

## Request for Proposal

### Cover Sheet

#### Administrative Information

<b>Title of RFP:</b> UST – Tank Closure Contract Project		<b>Number:</b> 0918005035	
<b>Agency:</b> Department of Administrative Services on behalf of the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (Board)			
Number of years of initial contract term: 1 Years	Number of possible annual extensions: 5	Available to Political Subdivisions?	Yes
<b>State Issuing Officer:</b> Steve Oberbroeckling Purchasing Agent III Phone: 515-725-2090 E-mail: steve.oberbroeckling@iowa.gov		<b>Mailing Address:</b> Iowa Department of Administrative Services Hoover State Office Building, Level 3 1305 East Walnut Street Des Moines, IA 50319-0105	
<b>PROCUREMENT TIMETABLE—Event or Action:</b>		<b>Date/Time (Central Time):</b>	
State Posts Notice of on TSB website		04 MAY 2018	
State Issues		07 MAY 2018	
RFP written questions, requests for clarification, and suggested changes from Contractors due:		24 MAY 2018 /1:00PM	
Agency’s written response to questions, requests for clarification, and suggested changes due approximately:		31 MAY 2018	
Follow-Up RFP written questions, requests for clarification, and suggested changes from Contractors due:		07 JUN 2018 /1:00PM	
Agency’s written response to questions, requests for clarification, and suggested changes due approximately:		14 JUN 2018	
Proposals Due Date:		28 JUN 2018/1:00PM	
<b>Relevant Websites:</b>		<b>Web-address:</b>	
Internet website where Addenda to this will be posted:		<a href="http://bidopportunities.iowa.gov/">http://bidopportunities.iowa.gov/</a>	
Number of Copies of Proposals Required to be Submitted:		Technical Proposal : 1 Original, 3 Copies, and 1 Digital Cost Proposal: 1 Original, 3 Copies, and 1 Digital	

## SECTION 1 INTRODUCTION

### 1.1 Purpose

The purpose of this Request for Proposals (RFP) is to solicit Proposals from qualified service providers to provide, on an as-needed basis, corrective action related activities at underground storage tank (UST) sites where the DNR has determined corrective action is needed and either there is no responsible party able to pay for the corrective action or the responsible party is recalcitrant in undertaking the needed corrective action or UST system removal. Services provided by consultant contracts will be limited to ‘corrective action’ activities as defined in Iowa Code 455G.2 and may include site checks, UST closures, Tier I and Tier 2 RBCA investigations, site monitoring reports, monitoring well closures, and corrective action addressing emergency situations. Additional services may be provided at the Board’s discretion to either the selected UST sites.

The Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (Board) intends to award two Contracts for the initial period identified on the RFP cover sheet, and the Agency, in its sole discretion, may extend the Contract(s) for up to the number of annual extensions identified on the RFP cover sheet.

### 1.2 Definitions

For the purposes of this RFP and the resulting contract, the following terms shall mean:

“**Agency**” means the agency identified on the RFP cover sheet that is issuing the RFP.

“**Board**” means the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board.

“**Contract**” means the contract(s) entered into with the successful Contractor(s) as described in Section 7.

“**Contractor**” means the awarded business/person to provide the contractual services agreed upon.

“**Department**” or “**DNR**” means the Iowa Department of Natural Resources

“**EC**” means environmental covenant

“**IC**” means institutional control

“**LUST**” means Leaking Underground Storage Tank

“**NAR**” means a site classification of No Action Required

“**OA1**” means the method for determination of volatile petroleum hydrocarbons (gasoline)

“**OA2**” means the method for determination of extractable petroleum products (and related low volatility organic compounds)

“**QA**” means Quality Assurance

“**QC**” means Quality Control

“**Proposal**” means the Respondent’s proposal submitted in response to the RFP.

“**RBCA**” means Risk-Based Corrective Action

“**Registration Number**” means the number assigned by DNR to a registered underground storage tank site

“**Proposal**” means the Respondent’s proposal submitted in response to the RFP.

**“Respondent”** means the company, organization or other business entity submitting a proposal in response to this RFP.

**“Responsible Respondent”** means a Contractor that has the capability in all material respects to perform the specifications of the Contract. In determining whether a Contractor is a Responsible Contractor, the Agency may consider various factors including, but not limited to, the Contractor’s competence and qualifications to provide the goods or services requested, the Contractor’s integrity and reliability, the past performance of the Contractor and the best interest of the Agency and the State.

**“Responsive Proposal”** means a Proposal that complies with the material provisions of this RFP.

**“RFP”** means this Request for Proposals and any attachments, exhibits, schedules or addenda hereto.

**“SMR”** means Site Monitoring Report

**“State”** means the State of Iowa and the Agency and Board identified on the Contract Declarations & Execution Page(s).

**“Tank Closure Report”** means a technical report which contains data about the underground storage tank which has been removed, such as date, location and lab analysis results

**“Tier 1”** means Tier 1 assessment resulting in a Tier 1 Report

**“Tier 2”** means Tier 2 assessment resulting in a Tier 2 Site Cleanup Report

**“Tier 3”** means Tier 3 assessment resulting in a Tier 3 Report

**“UST”** means Underground Storage Tank

### **1.3 Overview of the RFP Process**

Respondents will be required to submit their Proposals in hardcopy and on digital media (i.e. CD, USB drive, etc.). It is the Agency’s intention to evaluate Proposals from all Respondents that submit timely Responsive Proposals, and award the Contract(s) in accordance with Section 6, Evaluation and Selection.

### **1.4 Background Information**

This RFP is designed to provide vendors with the information necessary for the preparation of competitive Proposals. The RFP process is for the Board’s benefit and is intended to provide the Board with competitive information to assist in the selection process. It is not intended to be comprehensive. Each vendor is responsible for determining all factors necessary for submission of a comprehensive Proposal.

The Iowa Underground Storage Tank (UST) Fund Program was created in 1989 to provide financial assistance to owners and operators of USTs to better enable them to comply with these technical and financial requirements. The Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (Board) is composed of ten members. The Board is authorized to enter into contracts with parties in the private sector to administer the Program.

The Board is seeking Proposals from qualified service providers to provide, on an as-needed basis, corrective action related activities at underground storage tank (UST) sites where the DNR has determined corrective action is needed and either there is no responsible party able to pay for the corrective action or the responsible party is recalcitrant in undertaking the needed corrective action or UST system removal. Services provided by contractor(s) will be limited to ‘corrective action’ activities as defined in Iowa Code 455G.2 and may include site checks, UST closures, Tier I and Tier 2 RBCA investigations, site monitoring reports, monitoring well closures, and corrective action addressing emergency situations. Additional services may be provided at the Board’s discretion at any of the selected UST sites.

**2.1. Issuing Officer**

The Issuing Officer identified in the RFP cover sheet is the sole point of contact regarding the RFP from the date of issuance until a Notice of Intent to Award the Contract is issued.

**2.2. Restriction on Communication**

From the issue date of this RFP until a Notice of Intent to Award the Contract is issued, Contractors may contact only the Issuing Officer. The Issuing Officer will respond only to written questions regarding the procurement process. Questions related to the interpretation of this RFP must be submitted as provided in Section 2.2. Oral questions related to the interpretation of this RFP will not be accepted. Contractors may be disqualified if they contact any State employee other than the Issuing Officer about the RFP except that Contractors may contact the State Targeted Small Business Office on issues related to the preference for Targeted Small Businesses.

**2.3. Downloading the RFP from the Internet**

The RFP document and any addenda to the RFP will be posted at <http://bidopportunities.iowa.gov/>. The Contractor is advised to check the website periodically for Addenda to this RFP, particularly if the Contractor downloaded the RFP from the Internet as the Contractor may not automatically receive addenda. It is the Contractor's sole responsibility to check daily for addenda to posted documents.

**2.4. Procurement Timetable**

The dates provided in the procurement timetable on the RFP cover sheet are provided for informational and planning purposes. The Agency reserves the right to change the dates. If the Agency changes any of the deadlines for Contractor submissions, the Agency will issue an addendum to the RFP.

**2.5. Pre-Proposal Conference**

If the RFP cover sheet indicates a pre-proposal conference will be held in conjunction with this RFP, it will be held at the date, time, and location listed on the RFP cover sheet. The purpose of the pre-proposal conference is to discuss with prospective Contractors the work to be performed and allow prospective Contractors an opportunity to ask questions regarding the RFP. Oral discussions at the pre-proposal conference shall not be considered part of the RFP unless confirmed in writing by the Agency and incorporated into this RFP. The conference may be recorded. Questions asked at the conference that cannot be adequately answered during the conference may be deferred. A copy of the questions and answers will be sent to Contractors who submit a letter of intent to bid and will be posted in the form of an addendum at: <http://bidopportunities.iowa.gov/>.

