation schedules, and to discuss any other security matter deemed pertinent by the Lottery.

2.3.4 Contractor's employees shall perform services as outlined herein under Lottery Security's direct oversight. Contractor assumes all legal obligations for its employees' compensation, benefits, and Contractor's share of Social Security taxes.

2.4 BASIC DUTIES

2.4.1. The security officer must be capable of learning the "AMAG" access control program, and closed circuit television monitoring software including "Wave Reader," "Live Viewer," and "Digi Ops". The security officer must have basic computer skills and be able to send and receive email.

2.4.2 The security officer is to monitor the security system in all areas of the facility to which he or she is assigned. Unauthorized entries, exits, suspicious persons and activities are to be investigated immediately and reported to the assigned Lottery Security Investigator, and when necessary, the appropriate law enforcement agency.

2.4.3 The security officer will guard and protect the Nebraska Lottery's Instant Ticket Vendor's property against fire, theft, damage, and trespassing, and protect the personal safety of any Nebraska Lottery employee, Nebraska Lottery vendor employee, or visitor who is on-site.

2.4.3.1 During severe weather (e.g. high wind, severe storms, etc.), the security officers will check all exterior glass of the Instant Ticket Facility for breakage and/or leaks.

2.4.4 All security officers must be thoroughly familiar with their individual duties and capable of performing all of the procedures and duties described in the Nebraska Lottery Security Procedures Manual.

2.4.5 During the scheduled hours, the uniformed security officers will perform the additional duties as required by the Lottery Security Director or his/her designee.

2.4.6 All security officers must be able to communicate effectively, both in writing and verbally.

2.4.6.1 The security officer assigned to the Instant Ticket Facility must have a cellular telephone which can be used in the event he or she cannot be reached on the "landline."

2.4.6.2 All security officers will be required to carry a cellular phone during all absences

from his/her post.

2.4.6.3 All security officers will be required to have a working flashlight available.

2.4.7 All security officers will have uniform shirts and pants which will be kept clean and in good repair. During the seasons in which a coat or jacket is worn over the uniform shirt, it must be marked so the security officer can be easily identified. In addition to a neat appearance, the security officer will conduct himself/herself in a courteous and professional manner at all times.

2.4.8 At no time will a uniformed security guard be authorized or permitted to carry a weapon. Any violation of this policy will result in immediate removal from the contract.

2.5 SPECIFIC DUTIES

2.5.1 Monitor the CCTV for activity at the Instant Ticket Facility.

2.5.2 Monitor the access control systems for activity at the Instant Ticket Facility.

2.5.2.1 In the event of an alarm (including any alarm originating from Lottery Headquarters), take the appropriate action, which may include handling the alarm by silencing it, notifying the Lottery Investigator responsible for the facility at which the alarm sounded, and/or notifying law enforcement or fire officials.

2.5.3 Ensure that all visitors are authorized for entry, sign the appropriate log, receive a visitor's badge, and are escorted per the Nebraska Lottery Security Procedures Manual. All service personnel will be escorted by the security officer unless they have a badge authorizing their access (i.e. cleaning company, alarm company), or they are being "hosted" by an employee with authorized access.

2.5.3.1 Maintain control of temporary badges for employees who have forgotten or lost their badge.

2.5.3.2 Notify Lottery Security when new badges are needed due to loss or damage.

2.5.4 Continually monitor all cameras, and insure they are operating properly. Remotely access cameras at off-site locations to be certain connections are functional.

2.5.5 Provide security at access points during the loading and unloading of freight, or any other time an access point must remain open.

2.5.6 On weekends, holidays, and after business hours, the security guard assigned to the Instant Ticket Facility will be required to take calls regarding stolen tickets, as well as conduct telephonic follow-up on information given. Because of this requirement, the security officer must become familiar with the procedures and computer programs

used by the Lottery for ticket tracking.

- 2.5.7** Complete required reports in a timely fashion and be certain they are thorough and legible. Required reports include, but are not limited to, verification initiation, stolen ticket reports, attempts to cash stolen tickets, and attempts to cash “unactivated” ticket packs.
- 2.5.8** Each security officer will complete a Daily Activity Report to log all security checks, problems, and any other activity deemed “significant.” All such reports will be provided to, and maintained by, Lottery Security.
- 2.5.9** All security officers will maintain good communication with Lottery Security. Any unusual incidents, hazardous conditions or problems with cameras, access controls, etc, must be reported immediately.
- 2.5.10** All security officers are to report for duty early enough to insure continuity of coverage, allow time for special instructions and to be briefed on any other pertinent information.
- 2.5.11** Security officers are to monitor, control, and prevent equipment or other property from being removed from the building without proper authorization.
- 2.5.12** Telephone calls are limited to emergency and official business use only. Collect calls are not to be accepted. The contractor will be charged for all unauthorized long distance calls made by security officers.
- 2.5.13** Security officers must take the steps necessary to perform the above-listed tasks, and the absence of any of those “steps” from this list does not excuse the officer from performing the “step” and from completing the task.
- 2.5.14** Security officers will perform additional duties that the Lottery Security Director and Contractor may agree upon from time to time.
- 2.5.15** Security officers shall be required to attend one (1) in-service training session per year, which will be conducted at the Instant Ticket Facility.

2.6 Vendor Personnel

The Nebraska Lottery reserves the right to approve all personnel assigned to work on the Nebraska Lottery account. The Nebraska Lottery reserves the right to request the transfer, dismissal, termination, or reassignment of any Contractor personnel assigned to the Nebraska Lottery account who, in the opinion of the Nebraska Lottery, poses a perceived threat to the security, integrity, or efficiency of Nebraska Lottery operations. The Contractor must notify the Nebraska Lottery before dismissing or reassigning any personnel assigned to the Nebraska Lottery account and shall provide the Nebraska Lottery with specific information regarding the reasons for pending dismissal or reassignment.

The Nebraska Lottery or Lottery Security will perform background investigations on each individual assigned to work on the Nebraska Lottery account.

2.7 No Financial Commitment Without Prior Nebraska Lottery Approval

Contractor will make no financial commitment on behalf of the Nebraska Lottery without having prior, written approval from an authorized representative of the Nebraska Lottery.

If the Contractor incurs any expenditure without the prior written approval of the Nebraska Lottery, the Contractor will be responsible for those expenditures without any recourse for reimbursement.

2.8 Disclosure of Anticipated Subcontractors

If Vendor proposes to use one or more subcontractors, the Proposal must identify the contemplated subcontractor(s) and must include evidence of each subcontractor's ability to fulfill its respective duties hereunder on behalf of the Vendor.

2.9 Additional Information

Vendors should describe any additional features, aspects, or advantages of its products or services in any relevant area not covered elsewhere in the bid response.

SECTION 3: COMPENSATION

Vendors must state their pricing for the uniformed security officer services described herein including any and all costs involved. Contractors will receive no compensation other than as indicated in their cost proposals. All pricing information submitted must be in a separate sealed envelope and clearly marked as such. The sealed cost proposal must be included in the original proposal only. Only one original cost proposal is required. The vendor shall not disclose its cost proposal or other cost information in the body of written proposal. Including cost information in the written proposal may be cause for proposal disqualification.

3.1 Introduction

Cost is an important factor in deciding whether the Proposal meets the immediate and long-term needs of the Nebraska Lottery. The goal is to develop a program of compensation that rewards the Contractor while assuring the Nebraska Lottery that it is achieving the desired maximization of revenue and operating efficiency. A contractual relationship that rewards all parties for success will be mutually beneficial.

Each Proposal must include a precise statement of the Vendor's proposed compensation for providing Uniformed Security Officer Services requested and outlined in this RFP.

The evaluation of the cost proposal will take into account the statutory and budgetary restrictions and requirements of the Nebraska Lottery.

3.2 Cost Proposal

Vendors must propose compensation on an hourly-fee basis. Vendors should take into account that this is potentially an eight (8) year contract and may propose an hourly-fee increase to take effect at the beginning of any fiscal year (each fiscal year begins July 1) within the contract term. Vendors may also propose a different hourly-fee for certain holidays as designated in the cost proposal. The Vendor's proposed compensation will serve as the Contractor's sole source of compensation for providing all services required by this RFP.

3.3 Payment

Upon determination of the amount due the Contractor for any period, payment (less applicable damages and penalties that may be deducted) will be processed in the normal weekly payment cycle.

3.4 Bidding

All pricing information submitted must be in a separate sealed envelope and clearly marked as such. The sealed cost proposal must be included in the original proposal only. Only one original cost proposal is required.

SECTION 4: GENERAL PROVISIONS

4.1 Contractor / Nebraska Lottery Relationship

The nature of this RFP and the contract that may result from this RFP will result in a relationship between the Contractor and the Nebraska Lottery that must be founded on mutual trust and respect. The Contractor and the Nebraska Lottery will work together in designing the Uniformed Security Officer Services required by this RFP and any contract resulting from this RFP.

4.2 Governing Law

4.2.1 All proposals and the contract are subject to the requirements of, and must comply with, the Act, regardless of whether or not specifically addressed in this RFP, the proposal, or the contract. All potential Vendors shall read and be familiar with the Nebraska Lottery Act, NEB. REV. STAT. §9-801 et seq.

4.2.2 The contract shall be governed by and construed in accordance with the laws of the State of Nebraska. Venue for any actions as a result of this RFP or any resulting contract will be in Lancaster County District Court, in Lincoln, Nebraska.

4.2.3 The Nebraska Lottery does not agree to hold the Contractor harmless nor indemnify the Contractor, and any provisions to the contrary are void.

4.2.4 The contract shall be binding upon any successor, subcontractor, or assignee.

4.2.5 In the event of any default, dispute, or nonpayment, the parties shall be liable for those damages commonly available to the prevailing party under Nebraska law and as provided in this RFP and any resulting contract.

4.3 Nebraska Lottery Obligations

The Nebraska Lottery reserves the right to select qualified responses to this RFP without discussion of the responses with the Vendors. It is understood that all proposals except those sections marked “confidential” and determined by legal counsel to fall under exceptions to the applicable public records laws will become a part of the Nebraska Lottery’s official procurement files and will be available for public inspection if a bid is awarded. The Nebraska Lottery reserves the right to reject any or all proposals received. No obligation is made by retention of these proposals, nor is the Nebraska Lottery committed to awarding a contract as a result of this RFP.

4.4 Right to Alter, Modify, or Amend the RFP

The Nebraska Lottery reserves the right to alter, modify, or amend any provision of this RFP at any time if it is in the best interest of the Nebraska Lottery to do so. The decision of the Tax Commissioner or the Director shall be administratively final in this regard. Any modification of this RFP will be clearly marked as a modification and will be provided to each potential Vendor that was originally mailed this RFP or has requested a copy of this RFP.

4.5 Content of the RFP

This RFP is designed to provide Vendors with the information necessary for the preparation of competitive Proposals. It is not intended to be comprehensive, and each Vendor is responsible for determining all necessary technical and operational issues for submission of a comprehensive proposal. Vendors must submit a proposal on the whole RFP. Vendors are to disregard any draft material they may have received, any newspaper articles they may have read, and any other previous oral or written representations.

By submitting a proposal, each Vendor agrees that it will not bring any claim or have any cause of action against the Nebraska Department of Revenue, the Nebraska Lottery, the State of Nebraska, or any employee of the Department or the State, based on any misunderstanding concerning the information provided or concerning the Department's failure, negligent or otherwise, to provide the Vendor with pertinent information as intended by this RFP.

Vendors shall not be allowed to take advantage of any error or omissions in the RFP. Where errors or omissions appear in the RFP, Vendors shall promptly notify the Nebraska Lottery of such error or omission. Inconsistencies in the RFP are to be reported before bids are submitted, wherever found.

Mandatory requirements for the Vendor providing Uniformed Security Officer Services are so labeled or are indicated by the terms "required," "shall," "will," or "must."

Vendors shall indicate exceptions to any section or paragraph; otherwise, acceptance is assumed. Exceptions stated by the Vendor may be cause for rejection of the Proposal at the discretion of the Nebraska Lottery.

4.6 Contractor Obligations

The Contractor will always be responsible for the performance of all contractual obligations that may result from an award based on this RFP. The Contractor will not enter into any agreements nor use the services of any subcontractor in the performance of any aspect of the contract without the express, written permission of the Nebraska Lottery. The Contractor's books, records, and other evidence pertaining to the contract shall be available to Lottery Security, the Nebraska Lottery, and its internal and chosen external auditors at all times during the contract period and for three (3) full years from the expiration date or final payment on the contract, whichever is later.

4.7 Request Procedures

This RFP requires Vendors to submit any proposal by 10:00 a.m. C.T. **May 12, 2017.**

4.7.1 Vendors must make proposals and assurances to all sections and subsections of this RFP. In addition to any other specific requirements within this RFP regarding what must be included in Vendor proposals, each Vendor must submit the following items:

- 4.7.1.1** One (1) original paper copy and six (6) additional paper copies, as well as seven (7) complete copies on CD-ROM.
- 4.7.1.2** Documentation of the financial soundness of the Vendor, including financial statements as required in **Section 4.9.**
- 4.7.1.3** Outline of experience in providing Uniformed Security Officer Services per **Section 4.10.2.**
- 4.7.1.4** Outline of experience with governmental entities or instrumentalities per **Section 4.10.3.1.**
- 4.7.1.5** A brief history of the Vendor per **Section 4.10.4.**
- 4.7.1.6** An organizational chart of the Vendor, including the ownership structure, per **Section 4.10.5.**
- 4.7.1.7** A list of any potential conflicts of interest per **Section 4.10.6.**
- 4.7.1.8** A list of all relevant political contributions or independent expenditures per **Section 4.10.7.**
- 4.7.1.9** A summary of all judicial and administrative proceedings involving the Vendor or its parent company per **Section 4.10.8.**
- 4.7.1.10** References and listings of current and former accounts as required in **Section 4.11.**
- 4.7.1.11** A transmittal letter as required in **Section 4.12.**
- 4.7.1.12** The signed Proposal Certification required by **Section 4.13** and found in **Appendix “A.”**
- 4.7.1.13** Proposal Security as required by **Section 4.14.**
- 4.7.1.14** Sealed cost proposal per **Section 4.15.**
- 4.7.1.15** A signed Covenant Not To Sue as described in **Section 4.16**, and found in **Appendix “C” OR** litigation security as described in **Section 4.19.**

- 4.7.1.16** A signed Nondisclosure Agreement per **Section 4.33.27**; see **Appendix “D.”**
- 4.7.1.17** A Nebraska Lottery Vendor Information Form, clearly identified as “Disclosure Documents” and submitted in a separate envelope. This form can be obtained by contacting Lottery Security Director Mike Olsen at (402) 471-5948. See **Sections 4.23.3 and 4.23.4.**
- 4.7.1.18** A Drug-Free Workplace Policy required by **Section 4.40** and found in **Appendix “B.”**
- 4.7.1.19** A list of variations, if any, where the Uniformed Security Officer Services proposed differ from the requirements in this RFP. Where variations are not cited, it shall be assumed that the Vendor proposes to meet all the requirements of the RFP. Where a variation is noted, the Vendor must provide an explanation as to why the variation was taken.
- 4.7.2** All materials submitted in writing and other information gained will be considered as part of the Vendor’s proposal and will be considered in making the award; non-written communication not specifically requested by the Nebraska Lottery may, at its discretion, be disregarded by the Nebraska Lottery without consideration. Following the selection of the Contractor, all Vendors who submitted a proposal will receive notification of the Nebraska Lottery’s decision.
- 4.7.3** Only one (1) response may be submitted from each Vendor. For purposes of this document, Vendor is defined to include a parent corporation of the Vendor and any other subsidiary of that parent corporation. If a Vendor submits more than one (1) response, all responses from that Vendor shall be rejected.
- 4.7.4** Vendors must bear all costs associated with their proposals, including, but not limited to preparation, copying, postage, and delivery fees. No costs or expenses incurred by Vendors in responding to this RFP and participating in this solicitation will be borne by the Nebraska Lottery.
- 4.7.5** All proposals must each be on 8½ x 11 inch paper. All pages of the proposal must be numbered.
- 4.7.6** Each proposal submitted in response to this RFP must be organized and arranged to correspond with the numbered sections of this RFP that request a response. Failure to arrange the proposal as requested may, at the discretion of the Nebraska Lottery, result in disqualification. Conciseness and clarity of content must be emphasized. The response must be complete. Failure to provide required information may, at the discretion of the Nebraska Lottery, result in disqualification of the proposal. The Nebraska Lottery may waive any nonmaterial deviation in a bid, but shall in no way modify the requirements of

this RFP or excuse the Vendor from full compliance with the contract requirements, if the Vendor is awarded the contract.

- 4.7.7** All proposals shall be prepared simply and economically, providing a direct, concise delineation of the Vendor's proposal and qualifications. All proposals must be typed and signed by a person authorized to bind the Vendor.
- 4.7.8** Where the written words differ from figures, the amount stated in written words will govern.
- 4.7.9** Alterations must be crossed out and the corrections thereto printed in ink or typewritten adjacent to the alteration. The corrections must be initialed in ink by the person who signs the proposal and is named in the transmittal letter. Erasures will not be allowed, and if detected may, at the discretion of the Nebraska Lottery, constitute cause for rejection of the proposal.
- 4.7.10** Vendors must submit a Proposal that sufficiently addresses each requirement, service, and deliverable outlined in this RFP. Vendors shall provide information specifically describing their approach to providing each service, deliverability of services listed, the manpower that will be devoted and required to fulfill each task, and the proposed schedule of time to complete the task. Vendors shall demonstrate evidence of full-service capability. Vendors shall identify all employees by name who would participate in any contract awarded pursuant to this RFP, and the nature and scope of the duties and responsibilities of each such employee.

4.8 Submission of Proposal

- 4.8.1** The Vendor's proposal, which includes all documents and materials required by this RFP, must be hand delivered or mailed to the Nebraska Lottery. Proposals will not be accepted over the telephone or by facsimile. All required components of the proposals must be received at the Nebraska Lottery, 1800 "O" Street, Suite 101, Lincoln, NE 68508, **by 10:00 a.m. C.T. on May 12, 2017**. Proposals or portions thereof received after **10:00 a.m. C.T. on May 12, 2017**, will be considered late bids and will be returned to the Vendor unopened. The Nebraska Lottery is not responsible for late or lost proposals due to mail service inadequacies, insufficient postage, traffic, or other similar reasons.
- 4.8.2** By submitting a signed proposal, a Vendor agrees that it fully understands this RFP and shall abide by the terms and conditions contained in it when preparing its proposal. To evaluate the proposals, consistency of terms and conditions between proposals is a necessity. The terms and conditions may be negotiated with the Contractor prior to signing of the contract.

4.9 Financial Soundness

- 4.9.1** The Nebraska Lottery must be provided with adequate information to permit an evaluation of Vendor's financial capability to undertake and satisfactorily complete any contract awarded by the Nebraska Lottery as a result of this RFP. Acceptable documentation includes annual reports and audited financial statements or, in the case of a small firm, unaudited financial statements. Vendors are also required to include a list of all liens filed on or against the Vendor or filed on or against persons with a substantial interest in the Vendor.
- 4.9.2** If, during the period prior to award of a contract pursuant to this RFP and through the end of the contract and any exercised extension thereof, the Vendor experiences a substantial change in its financial condition or a change of ownership, the Nebraska Lottery shall be immediately notified in writing. Failure to notify the Nebraska Lottery of such a substantial change in financial condition or ownership will be sufficient grounds for rejecting the Vendor's response or terminating any contact.
- 4.9.3** If any Vendor makes a material misrepresentation in submitting information under this section or any section of this RFP, such misrepresentation will be sufficient grounds for rejecting the Vendor's response or terminating the contract.
- 4.9.4** Financial information that a Vendor seeks to remain confidential must be indicated in a separate section in the introduction that identifies by page, paragraph, and sentence what information or materials they consider to be confidential and must stamp "confidential" on each page of the data or other materials sought to be protected as confidential. The Vendor must state in the introductory section the reasons such confidentiality is necessary. This information will be kept confidential unless otherwise required by law. However, under no circumstance will the Nebraska Lottery be liable to any Vendor or to any other person or entity for any disclosure of any confidential information. Any portion of the proposal that has been declared and marked as confidential information must be included in a separate envelope and marked "confidential" on the outside.
- 4.9.5** The Contractor awarded a contract resulting from this RFP must annually submit copies of their annual report, audited financial statements, or unaudited financial statements (as appropriate) for the term of the contract and any exercised extensions thereof. Failure to submit the information required by this section will be cause for the Nebraska Lottery to reject the response as not meeting the requirements of this RFP.