If the RFP cover sheet indicates the pre-proposal conference is mandatory, the Agency shall reject Proposals submitted by Contractors who do not attend the pre-proposal Conference.

**2.6. Questions, Requests for Clarification, and Suggested Changes**

Contractors are invited to submit written questions and requests for clarifications regarding the RFP. Contractors may also submit suggestions for changes to the specifications of this RFP. The questions, requests for clarifications, or suggestions must be in writing and received by the Issuing Officer before the date and time listed on the RFP cover sheet. Oral questions will not be permitted. If the questions, requests for clarifications, or suggestions pertain to a specific section of the RFP, Contractor shall reference the page and section number(s). The Agency will send written responses to questions, requests for clarifications, or suggestions will be received from Contractors on before the date listed on the RFP cover sheet. The Agency's written responses will become an addendum to the RFP. If the Agency decides to adopt a suggestion that modifies the RFP, the Agency will issue an addendum to the RFP.

The Agency assumes no responsibility for oral representations made by its officers or employees unless such representations are confirmed in writing and incorporated into the RFP through an addendum.

**2.7. Amendment to the RFP**

The Agency reserves the right to amend the RFP at any time using an addendum. The Contractor shall acknowledge receipt of all addenda in its Proposal. If the Agency issues an addendum after the due date for receipt of Proposals, the Agency may, in its sole discretion, allow Contractors to amend their Proposals in response to the addendum.

**2.8. Amendment and Withdrawal of Proposal**

The Contractor may amend or withdraw and resubmit its Proposal at any time before the Proposals are due. The amendment must be in writing, signed by the Contractor and received by the time set for the receipt of Proposals. Electronic mail and faxed amendments will not be accepted. Contractors must notify the Issuing Officer in writing prior to the due date for Proposals if they wish to completely withdraw their Proposals.

**2.9. Submission of Proposals**

The Agency must receive the Proposal at the Issuing Officer's address identified on the RFP cover sheet before the "Proposals Due" date listed on the RFP cover sheet. **This is a mandatory specification and will not be waived by the Agency. Any Proposal received after this deadline will be rejected and returned unopened to the Contractor.** Contractors mailing Proposals must allow ample mail delivery time to ensure timely receipt of their Proposals. It is the Contractor's responsibility to ensure that the Proposal is received prior to the deadline. Postmarking by the due date will not substitute for actual receipt of the Proposal. Electronic mail and faxed Proposals will not be accepted.

Contractors must furnish all information necessary to enable the Agency to evaluate the Proposal. Oral information provided by the Contractor shall not be considered part of the Contractor's Proposal unless it is reduced to writing.

**2.10. Proposal Opening**

The Agency will open Proposals after the deadline for submission of Proposals has passed. The Proposals will remain confidential until the Evaluation Committee has reviewed all of the Proposals submitted in response to this RFP and the Agency has issued a Notice of Intent to Award a Contract. See Iowa Code Section 72.3. However, the names of Contractors who submitted timely Proposals will be publicly available after the Proposal opening. The announcement of Contractors who timely submitted Proposals does not mean that an individual Proposal has been deemed technically compliant or accepted for evaluation.

**2.11. Costs of Preparing the Proposal**

The costs of preparation and delivery of the Proposal are solely the responsibility of the Contractor.

**2.12. No Commitment to Contract**

The Agency reserves the right to reject any or all Proposals received in response to this RFP at any time prior to the execution of the Contract. Issuance of this RFP in no way constitutes a commitment by the Agency to award a contract.

**2.13. Rejection of Proposals**

The Agency may reject outright and not evaluate a Proposal for reasons including without limitation:

**2.13.1** The Contractor fails to deliver the cost proposal in a separate envelope.

**2.13.2** The Contractor acknowledges that a mandatory specification of the RFP cannot be met.

**2.13.3** The Contractor's Proposal changes a material specification of the RFP or the Proposal is not compliant with the mandatory specifications of the RFP.

**2.13.4** The Contractor's Proposal limits the rights of the Agency.

**2.13.5** The Contractor fails to include information necessary to substantiate that it will be able to meet a specification of the RFP as provided in Section 4 of this RFP.

- 2.13.6 The Contractor fails to timely respond to the Agency's request for information, documents, or references.
- 2.13.7 The Contractor fails to include Proposal Security, if required.
- 2.13.8 The Contractor fails to include any signature, certification, authorization, stipulation, disclosure or guarantee as provided in Section 3 of this RFP.
- 2.13.9 The Contractor presents the information requested by this RFP in a format inconsistent with the instructions of the RFP or otherwise fails to comply with the specifications of this RFP.
- 2.13.10 The Contractor initiates unauthorized contact regarding the RFP with state employees or the Board Administrator.
- 2.13.11 The Contractor provides misleading or inaccurate responses.
- 2.13.12 The Contractor's Proposal is materially unbalanced.
- 2.13.13 There is insufficient evidence (including evidence submitted by the Contractor and evidence obtained by the Agency from other sources) to satisfy the Agency that the Contractor is a Responsible Contractor.
- 2.13.14 The Contractor alters the language in Attachment #1-Certification Letter, or Attachment #2-Authorization to Release Information letter.

#### **2.14. Nonmaterial Variances**

The Agency reserves the right to waive or permit cure of nonmaterial variances in the Proposal if, in the judgment of the Agency, it is in the State's best interest to do so. Nonmaterial variances include but are not limited to: minor failures to comply that do not affect overall responsiveness, that are merely a matter of form or format, that do not change the relative standing or otherwise prejudice other Contractors, that do not change the meaning or scope of the RFP, or that do not reflect a material change in the specifications of the RFP. In the event the Agency waives or permits cure of nonmaterial variances, such waiver or cure will not modify the RFP specifications or excuse the Contractor from full compliance with RFP specifications or other Contract specifications if the Contractor is awarded the Contract. The determination of materiality is in the sole discretion of the Agency.

#### **2.15. Reference Checks**

The Agency reserves the right to contact any reference to assist in the evaluation of the Proposal, to verify information contained in the Proposal and to discuss the Contractor's qualifications and the qualifications of any subcontractor identified in the Proposal.

#### **2.16. Information from Other Sources**

The Agency reserves the right to obtain and consider information from other sources concerning a Contractor, such as the Contractor's capability and performance under other contracts, the qualifications of any subcontractor identified in the Proposal, the Contractor's financial stability, past or pending litigation, and other publicly available information.

#### **2.17. Verification of Proposal Contents**

The content of a Proposal submitted by a Contractor is subject to verification. If the Agency determines in its sole discretion that the content is in any way misleading or inaccurate, the Agency may reject the Proposal.

#### **2.18. Proposal Clarification Process**

The Agency reserves the right to contact a Contractor after the submission of Proposals for the purpose of clarifying a Proposal. This contact may include written questions, interviews, site visits, a review of past performance if the Contractor has provided goods and/or services to the State or any other political subdivision wherever located, or requests for corrective pages in the Contractor's Proposal. The Agency will not consider

information received from or through Contractor if the information materially alters the content of the Proposal or the type of goods and/or services the Contractor is offering to the Agency. An individual authorized to legally bind the Contractor shall sign responses to any request for clarification. Responses shall be submitted to the Agency within the time specified in the Agency's request. Failure to comply with requests for additional information may result in rejection of the Proposal.

## **2.19. Disposition of Proposals**

All Proposals become the property of the State and shall not be returned to the Contractor. Once the Agency issues a Notice of Intent to Award the Contract, the contents of all Proposals will be in the public domain and be available for inspection by interested parties, except for information for which Contractor properly requests confidential treatment or according to exceptions provided in Iowa Code Chapter 22 or other applicable law.

## **2.20. Public Records and Requests for Confidential Treatment**

The Agency's release of public records is governed by Iowa Code chapter 22. Contractors are encouraged to familiarize themselves with Chapter 22 before submitting a Proposal. The Agency will copy and produce public records upon request as required to comply with Chapter 22 and will treat all information submitted by a Contractor as non-confidential records unless Contractor requests specific parts of the Proposal be treated as confidential at the time of the submission as set forth herein **AND the information is confidential under Iowa or other applicable law.**

### **2.20.1 Form 22 Request for Confidentiality**

***FORM 22 MUST BE COMPLETED AND INCLUDED WITH CONTRACTOR'S PROPOSAL. COMPLETION AND SUBMITTAL OF FORM 22 IS REQUIRED WHETHER THE PROPOSAL DOES OR DOES NOT CONTAIN INFORMATION FOR WHICH CONFIDENTIAL TREATMENT WILL BE REQUESTED. FAILURE TO SUBMIT A COMPLETED FORM 22 WILL RESULT IN THE PROPOSAL CONSIDERED NON-RESPONSIVE AND NOT EVALUATED.***

### **2.20.2 Confidential Treatment Is Not Requested**

A Contractor not requesting confidential treatment of information contained in its Proposal shall complete Section I of Form 22 and submit Form 22 with the Proposal.