4.10 Experience

- 4.10.1** Vendors must be experienced in providing Uniformed Security Officer Services.

4.10.2 Vendors must outline its experience in providing Uniformed Security Officer Services and the expertise of personnel rendering the requested services. Vendors shall provide a detailed narrative setting forth the qualifications of the Vendor and its participating staff members. The narrative should focus on Uniformed Security Officer Services, and must include the following:

4.10.2.1 The history of the Vendor's experience in providing Uniformed Security Officer Services.

4.10.2.2 Vendor must provide resumes or short biographies of all management, supervisory, and key technical personnel planned to be involved in providing the services contemplated under this RFP. Vendor must specify what role the individual will have in the planning, creation, production, procurement, or other service provided in response to this RFP. The resumes must present the personnel in sufficient detail as to provide the Nebraska Lottery with evidence that the personnel involved can perform the work specified in the RFP. Vendor must specify what approximate percentage of time each indicated person is available to perform the work if the Vendor is awarded the contract.

4.10.2.3 Specific experience and expertise by the Vendor and staff in providing Uniformed Security Officer Services.

4.10.3 Vendor(s) must also specify the following:

4.10.3.1 Any experience by the Vendor or its staff with governmental entities or instrumentalities.

4.10.3.2 List any current personnel with experience on lottery accounts.

4.10.4 All Vendors in their proposal must provide a brief history of their company including, but not limited to:

4.10.4.1 The name and address of the business entity submitting the proposal.

4.10.4.2 The type of business entity (i.e., corporation, partnership).

4.10.4.3 Place of incorporation, if applicable.

4.10.4.4 Name and location of major offices and other facilities that relate to the Vendor's performance under the terms of this RFP.

4.10.4.5 Name, address, and business and home telephone numbers of the Vendor's principal contact person regarding all contractual matters relating to this RFP.

- 4.10.4.6 Name and address of each lobbyist representing the Vendor in Nebraska and all accounts and money managed by those lobbyists.
 - 4.10.4.7 The Vendor's Federal Employer Identification Number and Nebraska tax identification / registration number (if any).
 - 4.10.4.8 Full name (last, first, middle), address, and date of birth for each partner, member, officer, and director of the Vendor assigned to the Nebraska Lottery account, and also full name, address, social security number, and date of birth for each person who owns ten percent (10%) or more of the stock or other interest in the Vendor.
 - 4.10.4.9 A statement regarding the financial stability of the Vendor, including the ability of the Vendor to perform the functions required in this RFP and represented by the Vendor in its response.
 - 4.10.4.10 The number of years in business.
 - 4.10.4.11 The founding date of the organization.
 - 4.10.4.12 Major clients.
 - 4.10.4.13 Trade affiliations.
 - 4.10.4.14 Any parent / subsidiary affiliation with other entities.
- 4.10.5 All Vendors must provide an organizational chart of their company in general including ownership structure and also for the Nebraska office that will be providing services on the Nebraska Lottery account, including all personnel located in that office. **The chart must specifically highlight the names, positions, and the geographic locations of persons who will work on the Nebraska Lottery account.**
- 4.10.6 Each Vendor must disclose any potential conflicts of interest relative to performance of the requirements of this RFP. Any personal or business relationship between the Vendor or its principals or any affiliate or subcontractor, and any employee of the Department of Revenue, the Nebraska Lottery, or its contractors must be disclosed. Failure to disclose any such relationship may, at the discretion of the Nebraska Lottery, be cause for contract termination or disqualification of the proposal. Vendors must also disclose any current clients that offer gaming within Nebraska or within a 100-mile radius of Nebraska (e.g., casinos, horse racing, pickle cards, keno, bingo, etc.).

4.10.7 Each Vendor must list the details of any contributions to or independent expenditures by the Vendor, an officer of the Vendor, a separate segregated political fund established by the Vendor as provided in NEB. REV. STAT. §49-1469, or by a person, including any lobbyist acting on behalf of the Vendor, officer, or fund for any candidate for the office of Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, member of a board or commission with one or more election districts of more than one county, or member of the Legislature or contributions to or independent expenditures for any political party that has supported candidates for the above listed offices since March 31, 2005. See Advisory Opinion #160 of the Nebraska Accountability and Disclosure Commission in **Appendix “E.”** See also Neb. Rev. Stat. § 9-835(2) which provides;

The director may not award and the Tax Commissioner may not approve a contract with a person to serve as a lottery contractor for a major procurement if the person has made a contribution to a candidate for a state elective office as defined in section 49-1444 after March 1, 1995, and within three years preceding the award of the contract. A person shall be considered to have made a contribution if the contribution is made by the person, by an officer of the person, by a separate segregated political fund established and administered by the person as provided in section 49-1469, or by anyone acting on behalf of the person, officer, or fund. Any contract awarded in violation of the subsection shall be void.

4.10.8 Each Vendor must list (identifying caption, case number, and jurisdiction) and summarize all judicial and administrative proceedings involving its Vendor activities, claims of unlawful employment discrimination, and antitrust suits in which the Vendor has been a party within the past five (5) years. If the Vendor is a subsidiary, this information must also be submitted for all parent companies.

4.11 References

4.11.1 Vendors must provide the Nebraska Lottery with a client list of at least three (3) businesses for whom the Vendor has provided Uniformed Security Officer Services. This client list must include only those companies with whom the Vendor has worked during the past five (5) years. Vendors must list all lotteries for which they have provided Uniformed Security Officer Services in the last five (5) years. Vendors must provide the following information on all clients' names submitted:

- 4.11.1.1** Contact Name
- 4.11.1.2** Company Name
- 4.11.1.3** Address
- 4.11.1.4** Telephone Number
- 4.11.1.5** Years of Association with Client
- 4.11.1.6** Type of uniformed security officer services provided
- 4.11.1.7** Dates when uniformed security officer services were provided
- 4.11.1.8** Value (approximate) of uniformed security officer services provided

4.11.2 Vendors must also list all lottery clients that were lost between January 2010 and the present and the reason for the loss.

4.11.3 The Nebraska Lottery reserves the right to contact any accounts listed in this section.

4.12 Transmittal Letter

4.12.1 A Transmittal Letter must be submitted as part of the proposal. This letter must clearly indicate that it is the Transmittal Letter, identify the Vendor submitting the proposal, and indicate the name, title, address, and telephone number of the person in the Vendor's organization to be contacted concerning the proposal. The letter must also contain any requests for treatment of information submitted by the Vendor as confidential information as required by Sections 4.3, 4.9.4 and 4.24 in this RFP. This letter shall clearly indicate that no relationship exists between the Vendor and the Nebraska Lottery that interferes with the fair competition or is a conflict of interest, and no relationship exists between the Vendor and another person or organization that constitutes a conflict of interest with respect to this RFP.

4.12.2 The Transmittal Letter must include a commitment by that entity to perform the Uniformed Security Officer Services required by the Nebraska Lottery in this RFP. The letter must state that the proposal is valid for 150 calendar days following the date on which the proposals are due. Any proposal containing a term of less than 150 calendar days for acceptance shall be rejected. The Letter must be signed by a person legally authorized to bind the Vendor to the representations in the response. The Vendor shall also indicate in its Transmittal Letter why it believes it is the most qualified Vendor to perform the Uniformed Security Officer Services required by the Nebraska Lottery in this RFP.

4.12.3 The Transmittal Letter must include a statement of acceptance of the terms and conditions of the contract indicated in this RFP. If the Vendor takes exception to any of the proposed terms and conditions, those exceptions must be noted in the Transmittal Letter. Vendors must realize, however, that failure to accept the terms and conditions specified in this RFP may, at the discretion of the Nebraska Lottery, result in disqualification of the proposal.

4.12.4 The Proposal Certification required by Section 4.13 and the Proposal Security required by Section 4.14 must be attached to the Transmittal Letter.

4.13 Proposal Certification

The Transmittal Letter must be accompanied by a single, signed copy of the Proposal Certification, which is included with this RFP as **Appendix "A."** The certification must be signed by a person having authority to bind the Vendor.

4.14 Proposal Security

Each Vendor must submit a Proposal Security made payable to the Nebraska Lottery in the form of a certified or cashier's check in the amount of **\$5,000**, or a Proposal bond in the amount of **\$5,000** issued by a surety licensed to do business in Nebraska on a form acceptable to the Nebraska Lottery, or an irrevocable letter of credit in the amount of **\$5,000**. The Proposal Security shall be forfeited if the Vendor chosen to receive the contract award does not honor the terms offered in its Proposal or does not negotiate contract terms in good faith. Security submitted by unsuccessful Vendors will be returned when the Proposals expire or are rejected, or when the Nebraska Lottery enters into a contract with the successful Vendor, whichever is earlier.

4.15 Cost Proposal

See Section 3.2. Cost is an important factor in deciding whether the proposal meets the immediate and long-term needs of the Nebraska Lottery. The goal is to determine compensation that rewards the Contractor while assuring the Nebraska Lottery that it is achieving the desired operating efficiency. The basis for compensation will be determined by rates quoted in the proposals and as agreed to in the contract. This basis for compensation may be renegotiated by the Nebraska Lottery and the Contractor, at the option of the Nebraska Lottery, if the Nebraska Lottery chooses to extend the Contract.

Vendors must state their pricing for the Uniformed Security Officer Services described herein, including any and all costs involved. Contractor will receive no compensation other than as indicated in its cost proposal. All pricing information submitted must be in a separate sealed envelope and clearly marked as such. The sealed cost proposal must be included in the original proposal only. Only one original cost proposal is required. The Vendor shall not disclose its cost proposal or other cost information in the body of written proposal. Including cost information in the written proposal may, at the discretion of the Nebraska Lottery, be cause for proposal disqualification.

4.16 Covenant Not to Sue

Each Vendor must submit a covenant not to sue on a form approved by the Nebraska Lottery. An example of a covenant not to sue is attached; see **Appendix "C" OR** litigation security as described in Section 4.19.

4.17 Nonexclusive Rights

While the Nebraska Lottery anticipates that the Contractor will be expected to serve as the primary source for all Uniformed Security Officer Services, any contract or agreement resulting from this RFP shall not grant to the Contractor exclusive rights. The Nebraska Lottery reserves the right to contract separately for Uniformed Security Officer Services from any Vendor the Nebraska Lottery deems appropriate without additional compensation to the Contractor. If the Department exercises this right, the provisions of any contract resulting from this RFP will not be required to be renegotiated unless such provisions are materially affected by the new contract.

4.18 Property of the Nebraska Lottery

All materials and proposals submitted by Vendors become the property of the Nebraska Lottery upon receipt and will not be returned to the Vendor. The Nebraska Lottery shall have the right to use all materials, ideas, or adaptation of the ideas contained in any proposal received in response to this RFP as the Nebraska Lottery deems appropriate without compensation. Selection or rejection of the Vendor's proposal will not affect this right.

4.19 Litigation Security

Each Vendor must either submit a litigation security in the form of a certified or cashier's check in the amount of **\$25,000** made payable to the Nebraska Lottery, a litigation bond in the amount of **\$25,000** issued by a surety licensed to do business in Nebraska, on a form acceptable to the Nebraska Lottery, an irrevocable letter of credit in the amount of **\$25,000**, **OR** a covenant not to sue in a form acceptable to the Nebraska Lottery. The purpose of this security or covenant is to discourage unwarranted or frivolous litigation by permitting the State of Nebraska, Nebraska Department of Revenue, Nebraska Lottery or any officers, employees, or agents thereof to recover damages, including reasonable attorney fees, resulting from such litigation. Such litigation security will be forfeited if the Vendor contests the award of the contract on grounds that are found to be frivolous in light of the facts surrounding the award or applicable law. Failure to provide this security or covenant with the proposal will result in the disqualification of the proposal. The litigation security or covenant not to sue must be submitted with the Transmittal Letter.

The litigation security will be retained for a period of one year following the date the contract is awarded, unless a covenant not to sue, in a form acceptable to the Nebraska Lottery, is received from the Vendor and accepted by the Nebraska Lottery.

4.20 Performance Bond

Pursuant to NEB. REV. STAT. §9-836 of the Act, the Contractor, at the time of executing the contract, must submit a performance bond in the amount equal to the amount estimated to be annually paid to the Contractor. The bond shall provide funds to the Nebraska Lottery in the event that the Nebraska Lottery suffers any liability, loss, damage, or expense as a result of the Contractor's failure to fully and completely perform all requirements of this Agreement, which include, without limitation, the Contractor's obligation to indemnify the Nebraska Lottery under circumstances described by this agreement and the Contractor's obligation to perform its Uniformed Security Officer Services as required by this Agreement throughout the term of this Agreement and any exercised extensions thereof. Bond payments shall be considered limited to actual damages that are sustained. The performance bond will guarantee the faithful performance of the Contractor for the duration of the contract. Failure to meet the contract obligations will be grounds for forfeiture of the bond.

4.21 Fidelity Bond

It shall be the responsibility of the Contractor to make sure that all the Contractor's employees and agents and any subcontractor and its employees or agents are covered by a fidelity bond in the amount of **\$500,000**. This bond shall be in effect throughout the initial term and any and all renewal terms of the contract. This bond coverage must indemnify the State of Nebraska, Nebraska Department of Revenue, and the Nebraska Lottery for any errors or omissions due to any fraudulent or dishonest act on the part of the Contractor and its officers, employees, and agents, and of any subcontractor and its officers, employees, and agents, regardless of negligence.

This bond shall be written as continuous, with an endorsement requiring notice of cancellation sent to the Nebraska Lottery at least thirty (30) days in advance of effective termination. The bond shall be written on a discovery form providing an unlimited discovery period.

Continuous will mean that notice is required and there must be no gaps. Discovery means that the bond covers events occurring during the effective period that are not discovered until years later.

4.22 Insurance

The Contractor shall be required to provide and/or carry the following types of insurance. A current certificate of insurance must be submitted by the Contractor to the Nebraska Lottery:

4.22.1 General liability insurance: \$2,000,000.

4.22.2 Automotive insurance: \$500,000.

The terms, conditions, and coverage levels of such insurance may be modified at any time by the Director.

4.23 Submission of Disclosure Documents / Background Investigations / Inspections

- 4.23.1** Any Vendor, as well as any parent or subsidiary entity of the Vendor, selected to provide products, equipment, or services to the Nebraska Lottery pursuant to this RFP is required to undergo a thorough background investigation and a review and evaluation of Vendor's competence, integrity, background, and character, and to disclose the nature of the ownership and control of the Vendor **prior to entering into an agreement**; such Vendor must disclose all information as required under NEB. REV. STAT. § 9-834 and as otherwise required in this RFP.
- 4.23.2** Background investigations and inspections will be conducted by Lottery Security. Lottery Security reserves the right, at its discretion, to modify or lessen the requirements of this background investigation if a similar background investigation has recently been performed or due to some other reason.
- 4.23.3** **Each Vendor should immediately contact** Lottery Security Director **Mike Olsen**, (402) 471-5948, to obtain a Background Disclosure Package containing a Nebraska Lottery Vendor Information Form for the Vendor and Nebraska Lottery Vendor Personal Background Disclosure Forms and related materials for each individual subject to background investigation. The Nebraska Lottery Vendor Information Form must be submitted with the proposal, see Section 4.23.4.
- 4.23.4** **All Vendors must complete and submit a Nebraska Lottery Vendor Information Form with their proposal.** All Vendor Information Forms shall be clearly identified as "Disclosure Documents" and must be contained in a separate envelope within the proposal package.
- 4.23.5** Vendor background investigations may, at the discretion of the Nebraska Lottery, include inspection of any Vendor facilities or offices. Such inspections are distinct from and would be in addition to any Evaluation Committee Vendor site visits.
- 4.23.6** **Prior to entering into an Agreement**, the Vendor selected to provide services per this RFP must submit completed Personal Background Disclosure Forms and supply requested fingerprint cards, financial and tax statements and records, and other information on all persons and entities set forth in NEB. REV. STAT. §9-834, as well as other individuals and entities as determined by Lottery Security or the Nebraska Lottery, potentially including any and all Vendor employees. **No contract will be awarded** to a Vendor unless the required Disclosure Documents have been submitted.
- 4.23.7** Background investigations and inspections shall be performed at the expense of the relevant Vendor. The Vendor will pay for all reasonable and necessary expenses, including travel (round-trip), meals, and lodging, for up to two (2) individuals designated by Lottery Security for the purpose of conducting these background investigations and inspections.

- 4.23.8** The cost to Vendors for completing initial background checks and inspecting Vendors and their facilities are not expected to be substantial, dependent on travel costs to visit Vendor sites or conduct Vendor interviews. The Nebraska Lottery will not cap the costs of completing background investigations for either Vendors or the selected Contractor.
- 4.23.9** Any information provided to the Nebraska Lottery in the Disclosure Documents, as well as the results of the background investigation conducted by Lottery Security, will be used by the Nebraska Lottery to help determine the Contractor and may, at the discretion of the Nebraska Lottery, be used to disqualify a Vendor who does not meet the Nebraska Lottery's standards.
- 4.23.10** Lottery Security will confer with Vendors, upon request, regarding the completion of the Disclosure Documents. Vendors who wish to discuss completion of the Disclosure Documents should contact Mike Olsen, Director, Lottery Security, 1800 "O" Street, Suite 101, Lincoln, NE 68509-8901, telephone: (402) 471-5948, email: mike.olsen@nebraska.gov.
- 4.23.11** Throughout the initial term of the contract and during any and all exercised extension terms, Contractor must file addendums to its Vendor Information Form or any supplied Personal Background Disclosure Forms to report any changes in the above-requested data immediately to Lottery Security. Failure to immediately notify Lottery Security and the Nebraska Lottery of changes to the information on the Vendor Information Form or Personal Background Disclosure Forms shall be considered a breach of contract, and a potential threat to the security or integrity of Nebraska Lottery operations.
- 4.23.12** Contractor must notify Lottery Security and the Nebraska Lottery immediately regarding the hiring, dismissal, or transfer of any personnel assigned to the Nebraska Lottery account. Failure to immediately notify Lottery Security and the Nebraska Lottery of the hiring, dismissal, or transfer of any personnel assigned to the Nebraska Lottery account shall be considered a breach of contract, and a potential threat to the security or integrity of Nebraska Lottery operations.
- 4.23.13** Throughout the term of contract and any exercised extensions thereof, additional background investigations and inspections of the Contractor may be conducted by Lottery Security or the Nebraska Lottery to inspect any changes to Contractor's offices, manufacturing, warehousing and other facilities, or any of those venues during any phase of the Contractor's operations, without prior notice, for the protection of the security, integrity, and efficiency of the Nebraska Lottery as deemed appropriate by Lottery Security or the Nebraska Lottery. Additional background investigations will be conducted on any additional or new personnel assigned to the Nebraska Lottery account.
- 4.23.14** The Contractor will be responsible for the reasonable and necessary costs and expenses, including travel (round-trip), meals, and lodging, for all initial and all

subsequent background investigations and/or inspections during the term of the Agreement and any exercised extensions thereof as deemed appropriate by Lottery Security or the Nebraska Lottery.

- 4.23.15** Any contract entered into in which the Contractor, including the Contractor's owners, officers, and employees, fails their background investigation, fails to cooperate in their background investigation, or fails to cure concerns raised in their background investigation is voidable at the election of the Nebraska Lottery.

4.24 Proposals Subject to Open Records

All data, material, and documentation originated and prepared for the Nebraska Lottery pursuant to this RFP shall belong exclusively to the Nebraska Lottery and will be available to the public no later than June 12, 2017, at 9:00 a.m. C.T., unless the response or specific parts of the response can be shown to be exempt from the Nebraska Open Records Act or the State Lottery Act, or no Contractor is selected and all responses are returned.

The Nebraska Lottery will make reasonable attempts to maintain the confidentiality of any trade secrets or proprietary information identified by a Vendor if such Vendor properly identifies the particular data or other materials that are trade secrets or proprietary information. Vendors must include a separate section in the introduction of their proposal that identifies by page, paragraph, and sentence what information or materials they consider to be confidential trade secret or proprietary information and must stamp "confidential" on each page of the data or other materials sought to be protected as confidential trade secret or proprietary information. The Vendor must state in the introductory section the reasons such confidentiality is necessary. However, under no circumstance will the Nebraska Lottery be liable to any Vendor or to any other person or entity for any disclosure of any such trade secret or confidential information.