### **2.20.3 Confidential Treatment of Information is Requested**

A Contractor requesting confidential treatment of specific information shall: (1) fully complete Section II of Form 22, (2) conspicuously mark the outside of its Proposal as containing confidential information, (3) mark each page upon which the Contractor believes confidential information appears **and CLEARLY IDENTIFY EACH ITEM for which confidential treatment is requested; MARKING A PAGE IN THE PAGE MARGIN IS NOT SUFFICIENT IDENTIFICATION**, and (4) submit a "Public Copy" from which the confidential information has been excised.

Form 22 will not be considered fully complete unless, for each confidentiality request, the Contractor: (1) enumerates the specific grounds in Iowa Code chapter 22 or other applicable law that supports treatment of the material as confidential, (2) justifies why the material should be maintained in confidence, (3) explains why disclosure of the material would not be in the best interest of the public, and (4) sets forth the name, address, telephone, and e-mail for the person authorized by Contractor to respond to inquiries by the Agency concerning the confidential status of such material.

**The Public Copy from which confidential information has been excised is in addition to the number of copies requested in Section 3 of this RFP.** The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the Proposal as possible.

**Failure to request information be treated as confidential as specified herein shall relieve Agency and State personnel from any responsibility for maintaining the information in confidence. Contractors may not request confidential treatment with respect to pricing information and transmittal letters. A contractor's request for confidentiality that does not comply with this section or a contractor's request for confidentiality on information or material that cannot be held in**

**confidence as set forth herein are grounds for rejecting contractor's Proposal as non-responsive. Requests to maintain an entire Proposal as confidential will be rejected as non-responsive.**

If Agency receives a request for information that Contractor has marked as confidential and if a judicial or administrative proceeding is initiated to compel the release of such material, Contractor shall, at its sole expense, appear in such action and defend its request for confidentiality. If Contractor fails to do so, Agency may release the information or material with or without providing advance notice to Contractor and with or without affording Contractor the opportunity to obtain an order restraining its release from a court possessing competent jurisdiction. Additionally, if Contractor fails to comply with the request process set forth herein, if Contractor's request for confidentiality is unreasonable, or if Contractor rescinds its request for confidential treatment, Agency may release such information or material with or without providing advance notice to Contractor and with or without affording Contractor the opportunity to obtain an order restraining its release from a court possessing competent jurisdiction.

**2.21. Copyright Permission**

By submitting a Proposal, the Contractor agrees that the Agency may copy the Proposal for purposes of facilitating the evaluation of the Proposal or to respond to requests for public records. By submitting a Proposal, the Contractor consents to such copying and warrants that such copying will not violate the rights of any third party. The Agency shall have the right to use ideas or adaptations of ideas that are presented in Proposals.

**2.22. Release of Claims**

By submitting a Proposal, the Contractor agrees that it will not bring any claim or cause of action against the Agency based on any misunderstanding concerning the information provided in the RFP or concerning the Agency's failure, negligent or otherwise, to provide the Contractor with pertinent information in this RFP.

**2.23. Contractor Presentations**

Contractors may be required to make a presentation. The determination as to need for presentations, and the location, order, and schedule of the presentations is at the sole discretion of the Agency. The presentation may include slides, graphics and other media selected by the Contractor to illustrate the Contractor's Proposal. The presentation shall not materially change the information contained in the Proposal.

**2.24. Evaluation of Proposals Submitted**

Proposals that are timely submitted and are not rejected will be reviewed in accordance with Section 6 of the RFP. The Agency will not necessarily award a contract resulting from this RFP to the Contractor offering the lowest cost. Instead, the Agency will award the Contract(s) to the Responsible Contractor(s) whose Responsive Proposal the agency believes will provide the best value to the Agency and the State.

**2.25. Award Notice and Acceptance Period**

Notice of Intent to Award the Contract(s) will be sent to all Contractors submitting a timely Proposal and may be posted at the website shown on the RFP cover sheet. Negotiation and execution of the Contract(s) shall be completed no later than thirty (30) days from the date of the Notice of Intent to Award or such other time as designated by Agency. If the successful Contractor fails to negotiate and deliver an executed Contract by that date, the Agency, in its sole discretion, may cancel the award and award the Contract to the remaining Contractor the Agency believes will provide the best value to the State.

**2.26. No Contract Rights until Execution**

No Contractor shall acquire any legal or equitable rights regarding the Contract unless and until the Contract has been fully executed by the successful Contractor and the Agency.

**2.27. Choice of Law and Forum**

This RFP and the Contract shall be governed by the laws of the State of Iowa. Changes in applicable laws and rules may affect the award process or the Contract. Contractors are responsible for ascertaining pertinent legal requirements and restrictions. Any and all litigation or actions commenced in connection with this RFP shall be brought in the appropriate Iowa forum.



**2.28. Restrictions on Gifts and Activities**

Iowa Code Chapter 68B restricts gifts which may be given or received by State employees and requires certain individuals to disclose information concerning their activities with State government. Contractors are responsible to determine the applicability of this Chapter 68B to their activities and to comply with its requirements. In addition, pursuant to Iowa Code section 722.1, it is a felony offense to bribe or attempt to bribe a public official.

**2.29. No Minimum Guaranteed**

The Agency does not guarantee any minimum level of purchases under the Contract.

**2.30. Appeals**

A Respondent whose proposal has been timely filed and who is aggrieved by the award of the department may appeal the decision by filing a written notice of appeal (in accordance with 11—Chapter 117.20, Iowa Administrative Code) to: The Director of the Department of Administrative Services, Hoover State Office Building, Des Moines, Iowa 50319-0104 and a copy to the Issuing Officer. The notice must be filed within five days of the date of the Intent to Award notice issued by the Department, exclusive of Saturdays, Sundays, and legal state holidays. The written notice may be filed by fax transmission to 515.725.2064. The notice of appeal must clearly and fully identify all issues being contested by reference to the page, section and line number(s) of the RFP and/or the notice of Intent to Award. A notice of appeal may not stay negotiations with the apparent successful Contractor.

<b>SECTION 3      FORM AND CONTENT OF PROPOSALS</b>
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**3.1 Instructions**

These instructions prescribe the format and content of the Proposal. They are designed to facilitate a uniform review process. Failure to adhere to the Proposal format may result in the rejection of the Proposal.

- 3.1.1** The Proposal shall be typewritten on 8.5" x 11" paper, include numbered pages, and sent in sealed envelope. The Proposal shall be divided into two parts: (1) the Technical Proposal and (2) the Cost Proposal. The Technical Proposal and the Cost Proposal shall be labeled as such and placed in separate sealed envelopes.

The envelopes shall be labeled with the following information:

Number: RFP0918005035  
Title: UST – Tank Closure Contract Project  
Steve Oberbroeckling  
Iowa Department of Administrative Services  
Hoover State Office Building, Level 3  
1305 East Walnut Street  
Des Moines, IA 50319-0105

The Agency shall not be responsible for misdirected packages or premature opening of Proposals if a Proposal is not properly labeled.

- 3.1.2** 1 Original, 1 Digital, & 3 Copies of the Technical Proposal shall be timely submitted to the Issuing Officer in a sealed envelope. 1 Original, 1 Digital, & 3 Copies of the Cost Proposal shall be submitted in a separate sealed envelope.

**Technical Proposal Envelope Contents**

Original Technical Proposal and any copies  
Public Copy (if submitted)  
Technical Proposal on digital media  
Electronic Public Copy on same digital media (if submitted)

**Cost Proposal Envelope Contents**

Original Cost Proposal and any copies  
Cost Proposal on digital media

- 3.1.3** If the Contractor designates any information in its Proposal as confidential pursuant to Section 2, the Contractor must also submit one (1) copy of the Proposal from which confidential information has been excised as provided in Section 2 and which is marked "Public Copy".
- 3.1.4** Proposals shall not contain promotional or display materials.
- 3.1.5** Attachments shall be referenced in the Proposal.
- 3.1.6** If a Contractor proposes more than one solution to the RFP specifications, each shall be labeled and submitted separately and each will be evaluated separately.