The Nebraska Lottery may not, at its discretion, consider any proposal that is declared, or a substantial portion of which is declared, by the Vendor submitting such proposal to constitute trade secrets or proprietary information. Any portion of the proposal that has been declared and marked as confidential information must be included in a separate envelope and marked "confidential" on the outside.

4.25 Opening of Proposals

The Proposals will be opened (not publicly) at 10:00 a.m. C.T. on May 12, 2017. The Proposals will be available for public inspection no later than June 12, 2017, at 9:00 a.m. C.T., if a bid is awarded and subject to restrictions of confidentiality.

4.26 Selection Factors for the Award

The Nebraska Lottery will award the contract to the Vendor submitting the proposal that best maximizes the benefits to the State in the areas of security, competence, cost, and timely performance to benefit the public purpose of the Act. **The lowest cost proposal is not necessarily the best proposal.** The lowest cost and best proposal will be determined in relationship to the Uniformed Security Officer Services promised using both objective and subjective criteria.

The Nebraska Lottery reserves the right to accept or reject any or all proposals, or any part of any proposal, and to waive any defect or technicality, and to advertise for new proposals where it would be in the best interest of the Nebraska Lottery. Contract award will be based on compliance with mandatory requirements, evaluation of desired capabilities, and precision and accuracy of the proposals. Complete and accurate responses to all items are necessary for the complete and fair evaluation of proposals.

4.26.1 Collusion between bidding Vendors will cause rejection of all bids of Vendors so involved. By submission of its Proposal, and in the case of a joint proposal, each party must certify, as to its own organization, that in connection with this proposal:

4.26.1.1 Compensation in this proposal has been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices with any other Vendor or with any other competitor.

4.26.1.2 Unless otherwise required by law, the compensation quoted in this proposal has not been knowingly disclosed by the Vendor and will not knowingly be disclosed by the Vendor prior to the opening of the proposals directly or indirectly to any other Vendor or to any competitor.

4.26.1.3 No attempt has been made or will be made by the Vendor to cause any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

4.26.2 The proposals will be reviewed initially by the Nebraska Lottery Evaluation Committee. The Nebraska Lottery Evaluation Committee will make its recommendation to the Director of the Nebraska Lottery. The recommendation by the Nebraska Lottery Evaluation Committee and subsequent selection by the Director of the Nebraska Lottery with approval of the Tax Commissioner shall be based upon all relevant factors, including without limitation:

4.26.2.1 The security offered by the Vendor and its products or services that promote the integrity of the Nebraska Lottery;

- 4.26.2.2** The competence and ability of the Vendor as demonstrated by:
- A.** Its experience, skill, and ability necessary to meet the requirements set forth in this RFP.
 - B.** Its financial responsibility.
 - C.** The quality of the products, equipment, and services offered.
 - D.** Vendor's work plan and project schedule.
 - E.** The sufficiency, appropriateness, and quality of the Vendor's assigned staff levels and persons to complete the services required by the RFP.
 - F.** Efforts to secure minority and female participation.
 - G.** Whether the proposal is completely responsive to and has satisfied all written specifications and requirements contained in the RFP.
 - H.** The capacity of the Vendor to perform and provide Uniformed Security Officer Services requested in the RFP and the Vendor's ability to perform the contract in the time specified in the RFP and throughout the term of the contract pursuant to the requirements of the Nebraska Lottery.
 - I.** Price and whether the cost proposal is reasonable for the experience of the Vendor and the requirements of the RFP. A cost analysis will be done and will include all identifiable costs associated with acquisition, installation, operation, and final disposition of the proposed services. The analysis will be based upon proposal data and other cost factors which in the judgment of the Nebraska Lottery Evaluation Committee will be incurred by the Nebraska Lottery, resulting from acceptance of the proposal.

4.26.2.3 Whether the Vendor is based in Nebraska. Pursuant to NEB. REV. STAT. §9-806(4), R.R. 1943, preference shall be given to Vendors based in Nebraska if the costs and benefits are equal or superior to those available from competing persons.

4.27 Evaluation Committee

The Nebraska Lottery intends to conduct a fair, comprehensive, and impartial evaluation of all proposals received in response to this RFP using an evaluation committee. The Nebraska Lottery Evaluation Committee will consist of selected Nebraska Department of Revenue personnel and, if deemed necessary, one or more representatives of the contractor which operates the Instant Ticket Facility. The names of the members of the Nebraska Lottery Evaluation Committee will be revealed no later than **June 12, 2017**.

4.28 Evaluation Procedure

The Nebraska Lottery reserves the right to obtain, from any and all sources, information concerning a Vendor or a Vendor's products, services, personnel, or subcontractors that the Nebraska Lottery deems pertinent to this RFP and to consider such information in evaluating the Vendor's proposal. If the Nebraska Lottery receives any information not contained in a Vendor's proposal that may have a material adverse effect on such Vendor, such information will be shared with that Vendor, who will be given an opportunity for a written response.

The Nebraska Lottery Evaluation Committee will conduct an independent review of each proposal submitted. The Nebraska Lottery reserves the right to contact Vendors after the submission of proposals for the purpose of clarifying information or representations made in a proposal to ensure mutual understanding and to request clarification of the information or representations in a proposal before completing the initial evaluation. The Evaluation Committee may, at its discretion, request additional responses and information. A Vendor's failure to respond to a request for additional information may result in rejection of that Vendor's proposal. Vendors may also be required to host visits to their facilities.

All materials submitted in writing and other information gained during Vendor presentations, if any are requested, will be considered as part of the Vendor's proposal and will be considered in making the award. Vendors will not be permitted to modify or amend their proposal if contacted by the Nebraska Lottery for this reason. Vendor presentations, if any are requested, are not open to the public. Failure to make clarifications as requested may, at the Nebraska Lottery's discretion; result in rejection of a Vendor's proposal.

When the evaluation is completed, the Committee will then prepare a recommendation to the Director and Tax Commissioner, who may meet with the Committee to ask questions regarding the recommendation. The Director will review the recommendation and award the contract with the approval of the Tax Commissioner. The Nebraska Lottery reserves the right to contact Vendors at any time in this process to discuss proposals and seek clarifications or modifications to proposals.

A written notice of award will be sent to all Vendors who have timely submitted a proposal in accordance herewith immediately following execution of the contract.

4.29 Cost to the Vendor

The Nebraska Lottery is not responsible for any costs incurred by Vendors that are related to the preparation or delivery of the Proposal, any on-site inspections, or any other activities related to this RFP.

4.30 Proposals Valid for 150 Days

All proposals submitted shall remain valid for 150 calendar days following the date on which the proposals are due. By submitting a proposal, Vendors specifically agree to this time limit.

4.31 Waiver of Deficiencies and Rejection for Noncompliance

The Nebraska Lottery reserves the right to waive minor deficiencies in a proposal. The decision as to whether a deficiency will be waived or will require rejection of a proposal will be solely within the discretion of the Nebraska Lottery. Vendors are specifically notified that the failure to comply with or respond to any part of this RFP that requires a response may, at the discretion of the Nebraska Lottery, result in rejection of its proposal.

4.32 Discretionary Rejection of Proposal

The Nebraska Lottery reserves the right to reject any and all proposals in response to this RFP at any time during the solicitation process for any reason.

4.33 Contract Provisions

The contract that the Nebraska Lottery expects to award as a result of this RFP will be based upon this RFP and the proposals submitted by the Vendors. The Nebraska Lottery reserves the right to either award a contract without further negotiation with the selected Vendor, or to negotiate all terms and conditions, including compensation terms, with the selected Vendor if the best interests of the Nebraska Lottery would be served. The selected Vendor may be required to reduce its price if the Nebraska Lottery reduces the requirements placed upon the Vendor or if the Nebraska Lottery assumes some of the Vendor's responsibilities. If contract negotiations cannot be successfully concluded with the initially chosen Vendor, the Nebraska Lottery may negotiate a contract with the next selected Vendor.

The following contract terms are not intended to be a complete listing of all contract terms, but are provided to enable the Vendor to better evaluate the Vendor's costs associated with the provision of services required by this Request for Proposal. Unless otherwise provided in the contract, the following terms are hereby incorporated in any contract awarded as a result of this solicitation. All costs associated with complying with these requirements must be included in the compensation quoted by the Vendor.

- 4.33.1** The contract term will commence on July 1, 2017 and continue through the performance of the contracted services as outlined in Section 1.1 and as provided in the Agreement. The basis for compensation will be determined by the price quoted in the proposal and as further negotiated in the contract.
- 4.33.2** The Contractor shall obtain any permits, licenses, or other authorizations required in connection with the performance of the work under the contract. The Contractor shall also comply with all tax laws and other applicable laws, ordinances, rules, orders, and regulations relating to the performance of the contract.
- 4.33.3** The Contractor certifies that the products, equipment, and services requested under this RFP will be supplied or will perform in accordance with this RFP and with any other requirements incorporated into the contract. The Contractor expressly warrants that the Uniformed Security Officer Services are fit for use in the Nebraska Lottery's warehouse facilities
- 4.33.4** The Contractor will indemnify and hold harmless the Nebraska Lottery, Department of Revenue, and State of Nebraska against any and all liability to third parties resulting from claims that the Uniformed Security Officer Services infringes on or violates any patents, copyrights, or trade secrets of a third party. The Contractor guarantees that it will have full legal right of material, supplies, equipment, machinery, articles, or things involved in the contract. The contract price shall, without exception, include compensation to the Contractor for all costs arising from patents, trademarks, and copyrights that are in any way involved in the contract. It shall be the responsibility of the Contractor to pay for all such costs.
- 4.33.5** The Nebraska Lottery is not liable for any form of taxation and assumes no liability as a result of this solicitation. Specifically, the Nebraska Lottery is not subject to federal excise tax, Nebraska sales tax, or any form of county or city tax. Property tax payable on Vendor-owned equipment installed in a state-owned facility remains the responsibility of the Vendor. The Nebraska Lottery will not be able to grant the Contractor an exemption from state or local property taxes.
- 4.33.6** Nonperformance by the Contractor of the material terms of the contract shall be a basis for termination of the contract by the Nebraska Lottery. Termination of the contract may, at its discretion, be made by the Nebraska Lottery for nonperformance upon thirty (30) calendar days' written notice to the Contractor. The performance bond shall be forfeited, at the option of the Nebraska Lottery, in that instance. For purposes of this section, "nonperformance" shall mean the neglect, failure, or refusal to do or perform an act required to be done pursuant to the contract.

If the Nebraska Lottery determines there to be a situation potentially threatening the security or integrity of Nebraska Lottery games or operations, Contractor or any of their employees may be refused permission to enter the Lottery Facilities.

- 4.33.7** Unsatisfactory performance by the Contractor of the material terms of the contract shall be a basis for termination of the contract by the Nebraska Lottery. The Contractor will receive a written notice giving them ten (10) calendar days to correct the unsatisfactory performance. If the performance is not corrected, the Nebraska Lottery may terminate the contract within thirty (30) calendar days' written notice to the Contractor. Further, the Nebraska Lottery shall not pay for work not done or for work done in an unsatisfactory manner per contract terms. The performance bond shall be forfeited in that instance. For purposes of this section, "unsatisfactory performance" shall be construed as meaning that the performance is such that a reasonable person would not be satisfied with it.
- 4.33.8** The Nebraska Lottery shall give the Contractor fifteen (15) calendar days' written notice of termination of the contract without penalty in the event there is a lack of available State funds to continue the contract or a change in law that invalidates the contract.
- 4.33.9** This RFP and any subsequent amendments, and the Contractor's proposal (hereinafter "proposal"), are hereby incorporated by reference as fully set forth herein, and the terms and conditions of the RFP and the proposal hereby become contractual obligations of the parties. To the extent that there may be a conflict or inconsistency between the Act, the provisions of this contract, the RFP, and the proposal, then the provisions of each of these documents shall be given effect in accordance with the following order of priority: (1) the Act, (2) the contract, (3) this RFP and its amendments (if any), and (4) the Contractor's proposal.
- 4.33.10** Any or all of the Uniformed Security Officer Services to be performed by the Contractor shall not be assigned, subcontracted, or transferred without the prior written approval of the Nebraska Lottery, nor shall the Contractor assign any monies due or becoming due under any contract entered into with the Nebraska Lottery pursuant to the contract, without prior written approval of the Nebraska Lottery.

It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto with respect to any Uniformed Security Officer Services performed under the contract. The Contractor represents that it has, or will secure at its own expense, all personnel required in providing services under the contract. The Contractor or other persons engaged in work or services required by the Contractor under the contract shall not be considered employees of the State. All claims on behalf of any person arising out of employment or alleged employment including, without limit, claims of discrimination against the Contractor, its officers, or its agents, shall in no way be the responsibility of the State; the Contractor will hold the State harmless from any and all such claims. Such

personnel or other persons shall not require nor be entitled to any compensation, rights, or benefits from the State including, without limit, tenure rights, medical and hospital care, sick and vacation leave, severance pay, and retirement benefits.

4.33.11 The Contractor agrees that during the term of the contract it will not discriminate against any employee, applicant, or recipient of services in accordance with the Nondiscrimination Statement below, and Contractor will include similar provisions in all subcontracts entered into for the performance of the contract. The contract may, at the discretion of the Nebraska Lottery, be canceled or terminated by the Nebraska Lottery and all funds due or to become due thereunder may be forfeited for a violation of the terms and conditions of this paragraph. The performance bond shall also be forfeited.

Nondiscrimination Statement: The Contractor agrees to comply fully with Title VII of the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, Public Law 93-112, as amended; the Americans With Disabilities Act of 1990, Public Law 101-336; and the Nebraska Fair Employment Practice Act, as amended, in that there shall be no discrimination against any employee who is employed in the performance of this contract, or against any applicant for such employment, because of age, color, national origin, ancestry, race, religion, creed, disability, sex, or marital status. This provision shall include but not be limited to the following: employment promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the Contractor.

4.33.12 The Contractor will be required to submit background information to the Nebraska Lottery, upon request, that will allow the Nebraska Lottery to evaluate any and all employees, officers, agents, or subcontractors of the Contractor who are involved in performing under the contract.

4.33.13 The Nebraska Lottery reserves the right, at its discretion, to exclude any Contractor officer, employee, agent, subcontractor, or other individual or firm from working in any capacity related to the provision of equipment, products or services under this RFP and subsequent contract for the protection of the security or integrity of the Nebraska Lottery.

4.33.14 All required bonds, security, and insurance must be issued by companies or financial institutions which are financially rated "A" or better and duly licensed, admitted, or authorized to do business in the State of Nebraska. The Nebraska Lottery shall be named as the Obligee in each required bond and as an Additional Insured in each required insurance contract, except that with regard to errors and omissions insurance, the Nebraska Lottery would be paid on behalf of an insured. Required coverage must remain in effect throughout the term of the contract and

the Contractor must submit copies of each required insurance contract, and any renewals thereof, to the Nebraska Lottery.

- 4.33.15** Contractor's employees and agents in their Nebraska office or that are otherwise assigned to the Nebraska Lottery account and their immediate family members residing in their household are prohibited from playing any Nebraska Lottery games, including any Multi-state games, which the Nebraska Lottery offers wherever they are played. It shall be the Contractor's responsibility to establish a policy to make its employees and members of their immediate families aware of this prohibition. The Contractor also must take reasonable steps to insure compliance. If Contractor employee or Contractor family members residing in their household purchase or redeem Nebraska Lottery tickets it shall be considered a breach of contract, and a potential threat to the security or integrity of Nebraska Lottery operations.
- 4.33.16** The Nebraska Lottery has the right to inspect, announced or unannounced, the Contractor's facilities at any time and may, at the discretion of the Nebraska Lottery, require the Contractor to secure a right of inspection on the Nebraska Lottery's behalf from any subcontractors involved in the provision of equipment, products, and related services. Contractor will pay for all reasonable and necessary expenses, including travel (round-trip), meals, and lodging for the purpose of conducting these inspections.
- 4.33.17** Assignment or subcontracting of any portion of the Contractor's obligations will not be allowed without prior written approval of the Director and Tax Commissioner, which may be withheld for any reason.
- 4.33.18** Only monies generated from the conduct of the Nebraska Lottery will be used to meet the Nebraska Lottery's financial obligations under this Agreement.
- 4.33.19** Contractor agrees not to use the Nebraska Lottery's name, logos, images, nor any data or results arising from this procurement process or contract awarded pursuant to this RFP as a part of any commercial advertising without prior written approval of the Nebraska Lottery.
- 4.33.20** The Nebraska Lottery reserves the right to approve the hiring and to request the removal of any Contractor employee assigned to work on the Nebraska Lottery account. The Nebraska Lottery may disapprove the hiring or transfer of any Contractor employee to the Nebraska Lottery account or request the removal of any Contractor employee from the Nebraska Lottery account at its discretion. Contractor shall comply with all Nebraska Lottery requests in this matter.
- 4.33.21** The Nebraska Lottery reserves the right to require at any time such further and additional security measures as deemed necessary or appropriate to ensure the integrity of the Contractor's operations or the game(s).

- 4.33.22** Except as otherwise provided in this RFP or the Contract, neither the Contractor nor the Nebraska Lottery shall be liable to the other for any delay in, or failure of performance of, any covenant contained in the contract that is caused by any event of force majeure. For purposes of this RFP, “force majeure” shall include acts of God, war, civil disturbance, and other causes that are beyond the control and anticipation of the party affected and which, by exercising reasonable diligence, the party was unable to anticipate or prevent, including the act or omission of any third party not controlled by the party affected. The existence of such causes of delay or failure shall, in the exercise of reasonable diligence, extend the period of performance for a reasonable period, until after the causes of delay or failure have been removed.
- 4.33.23** If, for any reason other than breach of contract by the Nebraska Lottery, the Contractor should lose its ability to perform its obligations under the Contract resulting from this RFP, the Nebraska Lottery shall acquire a usufruct in all contractual items owned by the Contractor in conjunction with the contract and the provision of which are necessary to Uniformed Security Officer Services required under this RFP.
- 4.33.24** The Nebraska Lottery is an extremely sensitive enterprise because of the nature of the lottery industry and its status as a governmental entity of the State of Nebraska. Therefore, it is essential that its operation, and the operation of other enterprises that would be linked to it in the public mind, avoid not only actual impropriety but also the appearance of impropriety. Accordingly, the Contractor is required to follow the rules and regulations established by the Nebraska Lottery. The Contractor will be expected to develop, disseminate, and enforce a Code of Conduct for all employees, independent contractors, and subcontractors that recognizes the public perception and sensitivity of the operations being performed on behalf of the State of Nebraska.
- 4.33.25** The Contractor can make no commitment on behalf of the Nebraska Lottery without prior written approval. The Nebraska Lottery reserves the right to cancel any approved project or any of its contracts at any time, in which case the Nebraska Lottery would be responsible only for actual costs prior to notification of such cancellation.
- 4.33.26** At the end of the contract term, the Contractor shall, in good faith and with reasonable cooperation, aid in the conversion to any new uniformed security officer services as requested by the Nebraska Lottery.
- 4.33.27** The Vendor at the time of the proposal, as well as the ultimate Contractor and its agents and employees shall execute a nondisclosure agreement similar to one provided in **Appendix “D.”** Failure to comply with the terms of this nondisclosure agreement shall be considered a breach of contract and a potential threat to the security or integrity of Nebraska Lottery operations.

4.33.28 Contractor and its authorized subcontractors will be subject at any time during the contract, and for a period of three (3) years after the contract, to audits by the Nebraska Lottery or by the Nebraska Lottery's regulatory authorities, such as the Auditor of Public Accounts (APA) or other Nebraska Lottery representatives as authorized by the Nebraska Lottery who must be provided full access to all of Contractor's pertinent contracts, databases, books, and records in any form, including access to individuals with knowledge of the systems and financial records for any audit purpose determined proper and necessary by the Nebraska Lottery, and otherwise fully cooperate in any audit conducted.