### 3.2 Technical Proposal

The following documents and responses shall be included in the Technical Proposal in the order given below:

#### **Exhibit 1 – Transmittal Letter (Required)**

An individual authorized to legally bind the Contractor shall sign the transmittal letter. The letter shall include the Contractor's mailing address, electronic mail address, fax number, and telephone number. Any request for confidential treatment of information shall be included in the transmittal letter in accordance with the provisions of Section 2.

#### **Exhibit 2 – Executive Summary**

The Respondent shall prepare an executive summary and overview of the goods and/or services it is offering, including all of the following information:

- Statements that demonstrate that the Respondent has read and understands the terms and conditions of the RFP including the contract provisions in Section 7, except as noted in Attachment #4-Exceptions to Terms and Conditions.
- An overview of the Respondent's plans for complying with the specifications of this RFP.
- Any other summary information the Respondent deems to be pertinent.

#### **Exhibit 3 – Firm Proposal Terms**

The Respondent shall guarantee in writing the goods and/or services offered in the Proposal are currently available and that all Proposal terms, including price, will remain firm 120 days following the deadline for submitting Proposals.

#### **Exhibit 4 – Respondent Background Information**

The Respondent shall provide the following general background information:

- Does your state have a preference for instate Contractors? Yes or No. If yes, please include the details of the preference.
- Name, address, telephone number, fax number and e-mail address of the Respondent including all d/b/a's or assumed names or other operating names of the Respondent and any local addresses and phone numbers.
- Form of business entity, i.e., corporation, partnership, proprietorship, or LLC.
- Copy of W-9.
- State of incorporation, state of formation, or state of organization.
- The location(s) including address and telephone numbers of the offices and other facilities that relate to the Respondent's performance under the terms of this RFP.
- Number of employees.
- Type of business.
- Name, address and telephone number of the Respondent's representative to contact regarding all contractual and technical matters concerning the Proposal.
- Name, contact information, background information, qualifications and experience of any subcontractors and/or third party contractors who will be involved with this project and the nature of the goods and/or services the subcontractor and/or third party contractor would perform. Include number of years in business and number of years of experience with providing the types of services that the subcontractor or third party contractor would be providing.
- Respondent's accounting firm.
  - Awarded Contractor will be required to register to do business in Iowa before payments can be made.
  - For Contractor registration documents, go to:  
<https://das.iowa.gov/procurement/vendors/how-do-business>

#### **Exhibit 5 – Termination, Litigation, and Debarment**

The Respondent must provide the following information for the past five (5) years:

- Has the Respondent had a contract for goods and/or services terminated for any reason? If so, provide full details regarding the termination.
- Describe any damages or penalties assessed against or dispute resolution settlements entered into by Respondent under any existing or past contracts for goods and/or services. Provide full details regarding the circumstances, including dollar amount of damages, penalties and settlement payments.

- Describe any order, judgment or decree of any Federal or State authority barring, suspending or otherwise limiting the right of the Respondent to engage in any business, practice or activity.
- A list and summary of all litigation or threatened litigation, administrative or regulatory proceedings, or similar matters to which the Respondent or its officers have been a party.
- Any irregularities discovered in any of the accounts maintained by the Respondent on behalf of others. Describe the circumstances and disposition of the irregularities.

Failure to disclose these matters may result in rejection of the Proposal or termination of any subsequent Contract. The above disclosures are a continuing requirement of the Respondent. Respondent shall provide written notification to the Agency of any such matter commencing or occurring after submission of a Proposal, and with respect to the successful Respondent, following execution of the Contract.

#### **Exhibit 6 – Acceptance of Terms and Conditions**

By submitting a Proposal, Respondent acknowledges its acceptance of the terms and conditions of the RFP and the General Terms and Conditions without change except as otherwise expressly stated in its Proposal. If the Respondent takes exception to a provision, it must identify it by page and section number, state the reason for the exception, and set forth in its Proposal the specific RFP or General Terms and Conditions language it proposes to include in place of the provision. If Respondent’s exceptions or responses materially alter the RFP, or if the Respondent submits its own terms and conditions or otherwise fails to follow the process described herein, the Agency may reject the Proposal, in its sole discretion.

#### **Exhibit 7 – Certification Letter**

The Respondent shall sign and submit with the proposal, the document included as Attachment #1 (Certification Letter) in which the Respondent shall make the certifications included in Attachment #1.

#### **Exhibit 8 – Authorization to Release Information**

The Respondent shall sign and submit with the Proposal the document included as Attachment #2 (Authorization to Release Information Letter) in which the Respondent authorizes the release of information to the Agency.

#### **Exhibit 9 – Addendums**

Provide signed copy of posted RFP addendums. The addendum identifying the point value assigned to specific Section 3 Exhibits (Technical Proposal), as described in Section 6.4, does not need to be included in response as it will possibly be posted after Responses are delivered.

#### **Exhibit 10 – Request for Confidentiality**

The Respondent shall sign and submit with the Proposal the document included as Attachment #3 Form 22 – Request for Confidentiality.

#### **Exhibit 11 – Mandatory Specifications**

The Respondent shall answer whether or not it will comply with each specification in Section 4 of the RFP. Where the context requires more than a yes or no answer or the specific specifications so indicates, Respondent shall explain how it will comply with the specification. Merely repeating the Section 4 specifications may be considered non-responsive and result in the rejection of the Proposal. Proposals must identify any deviations from the specifications of the RFP or specifications the Respondent cannot satisfy. If the Respondent deviates from or cannot satisfy the specification(s) of this section, the Agency may reject the Proposal.

#### **Exhibit 12 – Work Plan**

The Respondent shall include a detailed Work Plan (no more than 25 pages) explaining how the Contractor intends to complete all Tasks listed in the Scope of Work, provide the Deliverables, and obtain the State’s acceptance of all Deliverables. The Work Plan shall include, but is not limited to:

**Exhibit 12A: Proposed Method of Performance.** (Please mark this section of your technical proposal as “Method of Performance”.) Proposals will be evaluated based on the Respondent’s distinctive plan for performing the requirements of the RFP. It is not sufficient for the Respondent to repeat the exact RFP language, or to present a paraphrased version, as an original idea for a technical approach.

The Contractor shall present a written narrative which demonstrates the method or manner in which the Contractor proposes to satisfy the requirements of the scope of work. A sequential step-by-step description of tasks that are proposed to accomplish the scope of work shall also be provided. The language of the narratives must be straightforward and limited to facts, solutions to problems, and plans of proposed action.

**Exhibit 12B: Expertise of Personnel Responsible for the Project.** (Please mark this section of your technical proposal as “Expertise of Personnel Responsible for the Project”.)

The qualifications of the personnel proposed by the Respondent to perform the requirements of the RFP will be considered in the evaluation. Therefore, the Respondent must submit detailed information related to the experience and qualifications of the staff proposed.

The Respondent must: (1) identify the Iowa certified groundwater professional who will be responsible for the supervision of field staff and completion of the activities identified in the Scope of Work and include a copy of the Iowa certified groundwater professional’s current certificate. In addition, the Respondent must provide: (2) a list of all personnel assigned to the project and what they will do; (3) an organizational chart showing the staffing and lines of authority for the personnel to be used; and (4) a resume including references and detailing educational qualifications and previous work assignments as may relate to the RFP for all personnel assigned to the project.

**Exhibit 12C: Location, Equipment and Facilities.** (Please mark this section of your technical proposal as “Location, Equipment, and Facilities”.) The Respondent must provide a list of the geographic location of (1) personnel, (2) equipment, (3) state certified lab conducting analytical work, (4) and facilities needed for the successful accomplishment of work.

**Exhibit 12D: Experience and Reliability of the Personnel Responsible for the Project.** (Please mark this section of your technical proposal as “Experience and Reliability of Personnel Responsible for the Project”.) The proposal must contain the following information on the Respondent, as well as on any subcontractors to be used.

Experience and reliability of the personnel identified in the “Expertise and Reliability of Personnel Responsible for the Project” is considered in the evaluation process. Therefore, the Respondent is advised to submit any information which documents successful and reliable experience of these personnel in past performances, especially those performances related to DNR’s applicable rules and guidance.

The Respondent must provide the following information related to at least three and not more than five contracts recently completed by the office and personnel who will carry out the terms of this contract. The completed contracts must include a broad range of LUST activities, including closure, Tier 1 and Tier 2 assessments, CADR’s, Free Product Recovery Reports, and SMR’s.

- Registration No.
- LUST No.
- Name, address, and telephone number of Contractor and a contact person who may be contacted for verification of all data submitted.
- Date and cost of contract.
- A brief, written description of the specific services performed and requirements thereof.
- Number of time extensions requested and was the project completed as scheduled.

**Exhibit 12F: Experience of the Firm**

The Respondent must provide the following information regarding its experience:

- Number of years in business.
- Number of years of experience with providing the types of services sought by the RFP.
- A list of all goods and/or services similar to those sought by this RFP that the Respondent has provided to other businesses or governmental entities.

- Letters of reference from three (3) previous or current customers or clients knowledgeable of the Respondent's performance in providing goods and/or services similar to the goods and/or services described in this RFP and a contact person and telephone number for each reference.

### **Exhibit 13 – Performance-Based Criteria**

Performance-based measures are required to be included in any State contract pursuant with Iowa Code section 8.47 (1) (Iowa Supp. 2001) (2001 Iowa Acts, House file 687, section 5).

- Describe any performance-based incentives and disincentives that the Respondent would propose including in the resulting contract.
- Who assesses/ inspects and reports subpar performance?
- How are they measured?
- How will they be tracked?
- How much should they be (monetarily)?
- What results are shared and how often?

### **3.3 Cost Proposal**

The Respondent shall prepare and submit a Cost Proposal which shall include the Contractor's Schedule of Costs and Fees for typical environmental work that may be associated with the services described in this RFP or those services not identified in this RFP but which may be necessary for completion of the contract requirements. The schedule shall include a listing of standard rates and reimbursable expenses or fees that are expected to be paid by the Board. These are all subject to review, negotiation and a maximum, as agreed. The Schedule of Costs and Fees will be used as a starting point for Service Agreement negotiations.

Clarification of information submitted or additional comment requests based on the scope of work will be the responsibility of the Contractor without additional compensation. All tasks that require the Contractor to obtain permits, licenses or other authorization as necessary will be the responsibility of the Contractor. The Department will obtain access to a selected site to perform the requested assessment and corrective action activities; the Contractor will be asked to secure access to off-site properties as necessary. The Respondent warrants all activities will comply with Department and industry standards.

#### **3.3.1 General Pricing**

Work on each assigned project will be performed on a task specific basis, and a total "not to exceed" limit. Pricing for any additional work, if requested, will be based on the Contractor's Schedule of Costs and Fees and general pricing as presented on Attachment #6-Cost Proposal, subject to review, negotiation and a maximum, as agreed upon by both parties.

The prices submitted on Attachment #6 are a partial listing of those services anticipated necessary to complete the scope of work for this RFP. Your proposal will be evaluated per Section 6 of this RFP based upon the rates provided. Unit rates will be applied to the number of samples, borings, wells, and soil/gas points, etc., necessary. Your cost proposal must include all services necessary to satisfy the contract requirements. For purposes of evaluation, each bidder should note the following costs in their proposal:

- 1) Tank Closure Costs: Includes mobilization/demobilization costs, all equipment, staff time, all required permits, notifications, and utility locates, tank closure, piping closure, disposal of residues and rinsates for cleaning, purging, removal, disposal, vapor analysis, backfill and compaction, and surface restoration, on a tank size basis. For closure in place, also include notification of appropriate fire prevention departments and flowable mortar or concrete costs.
- 2) Disposal Costs:
  - a. Tank contents. Includes costs to remove, containerize if necessary, and properly dispose of contents of tank, not including rinsate, on a per gallon basis.
  - b. Contaminated backfill. Includes all costs associated with removal, hauling, and disposal/treatment of all contaminated soils required to be removed at time of tank closure and/or

as part of corrective action, including all field testing, supervision, and reporting requirements, on a cubic yard basis.

- 3) Report Preparation Costs - General: Includes all staff and supervisory time to collect, review and assimilate information into necessary reports to comply with requirements of 567 IAC 135 and Department guidance documents. Costs must include services to address all sources, chemicals of concern, receptors, pathway evaluations, regulatory communications, mapping and evaluation of data. A minimum of three (3) copies of each report will be required to be submitted in a hardcopy format.
- 4) Mobilizations: Includes all costs to mobilize personnel to a site for field activities including receptor surveys, sampling activities, and other activities as may be requested by the Department and Board.
- 5) Receptor Surveys: Includes all technical and supervisory staff and equipment necessary to conduct telephonic, computer and field surveys, analysis, sampling, monitoring, and inspections sufficient to identify and evaluate each potential or actual receptor of concern in a project area.
- 6) Pathway Evaluation Costs: Includes all technical and supervisory staff and equipment necessary to conduct field surveys, analysis, sampling, monitoring, and inspections sufficient to evaluate each pathway and all receptors on a per pathway basis.
- 7) Borings: Includes all technical and supervisor staff and equipment to properly install, log, sample and abandon each soil or rock boring, including obtaining permits, utility locates, accurate surface and groundwater elevation surveys, appropriate cuttings disposal and surface restoration, on a per boring basis, assuming 25 ft. depth and a per foot basis for depths greater than 25 ft.
- 8) Monitoring Wells: Includes all technical and supervisory staff and equipment to properly install a boring and convert said boring into a monitoring well, including the proper disposal of soil cuttings, completion of monitoring well construction diagrams documenting well construction, static water level, well development, proper disposal of development and purge water, soil sample collection, and a weather sealed locking cap, on a per well basis, assuming a 25 ft. depth and a per foot basis for depths greater than 25 ft.
- 9) Soil & Groundwater Sampling: Includes all technical and supervisory staff and equipment to properly measure soil sampling depths, static water levels, purge wells and dispose of purge water, take necessary samples, including QA/QC, shipping, and conduct necessary analytical measurements. Analytical analyses may include Iowa Methods OA-1, OA-1 with MTBE, and OA-2.
- 10) Sampling from Water Lines, Drinking Water Wells or Non-drinking Water Wells: Includes all technical and supervisory staff and equipment to access receptor, measure static water levels, purge wells and dispose of purge water, take necessary samples, including QA/QC, shipping, and conduct necessary analytical measurements. Analytical analyses may include Iowa Methods OA-1, OA-1 with MTBE, and OA-2.
- 11) Soil Gas Points: Includes all technical and supervisory staff and equipment necessary to properly install a 10 foot deep soil gas well, including obtaining permits, site access, and utility locates on a per well basis.
- 12) Soil Gas Sample: Includes all technical and supervisory staff and equipment to properly obtain soil gas samples, including QA/QC, shipping, and conduct necessary analytical measurements, per sample.
- 13) Hydraulic Conductivity Testing: Includes all technical and supervisory staff and equipment to properly determine the hydraulic conductivity of the subsurface material in accordance with

Department RBCA guidance, on a per well basis.

- 14) Material and Equipment: Materials to be acquired for the performance of this work must be identified and priced to a reasonable level of detail. Equipment to be used must also be identified, and if use charges are to be assessed against the Board, the age and condition of the equipment must be described.

The agreed final cost of each assigned project will be the firm fixed cost for the project. Should the Board, Department or Contractor request additional work, the Board, prior to initiation of the activity must give change order authorization in writing. Prices as used herein shall fix the level of additional compensation that will be paid for the duration of the contract. Only additions confirmed by a pre-approved written change order will be allowed.

All costs, including subcontractors, independent contractors or other parties providing service or products required by the Scope of Work, shall be included.

**The State has established rules for limitations on reimbursement expenses.** Please reference Department of Administrative Services - State Accounting Enterprise Procedure 210-245 (accessible on the internet) for limits on travel expenses.

The Contractor shall without additional compensation, correct or revise any errors, omissions or other deficiencies in the Contractor's designs, drawings, specifications, and reports if deemed necessary by Department or the Board to satisfactorily complete each submitted project report.



## SECTION 4      SPECIFICATIONS

### 4.1      **Overview**

The successful Contractor shall provide the goods and/or services to the State in accordance with the specifications and technical specifications as provided in this Section. The Respondent shall address each specification in this Section and indicate whether or not it will comply with the specification. If the context requires more than a yes or no answer or the section specifically indicates, Respondent shall explain how it will comply with the specification. Proposals must address each specification. Merely repeating the specifications may be considered non-responsive and may disqualify the Respondent. Proposals must identify any deviations from the specifications of this RFP or specifications the Respondent cannot satisfy. If the Respondent deviates from or cannot satisfy the specification (s) of this section, the Agency may reject the Proposal.

### 4.2      **Mandatory Specifications**

All items listed in this section are Mandatory Specifications. Respondents must indicate either “yes” or “no” to each specification in their Proposals and provide an explanation as to how the specification is met. By indicating “yes” a Respondent agrees that it shall comply with that specification throughout the full term of the Contract, if the Respondent is successful. In addition, if specified by the specifications or if the context otherwise requires, the Respondent shall provide references and/or supportive materials to verify the Respondent’s compliance with the specification. The Agency shall have the right to determine whether the supportive information and materials submitted by the Respondent demonstrate that the Respondent will be able to comply with the Mandatory Specifications. If the Agency determines the responses and supportive materials do not demonstrate the Supplier will be able to comply with the Mandatory Specifications, the Agency may reject the Proposal.