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

4.34 Minority and Female Participation

The Contractor must adopt the same attitudes and concerns toward minority and female participation as held by the Nebraska Lottery. Although minority and female participation in the operational aspect of the Nebraska Lottery is not mandated by the Act, the Nebraska Lottery requests that Vendors carefully consider and respond to the following items:

4.35 Protest Procedure

Any Vendor who claims to be aggrieved in connection with the RFP or award of a contract may formally protest the Nebraska Lottery's action. To protest the issuance of the RFP, a written protest must be filed with the Nebraska Lottery within seventy-two (72) hours after the issuance of the RFP. For the protest of a contract award, a written protest must be filed with the Nebraska Lottery within seventy-two (72) hours after receipt of notice of the contract award. Protests not timely filed will not be considered. To be filed timely, a protest must be physically received by the Nebraska Lottery.

To be considered, the protest must contain an identification of the statutory provision or RFP procedure allegedly violated, a brief statement of the relevant facts, an identification of the issue or issues to be resolved, arguments and authorities in support of the protest, an affidavit that the contents of the protest are true and correct, and a certification that a copy of the protest has been served on the selected Vendor (assuming the action protested is a contract award).

The selected Vendor may file a response to the protest of the nonselected Vendor with the Nebraska Lottery within three (3) business days following the Nebraska Lottery's receipt of the protest. To be filed timely, a response must be physically received by the Nebraska Lottery.

The Nebraska Lottery will review the protest, any response, and the contract file, and deliver its findings and recommendations to the Tax Commissioner. After reviewing the protest, any response, the contract file, and the Nebraska Lottery's findings and recommendations, the Tax Commissioner will make and issue a written determination on the protest, which may include an order voiding the contract. The Tax Commissioner's written determination will be served on the protestor and the selected Vendor, by certified mail, return receipt requested, and the determination shall be administratively final when issued.

4.36 Contract Cancellation

The Nebraska Lottery may, at its discretion, cancel, suspend, or declare void said contract for any of the following reasons or any other infractions not hereby stated:

- 4.36.1** Failure in whole or in part to fulfill the contract.
- 4.36.2** Whenever it is the opinion of the Nebraska Lottery that the Contractor has obtained the contract by fraud, collusion, conspiracy, or other unlawful means.
- 4.36.3** In the event of willful attempt to overcharge and/or not invoicing in accordance to contract.
- 4.36.4** To impose on the Nebraska Lottery articles of workmanship, services, or materials inferior to those required.
- 4.36.5** Failure to meet specifications or special conditions as set forth by this request for proposal, which shall be made a part of any and all contracts awarded.
- 4.36.6** Failure to meet specified delivery dates and requirements.
- 4.36.7** Subcontracting or assigning work without proper notification and consent by the Nebraska Lottery.
- 4.36.8** If any statement, representation, warranty, or certificate made or furnished by the Contractor to the Nebraska Lottery in connection with this contract is materially false, incorrect, or incomplete.
- 4.36.9** If a court of competent jurisdiction finds that the Contractor has failed to adhere to any laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or Contractor fails to communicate with the Nebraska Lottery as required by the contract.
- 4.36.10** If the Nebraska Lottery makes a written determination that the Contractor has failed to substantially perform under this Agreement, which determination shall

specify the events resulting in the Nebraska Lottery's determination that the Contractor has failed to substantially perform under the RFP or subsequent contract.

- 4.36.11** If the Contractor fails to comply with any of the terms, conditions, or provisions of the RFP or subsequent contract in any manner whatsoever.
- 4.36.12** Failure to completely perform any other obligation under this RFP or the resulting contract.
- 4.36.13** If the actions or inactions of the Contractor threaten the security or integrity of the Nebraska Lottery or its operations.
- 4.36.14** Failure to pass or cure any incomplete or failed background investigation.
- 4.36.15** For other reasons as stated in this RFP or the Contract.

In the event of such cancellation, the Nebraska Lottery shall notify the Contractor in writing stating the reason for such cancellation. Upon notification, the contract shall be null and void and the performance bond shall be forfeited.

4.37 News Release / Disclosure Prohibition

- 4.37.1** Vendors shall not issue any news releases or make any statement to the news media pertaining to this RFP or any proposal or contract or work resulting from this RFP without the prior written approval of the Nebraska Lottery.
- 4.37.2** Until a contract resulting from this RFP is executed, no employee, agent, or representative of any Vendor shall make available or discuss its Proposal with the press, any elected or appointed official or officer of the State of Nebraska, or any employee, agent, or representative of the Nebraska Lottery, or members of the Nebraska Lottery Evaluation Committee, unless specifically authorized in writing to do so by the Nebraska Lottery.

4.38 Hiring Prohibition

At all times during the proposal evaluation period, beginning with the issuance of the RFP and ending with either a contract awarded or the rejection of all proposals, Vendors are prohibited from officially making any employment offer or proposing any business arrangement whatsoever to any Nebraska Department of Revenue employee, or any elected or appointed official or officer of the State of Nebraska, or any employee, agent, or representative of the Nebraska Lottery, or members of the Nebraska Lottery Evaluation Committee, or individuals involved in the evaluation of the proposals, the contract award, or contract negotiations. Vendors making such an offer or proposition shall be disqualified from further consideration.

4.39 Maintain Local Office

The Contractor will be required to maintain an office in Nebraska at all times during the terms of the contract. The office should be staffed with personnel knowledgeable in all aspects of the Nebraska Lottery.

4.40 Drug-Free Workplace Policy

A drug-free workplace policy must be submitted as part of the proposal. Failure to provide a Drug-Free Workplace Policy will result in the rejection of the proposal. An example of a drug-free workplace policy is attached, see **Appendix “B.”**

APPENDIX “A”

**NEBRASKA LOTTERY
PROPOSAL CERTIFICATION**

(To be signed and submitted with the proposal by the Vendor. Failure to sign this certification will cause rejection of Vendor’s proposal.)

We propose to provide any and all of the Uniformed Security Officer Services named in the attached proposal for which prices have been set. The price or prices offered herein shall apply for the period of time stated in the Request for Proposals (RFP).

We further agree to strictly abide by all terms and conditions contained in the Nebraska Lottery Act as modified by any attached special terms and conditions, all of which are made a part hereof. Any exceptions are noted in writing and included with this proposal.

It is understood and agreed that we have read the Nebraska Lottery’s specifications shown or referenced in the RFP and that this proposal is made in accordance with the provisions of such RFP and any modifications made thereto.

I certify that this proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a proposal for the Uniformed Security Officer Services and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of state and federal laws and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of the proposal and certify that I am authorized to sign this proposal and bind the Vendor indicated below to these specific terms, conditions, and specifications required in this RFP. I further certify that all representations made and facts presented in this proposal and any supporting documents are true and correct as of the date submitted to the Nebraska Lottery (the “Submission Date”). I hereby agree to immediately notify the Nebraska Lottery of any change in fact that arises after the Submission Date which renders any facts or representations contained in this RFP untrue or misleading.

Authorized Signature

Date

Title

Company Name

APPENDIX “B”

DRUG-FREE WORKPLACE POLICY

The State of Nebraska is committed to providing an employment environment that is safe and provides appropriate motivation to ensure a creative and productive work force. To this end, the State unequivocally endorses the philosophy that the workplace should be free from the detrimental effects of illicit drugs. To ensure worker safety and workplace integrity, the State of Nebraska prohibits the illegal manufacture, possession, distribution, or use of controlled substances in the workplace by its employees or those who engage or seek to engage in business with the State.

In an effort to bring about a “Drug-Free Nebraska” and to assure that employees in a workplace are free from illegal drugs and their effect, the State of Nebraska through its administrative entities will implement the following Drug-Free Workplace Policy.

1. SCOPE: Applicable to all code agency employees.
2. POLICY: It is unlawful to illegally manufacture, distribute, dispense, possess, or use a controlled substance in the workplace. The Nebraska Lottery, therefore, establishes a drug-free workplace policy for its employees.
3. PROCEDURES:
 - A. All employees and each new hire will receive a copy of this policy.
 - B. Each employee will receive a drug abuse awareness form which will state it is unlawful to manufacture, distribute, dispense, possess, or use a controlled substance in the workplace. Each employee will sign and date this statement certifying that he/she:
 1. Understands and will abide by the drug-free workplace policy;
 2. Has knowledge of disciplinary actions that may be imposed for violations of the drug-free workplace policy.

The signed and dated statement will be forwarded to the employee’s immediate supervisor who will forward it to the individual in charge of personnel records. The signed and dated statement will be permanently in the employee’s personnel file.

- C. All current employees will receive drug abuse awareness training. New hires will receive the training within the first six months of date of hire. This training shall include:
 1. A definition of drug abuse;
 2. Information on specific drugs and the effects of drug abuse;
 3. Dangers of drug abuse in the workplace;

4. Availability of counseling and treatment services; and
 5. Disciplinary actions which may be imposed on employees for violations of this policy.
- D. If an employee violates the drug-free workplace policy, disciplinary action may be imposed according to established rules and regulations of the State Department of Personnel or applicable labor agreements.
- E. If an employee is convicted of violating any criminal drug statute while in the workplace, he or she will be subject to discipline up to and including termination. Alternatively, the agency may require the employee to successfully finish a drug abuse program sponsored by an approved private or governmental institution.
- F. An employee is required to report within five days any criminal drug statute conviction occurring in the workplace to his or her immediate supervisor. The supervisor will immediately report such conviction to the Nebraska Lottery.
- G. If the Nebraska Lottery is a grantee of federal funds, the department shall notify the Federal granting agency within ten days after receiving notice of any employee's drug statute conviction.

Authorized Signature

Date

Title

Company Name

APPENDIX "C"

COVENANT NOT TO SUE

_____ (Company Name) of _____ (Address),
(hereinafter "Covenantor"), in consideration for submitting a Proposal to provide goods and services to the Nebraska Department of Revenue's Lottery Division (hereinafter "Nebraska Lottery") hereby covenants with the Nebraska Lottery not to institute any action or suit at law, in equity or any administrative action, against the Nebraska Lottery, the Nebraska Department of Revenue, or the State of Nebraska or any of its officers, employees, or agents thereof, in any forum, now or hereafter, to contest or delay the award of any contract resulting from the Request for Proposal on frivolous or unwarranted grounds as defined in Nebraska Lottery regulations.

In executing this covenant, Covenantor expressly reserves any and all rights, causes of action, claims, and demands against any person, firm, or corporation other than the aforementioned parties.

Executed this _____ day of _____, _____.