**4.2.1**      Must be able to provide Service identified under Section 5 - Scope of Work / Requirements.

#### **4.2.2      Personnel - Knowledge, Abilities, Skills, and Personal Characteristics**

The Contractor must provide key personnel and these individuals must have the following qualifications to perform the duties of the RFP:

- Knowledge of Department methods and procedures for investigation and evaluation of leaking UST sites (reference Iowa Administrative Code 567 – Chapter 135).
- Knowledge of petroleum products and their environmental interactions and persistence, and the toxic or hazardous properties of chemicals likely to be encountered.
- Knowledge of remedial technologies and methods capable of removing petroleum constituents from soil and groundwater.
- Knowledge of the installation and operation of mechanical in-situ remediation systems and free product recovery systems.
- Ability to apply knowledge of scientific principles to environmental problems.
- Ability to evaluate the feasibility of selected corrective action alternatives and project long-term costs associated with those technologies.

#### **4.2.3      Education, Experience and Special Requirements**

The Respondent must have on its staff at least one (1) person who is a certified Iowa groundwater professional, with an educational background or strong experience (more than 5 years) in environmental assessment and remediation projects. Education in Hydrogeology or certification as a PE or EIT is a plus. The Respondent must confirm that all field personnel meet minimum OSHA training requirements for the work that is to be performed.

An Iowa Certified Groundwater Professional (CGWP) is required to be on the Contractor’s staff as a key person and is expected to complete work or provide direct oversight of projects under this contract. Failure to maintain a CGWP on staff will result in cancellation of any remaining portion of the contract.

## SECTION 5      SCOPE OF WORK / REQUIREMENTS

### 5.1      Overview

The Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (Board) in conjunction with the Iowa Department of Natural Resources (Department) invite environmental consulting firms to submit a proposal to provide, on an as-needed basis, corrective action related activities at underground storage tank (UST) sites where the DNR has determined corrective action is needed and either there is no responsible party able to pay for the corrective action or the responsible party is recalcitrant in undertaking the needed corrective action or UST system removal. Services provided by Contractors will be limited to ‘corrective action’ activities as defined in Iowa Code 455G.2 and may include site checks, UST closures, Tier 1 and Tier 2 RBCA investigations, site monitoring reports, monitoring well closures, and corrective action addressing emergency situations. Additional services may be provided at the Board’s discretion to one or more of the selected UST sites.

### 5.2      Scope of Work / Services to be Provided

The Board and Department will identify project sites on an as-needed basis and will in conjunction with a contractor develop a site-specific scope of services to be performed for a specific project site. Technical information concerning the project sites will be available at the Department’s Record Center, Wallace State Office Building, 502 East 9<sup>th</sup> Street, Des Moines (5<sup>th</sup> floor). Tasks performed must be completed in accordance with Department regulations. All activities must comply with applicable Department rules and guidelines as provided in 567 –134 and 135 of the Iowa Administrative Code. Guidance documents and technical advisories for the Department of Natural Resources can be found at: <http://www.iowadnr.gov/Environmental-Protection/Land-Quality/Underground-Storage-Tanks>

Work tasks under this contract may include, but are not limited to:

- Site Checks
- Limited Tier 1, Tier 2, and Tier 3 RBCA Activities
- Site Monitoring Activities
- Corrective Action Design Development and Implementation
- Free Product Assessment and Recovery
- Monitoring Well Installation, Repair and Closure
- Pursuit of a No Further Action certificate
- Multi-Media Sampling and Analytical Testing
- Petroleum release ‘forensic’ analyses
- Record Searches

The scope of work and required completion schedules will vary with each project assignment. The scope of work may include a request a Contractor use direct-push technology to install sampling points at an assigned project site. The duration of each assignment will vary depending on the complexity of the individual project. The Contractor selected for an assignment shall be prepared to complete all work required in accordance with Federal, State, and local requirements and obtain Board approvals and permits, as necessary, and in a timely manner.

The tasks to be performed must be supervised by an Iowa Certified Groundwater Professional (CGWP). The contractor must comply with applicable DNR rules and the most recent guidelines as identified in the DNR documents entitled “Underground Storage Tank Closure Guidance”; “Tier 1 Guidance”; “Tier 2 Site Cleanup Report Guidance”; and all RBCA updates and web postings.

The major tasks the contractor will be expected to perform during the contract are as follows:

#### 5.2.1      Site Plan Development

The Contractor shall be responsible to review available DNR file information to formulate a plan for activities needed to bring the site to a closure in an expeditious manner. Contractor shall also be responsible for maintaining a safe job site with operational employees thoroughly knowledgeable and properly trained in hazards associated with working near USTs including during permanent closure of USTs. At a minimum this would include:

- Compliance with OSHA Health and Safety Standards - 29 CFR 1926/1910.
- Compliance with federal and state regulations governing the proper storage, removal, transportation, and disposal of hazardous materials (liquids/sludges).
- Compliance with state regulations which make it obligatory to report the release of petroleum products or hazardous materials.
- Develop site safety plan and make it available for review by operational employees.
- Iowa One Call utility notification procedures and requirements

### 5.2.2 Quality Assurance Project Plans

The contractor shall develop a quality assurance plan that documents the type and quality of the data needed for environmental decisions and describe the methods for collecting and assessing those data. The quality assurance project plan must be available for review by DNR/Board upon request.

Guidance for preparation and plan requirements may be found:

EPA Guidance -- <http://www.epa.gov/quality/qs-docs/g5-final.pdf>

EPA Requirements — <http://www.epa.gov/quality/qs-docs/r5-final.pdf>

### 5.2.3 UST Closure

Tank/Piping Removal. Complete the permanent closure of regulated USTs in compliance with DNR rules and guidance. To obtain a copy of this document from the internet, use the following internet address: <http://www.iowadnr.gov/Environmental-Protection/Land-Quality/Underground-Storage-Tanks/UST-Forms>

- Confirm site access (DNR staff will negotiate and obtain Right of Entry and Indemnity Agreements from property owners).
- Notify DNR 14 days prior to closure activities beginning. Provide notification of intended UST closure activity by submitting DNR Form 542-1308 “Notification of Closure/Change-in-Service” to the DNR at least 10 days before closure activities begin. Secure local permits and notify local fire prevention departments. Conduct initial site work.
- Provide oral confirmation of closure date to the DNR field office 24 hours prior to actual closure to confirm the removal date.
- Perform UST closure activities including proper removal and disposal of liquids and residues from the UST system; disconnect and remove all tank and piping fixtures; purge, clean, remove and dispose of the UST and piping; conduct organic vapor analysis and soil and groundwater sampling (Sampling activity must be supervised by a certified groundwater professional.); ship samples to an Iowa certified laboratory within 72 hours of collection; notify DNR if contamination is found; backfill and compact tank pit with inert clay/sand mixture, sand/bentonite mixture, or comparable materials which will allow adequate compaction of reduced settlement (sand alone is not allowable); plug all temporary monitoring wells; restoration of surface (Contract will not cover the replacement of concrete or asphalt. Class A road stone may be used to resurface.).
- Submit a copy of the closure confirmation report within 45 days of the tank and/or piping removal.

Tank/Piping Filling in Place. Complete the permanent closure of regulated USTs in compliance with DNR rules and guidance. To obtain a copy of this document from the internet, use the following internet address: <http://www.iowadnr.gov/Environmental-Protection/Land-Quality/Underground-Storage-Tanks/UST-Forms>

- UST systems must be physically impossible to remove or impair major structures before the DNR approves “filling in place” activities. Piping should be removed if possible or completely filled with mortar or concrete.
- Notify DNR 14 days prior to closure activities beginning. Provide notification of intended UST closure activity by submitting DNR Form 542-1308, “Notification of Closure/Change in Services,” before closure activities begin. Secure local permits and notify fire prevention departments.
- Provide oral confirmation of closure activities to the DNR field office 24 hours prior to actual sampling or filling in place procedures.

- Properly remove and dispose of liquids and residues from the UST system; disconnect and remove all tank and piping fixtures; purge and clean the UST; conduct sampling activity of soil and groundwater (Sampling activity must be supervised by a certified groundwater professional.); ship samples to an Iowa certified laboratory within 72 hours of collection; notify DNR if contamination is found; if approved by DNR, fill tank with inert material; plug all temporary monitoring wells; restoration of surface (contract will not cover the replacement of concrete or asphalt; Class A stone may be used to resurface.).
- Submit closure report within 45 days of filling in place.

#### **5.2.4 Tier 1 Site Assessment**

These activities will be completed only when directed by DNR and costs are pre-approved by the Board. (See DNR document “Tier 1 Guidance”). Copies of the Tier 1 Guidance can be obtained by utilizing the following internet address: <http://www.iowadnr.gov/Environmental-Protection/Land-Quality/Underground-Storage-Tanks/Leaking-Underground-Tanks/LUST-Site-Assessment/Tier-1>

- Complete Tier 1 field evaluation and submit a report to the DNR in accordance with Chapter 567--135.9(455B), Tier 1 site assessment policy and procedure.

#### **5.2.5 Tier 2 Assessment**

These activities will be completed only when directed by DNR and costs are pre-approved by the Board. (See DNR document “Tier 2 Site Cleanup Report Guidance” dated October 1998 and subsequent rule changes) Copies of the Tier 2 Guidance can be obtained by utilizing the following internet address: <http://www.iowadnr.gov/Environmental-Protection/Land-Quality/Underground-Storage-Tanks/Leaking-Underground-Tanks/LUST-Site-Assessment/Tier-2>

- Complete Tier 2 site assessment and submit a report to the DNR in accordance with Chapter 567--135.10(455B), Tier 2 site assessment policy and procedure.

#### **5.2.6 Expedited Corrective Action**

These activities will be completed only when directed by DNR and costs are pre-approved by the Board. These activities may be completed under a separate contract.

##### *Expedited Corrective Action*

- Complete expedited corrective action activities when appropriate in accordance with Chapter 567--135.12(11).

##### *Free Product Recovery*

- Conduct free product recovery and reporting activities when appropriate in accordance with Chapter 567--135.7(4)
- Initiate free product removal, assess the extent of product present, and submit a Free Product Recovery Assessment Report.

#### **5.2.7 Site Monitoring**

These activities will be completed only when directed by DNR and costs are pre-approved by the Board.

- Complete site monitoring activities in accordance with Chapter 567--135.8.
- Conduct sample analyses and submit a Site Monitoring Report.

#### **5.2.8 No Further Action Certificate**

Contractor shall conduct all activities to obtain and file No Further Action Certificates as directed by DNR. Contractor shall be responsible for properly plugging all monitoring wells and vapor wells, obtaining proper legal description, obtaining No Further Action Certificate, and filing the certificate with the appropriate county recorder’s office.

### **5.3 Schedules**

Upon submittal of the signed contract, the DNR will provide the Board with the location of sites where UST closures, RBCA assessments or limited corrective actions are to be conducted. The DNR will obtain site access for all sites before the Contractor initiates any activities. Additional sites will be metered into the process as necessary.

There is no defined schedule for the work to be assigned or completed and the Contractor must remain flexible and tolerant of change. Services can vary significantly from month to month. In some months little or no work will be required. However, the Contractor must be available to provide professional and field services without delay when requested to do so by the Board. As sites are identified, site assignments will be at the sole discretion of the Board.

### **5.4 Status Reports**

The contractor will be required to submit an electronic Status Reports by the 5<sup>th</sup> day of each month during the contract period. The reports shall include information regarding each specific site included in the Project, the status of budgets and work completed or pending during the past month.

<b>SECTION 6      EVALUATION AND SELECTION</b>
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**6.1 Introduction**

This section describes the evaluation process that will be used to determine which Proposal provides the greatest benefit to the State. Agency will not necessarily award the Contract to the Contractor offering the lowest cost to the Agency. Instead, the Agency will award to the Contractor whose Responsive Proposal the Agency believes will provide the best value to the State.

**6.2 Evaluation Committee**

The Agency will use an evaluation committee to conduct a comprehensive, fair, and impartial evaluation of Proposals received in response to this RFP. The evaluation committee will recommend an award based on the results of their evaluation to the Agency or to such other person or entity that must approve the recommendation.

**6.3 Scoring Breakdown**

Technical Proposal	700
Cost Proposal	300
Total	1000

**6.4 Technical Proposal Evaluation and Scoring**

All Technical Proposals will be evaluated to determine if they comply with the Mandatory Specifications. The evaluation committee will fully evaluate and score all Responsive Proposals submitted by Responsible Respondents in accordance with this Section. In addition to other RFP requirements, to be deemed a Responsive Proposal, the Proposal must:

- Answer “Yes” to all parts of Section 4 and include supportive materials as required to demonstrate the Respondent will be able to comply with the Mandatory Specifications in that section and
- Obtain the minimum score of 490 points (70%) of the available 700 points for the Technical Proposal.

An addendum identifying the point value assigned to specific Section 3 Exhibits (Technical Proposal) will be posted prior to opening submitted proposals.

**6.5 Tied Bid and Preferences**

**6.5.1** An award shall be determined by a drawing when responses are received that are equal in all respects and tied in price. Whenever it is practical to do so, the drawing will be held in the presence of the contractors who are tied in price. Otherwise the drawing will be made in front of at least three non-interested parties. All drawings shall be documented.

**6.5.2** Notwithstanding the foregoing, if a tied bid involves an Iowa-based contractor or products produced within the State of Iowa and a contractor based or products produced outside the State of Iowa, the Iowa contractor will receive preference. If a tied bid involves one or more Iowa contractors and one or more contractors outside the state of Iowa, a drawing will be held among the Iowa contractors only.

**6.5.3** In the event of a tied bid between Iowa contractors, the Agency shall contact the Iowa Employer Support of the Guard and Reserve (ESGR) committee for confirmation and verification as to whether the contractors have complied with ESGR standards. Preference, in the case of a tied bid, shall be given to Iowa contractors complying with ESGR standards.

**6.5.4** Second preference in tied bids will be given to contractors based in the United States or products produced in the United States over contractors based or products produced outside the United States.

**6.5.5** Preferences required by applicable statute or rule shall also be applied, where appropriate.

## 6.6 Cost Proposal Scoring

After the Technical Proposals are evaluated and scored, the Cost Proposals will be opened and scored.

To assist the agency in evaluating, Cost Proposals may be evaluated and points awarded as follows. The Cost Proposals will remain sealed during the evaluation of the Technical Proposal and any Bidder Demonstration. Only prospective contractors that meet all of the required features will be considered during the cost evaluation phase of the review process. The compliant prospective contractor's technical points will be added to the cost points, to obtain the total points awarded for the proposal. The Cost Proposals will be ranked from cheapest to the most expensive. The cheapest shall receive the maximum number of points available in this section. To determine the number of points to be awarded all other Cost Proposals, the cheapest bid will be used in all cases as the numerator. Each of the other bids will be used as the denominator. The percentage will then be multiplied by the maximum number of points and the resulting number will be the cost points awarded to other compliant contractors. Percentages and points will be rounded to the nearest whole value.

Example:

Contractor A quotes \$35,000; Contractor B quotes \$45,000 and Contractor C quotes \$65,000.

Contractor A:  $\frac{\$35,000}{\$35,000} =$  receives 100% of available points on cost.

Contractor B:  $\frac{\$35,000}{\$45,000} =$  receives 78% of available points on cost.

Contractor C:  $\frac{\$35,000}{\$65,000} =$  receives 54% of available points on cost.

<b>SECTION 7      CONTRACTUAL TERMS AND CONDITIONS</b>
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**7.1 Contract Terms and Conditions**

The Contract that the Agency expects to award as a result of this RFP shall comprise the specifications, terms and conditions of the RFP, written clarifications or changes made in accordance with the provisions of the RFP, the General Terms and Conditions, the offer of the successful Contractor contained in its Proposal, and any other terms deemed necessary by the Agency. No objection or amendment by a Contractor to the provisions or terms and conditions of the RFP or the General Terms and Conditions shall be incorporated into the Contract unless Agency has explicitly accepted the Contractor's objection or amendment in writing.

The General Terms and Conditions will be incorporated into the Contract. The General Terms and Conditions may be supplemented at the time of contract execution and are provided to enable Contractors to better evaluate the costs associated with the RFP specifications and the Contract. All costs associated with complying with these specifications should be included in any pricing quoted by the Contractor.

**By submitting a Proposal, Contractor acknowledges its acceptance of the terms and conditions of the RFP and the General Terms and Conditions without change except as otherwise expressly stated in its Proposal. If the Contractor takes exception to a provision, it must identify it by page and section number, state the reason for the exception, and set forth in its Proposal the specific RFP or General Terms and Conditions language it proposes to include in place of the provision. If Contractor's exceptions or proposed responses materially alter the RFP, or if the Contractor submits its own terms and conditions or otherwise fails to follow the process described herein, the Agency may reject the Proposal, in its sole discretion.**

The Agency reserves the right to either award a Contract without further negotiation with the successful Contractor or to negotiate Contract terms with the successful Contractor if the best interests of the State would be served.