Authorized Signature

Title

State of _____)

County of _____)

The foregoing Covenant Not to Sue was subscribed, sworn to, and acknowledged before me by _____, on behalf of _____, this _____ day of _____, _____.

(seal)

Notary Public

APPENDIX "D"

NONDISCLOSURE AGREEMENT

In consideration of the Nebraska Lottery retaining the Uniformed Security Officer Services from _____ (Potential Contractor) and because of the sensitivity of certain information that may come under the care and control of Potential Contractor, both parties agree that all information gathered, produced, or derived from this project (Confidential Information) shall remain confidential subject to release only by written permission of the Nebraska Lottery, and more specifically agree as follows:

1. The Confidential Information may be used by the Contractor only to assist the Contractor in connection with its engagement with the Nebraska Lottery.
2. The Contractor will not, at any time, use the Confidential Information in any fashion, form, or manner except in its capacity as independent Contractor with the Nebraska Lottery.
3. The Contractor agrees to maintain the confidentiality of the product in the same manner that it protects the confidentiality of its own proprietary products of like kind.
4. The Confidential Information may not be copied or reproduced without the Nebraska Lottery's written consent.
5. All confidential materials made available to the Contractor, including copies thereof, shall be returned to the Nebraska Lottery upon the first to occur of (a) completion of the project, or (b) request by the Nebraska Lottery.
6. The foregoing shall not prohibit or limit Contractor's use of the information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies) (a) previously known to it, (b) independently developed by it, (c) acquired by it from a third party, or (d) which is or becomes part of the public domain through no breach by the Contractor of this agreement.
7. This agreement shall become effective as of the date Confidential Information is first made available to the Contractor and shall survive the contract and be a continuing requirement.
8. Contractor will require that this agreement be signed by all its employees and/or subcontractors involved with the Nebraska Lottery account.

By _____

Title _____ Date _____

APPENDIX "E"

OPINION NUMBER - 160

ADOPTED - 1995/06/16

SUBJECT - Campaign Financing/Lottery Contractors and Lobbyists.

REQUESTED BY: Judy Monaghan, Lobbyist for Scientific Games, Inc.

QUESTION: 1) Does the Nebraska Political Accountability and Disclosure Act prohibit a Lobbyist for a lottery contractor from making a contribution to a candidate for state elective office? 2) Is a lottery contractor prohibited from making a contribution to a political party?

CONCLUSION

See analysis.

FACTS

Scientific Games, Inc. is a lottery contractor as defined by §9-803 R.S. Supp, 1994. That is, it holds a contract with the Lottery Division of the Nebraska Department of Revenue to provide goods or services for the state lottery. Inasmuch as the value of the contract exceeds \$15,000, the contract is considered a major procurement. During the 1995 Legislative Session, Legislative Bill 28 was introduced and passed. It was signed by the Governor on February 28, 1995. LB28 included an emergency clause and is now in effect.

Section 5 of LB28 includes the following provision:

A person who is awarded a contract by the Director of the Lottery Division as a lottery contractor for a major procurement as defined in §9-803 may not make a contribution to or an independent expenditure for a candidate for a state elective office during the term of the contract or for three years following the most recent award or renewal of the contract. A person shall be considered to have made a contribution or independent expenditure if the contribution or independent expenditure is made by the person, by an officer of the person, by a separate segregated political fund established and administered by the person as provided in §49-1469, or anyone acting on behalf of the person, officer, or fund. A person who knowingly or intentionally violates this section shall be guilty of a Class IV felony.

Section 49-1444 of the Nebraska Political Accountability and Disclosure Act defines the term state elective office as "the office of Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, member of a board or commission with one or more election districts of more than one county, and a member of the Legislature."

Scientific Games, Inc. is the principal of a lobbyist. That is, it has retained the services of an individual to represent its interests before the Legislature. The lobbyist is not an officer or an employee of Scientific Games, Inc. The relationship of the lobbyist to Scientific Games, Inc. is that of an independent contractor. The lobbyist has been involved in Nebraska politics for at least twenty years and has a long history of making political contributions to candidates and to one of the political parties. She wishes to know if she

may continue to make political contributions to candidates for state elective office and political parties as long as she is not making them on behalf of Scientific Games, Inc.

Scientific Games, Inc. wishes to know if it may make contributions to political parties in Nebraska.

ANALYSIS

As stated, a contribution or independent expenditure may not be made to a candidate for state elective office by a lottery contractor, an officer of that contractor, a separate segregated political fund established and administered by that contractor, or anyone acting on behalf of the contractor, one of its officers, or its separate segregated political fund. A lobbyist who makes a contribution to a candidate for state elective office violates the provisions of section 5 of LB28 if he or she is also an officer of the lottery contractor. It would also be a violation of that section for a lobbyist of a lottery contractor to make a contribution to or an independent expenditure for a candidate for state elective office if the contribution or expenditure is made at the direction of the lottery contractor, one of its officers, or its separated segregated political fund. That is, the lobbyist would be "acting on behalf of" a person or entity which may not make a contribution. In addition, a lobbyist would be prohibited from making a contribution to a candidate for state elective office or an independent expenditure if the lobbyist is reimbursed for the contribution or expenditure by the lottery contractor, an officer of that contractor, or a separate segregated political fund administered by the contractor. Stated succinctly, a lobbyist acting on behalf of him or herself and using his or her own money may make contributions to or independent expenditures for candidates for state elective office as long as he or she is not also an officer of the lottery contractor.

We turn now to the question of whether a lottery contractor is permitted to make a contribution to a Nebraska political party committee.

Section 9-835 of the state statutes as amended by LB28 provides in part as follows:

The director may not award and the Tax Commissioner may not approve a contract with a person to serve as a lottery contractor for a major procurement if the person has made a contribution to a candidate for state elective office as defined in section 49-1444 after the effective date of this act and within three years preceding the award of the contract. A person shall be considered to have made a contribution if the contribution is made by the person, by an officer of the person, by a separate segregated political fund established and administered by the person as provided in section 49-1469, or by anyone acting on behalf of the person, officer, or fund. Any contract awarded in violation of the subsection shall be void.

Section 49-1438 of the Nebraska Political Accountability and Disclosure Act includes within the definition of the term person a ". . . corporation, association, committee, or other organization or group of persons acting jointly."

Section 49-1440 defines the term political party committee as "a state central, district, or county committee of a political party which is a committee."

It should be noted that for the purposes of this opinion, the terms political party and political party committee refer to Nebraska political parties and Nebraska political party committees.

A political party committee could, under certain circumstances, be a person acting on behalf of a lottery contractor, an officer of the lottery contractor, or a separate segregated political fund of the lottery contractor, if the political party accepts a contribution from one of them with the understanding that the contribution will be forwarded to a candidate for state elective office. The question then becomes whether any contribution to a Nebraska political party committee by a lottery contractor, an officer of the lottery contractor, or a separate segregated political fund of a lottery contractor constitutes a violation of the provisions of LB28.

A review of a colloquy occurring during the hearing on LB28 may be helpful.

LB28 was heard by the Legislature's Committee on Government, Military and Veterans Affairs on January 18, 1995. Committee Member Senator David Bernard-Stevens posed a question to Senator Jerome Warner, the sponsor of the bill:

Senator Bernard-Stevens: Jerome, as I read through this last night I'm trying to remember it deals with directly and indirect contributions to a candidate?

Senator Warner: Yes.

Senator Bernard-Stevens: So that would, just to make sure, then that would include donations, say to a political party?

Senator Warner: Yes.

It is clear that the sponsor of the bill intended that contributions by lottery contractors not be funneled through political parties to candidates for state elective office. However, LB28 does not specifically prohibit contributions to political parties by lottery contractors. In viewing the plain language of the statute, it is our opinion that a lottery contractor, an officer of a lottery contractor, or a separate segregated political fund of a lottery contractor is only prohibited from making a contribution to a Nebraska political party when the contribution is for the support of a candidate for statewide office.

Given the fact that a violation of section 5 of LB28 is a Class IV a felony, a further explanation is appropriate.

Clearly, a lottery contractor may not make a contribution to a Nebraska political party committee which is earmarked for a candidate for state elective office. Merely ensuring that contributions are not earmarked to support or oppose candidates for state elective office may not be sufficient. The Commission recommends that contributions to a Nebraska political party committee by a lottery contractor, an officer of a lottery contractor, or a separate segregated political fund established and administered by a lottery contractor be earmarked such that they will not be used to support or oppose candidates for state elective offices. That is, the contribution could be earmarked for administrative expenses of the party, or it could be earmarked for candidates other than candidates for state elective office. Contributions to political parties should not be earmarked for projects which benefit a number of candidates, such as the mass mailing of brochures, if a candidate for state elective office benefits therefrom.

In focusing on Nebraska political parties and Nebraska political party committees, it is not the intent of the Commission to imply that lottery contractors may make contributions to political parties or political party committees in other states which are earmarked for candidates for state elective office in Nebraska. An out of state political party or political party committee under such circumstances would be acting on behalf of a

lottery contractor and the contribution would still be illegal. Instead, it is the Commission's intent to make clear that a contribution by a lottery contractor, an officer of a lottery contractor, or separate segregated political fund established and administered by a lottery contractor is not, under all circumstances, a violation of the provisions of LB28.

It is important that the Commission make its position clear. We do not view the provisions of LB28 as an invitation to gamesmanship. In determining if there has been compliance with the provisions of LB28, the Commission will always look for the ultimate source of the contribution and for the ultimate beneficiary of the contribution. The penalties for violations are harsh. The person making an illegal contribution may be guilty of a Class IV felony. A violation can result in a major procurement contract being denied or voided. A candidate or candidate committee knowingly accepting a contribution barred by the provisions of LB28 could be guilty of a Class III misdemeanor.

SUMMARY

A lobbyist whose principal is a lottery contractor may make a contribution to a candidate for state elective office as long as the lobbyist is not an officer of the lottery contractor or acting on behalf of the lottery contractor, an officer of the lottery contractor, or a separate segregated political fund established and administered by the lottery contractor. A lottery contractor, an officer of a lottery contractor, or a separate segregated political fund established and administered by a lottery contractor may not make a contribution to a Nebraska political party for the purpose of supporting or opposing a candidate for state elective office. Therefore, the Commission strongly recommends that a contribution to a Nebraska political party committee be earmarked in such a way that it will not be used to support or oppose candidates for state elective office.