**7.2 Attached Agreement**

The Contract will require the successful Contractor to agree to terms contained in RFP Attachment #7.

**7.3 Contract Length**

The term of the Contract will begin and end on the dates indicated on the RFP cover sheet. The Agency shall have the sole option to renew the Contract upon the same or more favorable terms and conditions for up to the number of annual extensions identified on the RFP cover sheet.

**7.4 Insurance**

The Contract will require the successful Contractor to maintain insurance coverage(s) in accordance with the insurance provisions of terms and conditions contained in Attachment #7 and of the type and in the minimum amounts set forth below, unless otherwise required by the Agency.



<b>Type of Insurance</b>	<b>LIMIT</b>	<b>AMOUNT</b>
General Liability (including contractual liability) written on an occurrence basis	General Aggregate Products – Comp/Op Aggregate Personal injury Each Occurrence	\$2 million  \$1 Million \$1 Million \$1 Million
Automobile Liability (including contractual liability) written on an occurrence basis	Combined single limit	\$1 Million
Excess Liability, umbrella form	Each Occurrence Aggregate	\$1 Million \$1 Million
Errors and Omissions Insurance	Each Occurrence	\$1 Million
Property Damage	Each Occurrence Aggregate	\$1 Million \$1 Million
Workers Compensation and Employer Liability	As Required by Iowa law	As required by Iowa law

### 7.5 **Regulatory Compliance**

The Respondent shall ensure all actions comply with all applicable laws and regulations, including, without limitation, Iowa Department of Natural Resources rules and guidelines in pursuit of a regulatory closure in accordance with Iowa Administrative Code 567 – Chapter 135.

## Attachment #1 Certification Letter

(Date) \_\_\_\_\_

Steve Oberbroeckling, Issuing Officer  
Iowa Department of Administrative Services  
Hoover State Office Building, Level 3  
1305 East Walnut Street  
Des Moines, IA 50319-0105

Re: Request for Proposal Number 0918005035 - PROPOSAL CERTIFICATIONS

Dear Steve:

I certify that the contents of the Proposal submitted on behalf of **(Name of Respondent)** in response to **Iowa Department of Administrative Services** for Request for Proposal Number 0918005035 for UST – Tank Closure Contract Project are true and accurate. I also certify that Respondent has not knowingly made any false statements in its Proposal.

### **Certification of Independence**

I certify that I am a representative of Respondent expressly authorized to make the following certifications on behalf of Respondent. By submitting a Proposal in response to the, I certify on behalf of the Respondent the following:

### **Certification of Independence**

I certify that I am a representative of Contractor expressly authorized to make the following certifications in behalf of Contractor. By submitting a Proposal in response to the RFP, I certify in behalf of the Contractor the following:

1. The Proposal has been developed independently, without consultation, communication or agreement with any employee or consultant to the Agency or with any person serving as a member of the evaluation committee.
2. The Proposal has been developed independently, without consultation, communication or agreement with any other contractor or parties for the purpose of restricting competition.
3. Unless otherwise required by law, the information found in the Proposal has not been and will not be knowingly disclosed, directly or indirectly prior to Agency's issuance of the Notice of Intent to Award the contract.
4. No attempt has been made or will be made by Contractor to induce any other contractor to submit or not to submit a Proposal for the purpose of restricting competition.
5. No relationship exists or will exist during the contract period between Contractor and the Agency or any other State agency that interferes with fair competition or constitutes a conflict of interest.

### **Certification Regarding Debarment**

6. I certify that, to the best of my knowledge, neither Contractor nor any of its principals: (a) are presently or have been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal Agency or State Agency; (b) have within a three year period preceding this Proposal been convicted of, or had a civil judgment rendered against them for commission of fraud, a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of antitrust statutes; commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property; (c) are presently indicted for or criminally or civilly charged by a government entity (federal, state, or local) with the commission of any of the offenses enumerated in (b) of this certification; and (d) have not within a three year period preceding this Proposal had one or more public transactions (federal, state, or local) terminated for cause.

This certification is a material representation of fact upon which the Agency has relied upon when this transaction was entered into. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to other remedies available, the Agency may pursue available remedies including suspension, debarment, or termination of the contract.

**Certification Regarding Registration, Collection, and Remission of Sales and Use Tax**

7. Pursuant to *Iowa Code sections 423.2(10) and 423.5(4) (2016)* a retailer in Iowa or a retailer maintaining a business in Iowa that enters into a contract with a state agency must register, collect, and remit Iowa sales tax and Iowa use tax levied under *Iowa Code chapter 423* on all sales of tangible personal property and enumerated services. The Act also requires Contractors to certify their compliance with sales tax registration, collection, and remission requirements and provides potential consequences if the certification is false or fraudulent.

By submitting a Proposal in response to the (RFP), the Contractor certifies the following: (check the applicable box)

- Contractor is registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by *Iowa Code Chapter 423*; or
- Contractor is not a “retailer” or a “retailer maintaining a place of business in this state” as those terms are defined in *Iowa Code subsections 423.1(47) and (48)(2016)*.

Contractor also acknowledges that the Agency may declare the Contractor’s Proposal or resulting contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract in addition to other remedies available to Agency.

Sincerely,

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name and Title of Authorized Representative Date**

**Attachment #2 Authorization to Release Information Letter**

(Date) \_\_\_\_\_

Steve Oberbroeckling, Issuing Officer  
Iowa Department of Administrative Services  
Hoover State Office Building, Level 3  
1305 East Walnut Street  
Des Moines, IA 50319-0105

Re: Request for Proposal Number 0918005035 - AUTHORIZATION TO RELEASE INFORMATION

Dear Issuing Officer:

**(Name of Respondent)** hereby authorizes the **Iowa Department of Administrative Services** ("Agency") or a member of the Evaluation Committee to obtain information regarding its performance on other contracts, agreements or other business arrangements, its business reputation, and any other matter pertinent to evaluation and the selection of a successful Respondent in response to Request for Proposal Number 0918005035.

The Respondent acknowledges that it may not agree with the information and opinions given by such person or entity in response to a reference request. The Respondent acknowledges that the information and opinions given by such person or entity may hurt its chances to receive contract awards from the State or may otherwise hurt its reputation or operations. The Respondent is willing to take that risk.

The Respondent hereby releases, acquits and forever discharges the State of Iowa, the Agency, their officers, directors, employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the undersigned that it may have or ever claim to have relating to information, data, opinions, and references obtained by the Agency or the Evaluation Committee in the evaluation and selection of a successful Respondent in response to the .

The Respondent authorizes representatives of the Agency or the Evaluation Committee to contact any and all of the persons, entities, and references which are, directly or indirectly, listed, submitted, or referenced in the Respondent's Proposal submitted in response to.

The Respondent further authorizes any and all persons, and entities to provide information, data, and opinions with regard to its performance under any contract, agreement, or other business arrangement, its ability to perform, business reputation, and any other matter pertinent to the evaluation of the Respondent's Proposal. The Respondent hereby releases, acquits and forever discharges any such person or entity and their officers, directors, employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the Respondent that it may have or ever claim to have relating to information, data, opinions, and references supplied to the Agency or the Evaluation Committee in the evaluation and selection of a successful Respondent in response to .

A photocopy or facsimile of this signed Authorization is as valid as an original.  
Sincerely,

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name and Title of Authorized Representative Date**

Attachment #3 Form 22 – Request for Confidentiality

**CONTRACTOR NOTE: SUBMISSION OF THIS FORM 22 IS REQUIRED**

**THIS FORM 22 (FORM) MUST BE COMPLETED AND INCLUDED WITH YOUR RESPONSE (PROPOSAL) TO THE REQUEST FOR PROPOSAL (RFP). THE FORM IS REQUIRED WHETHER THE PROPOSAL DOES OR DOES NOT CONTAIN INFORMATION FOR WHICH CONFIDENTIAL TREATMENT WILL BE REQUESTED.**

**FAILURE TO SUBMIT A COMPLETED FORM WILL RESULT IN THE PROPOSAL CONSIDERED NON-RESPONSIVE AND ELIMINATED FROM EVALUATION.**

**I. Confidential Treatment Is Not Requested**

A request for confidential treatment of information contained in our Proposal is not submitted.

_____	_____	_____
Company	RFP Number	RFP Title
_____	_____	_____
Signature	Title	Date

\*\*\*\*\*

**II. Confidential Treatment Is Requested**

***The below information is to be completed and signed ONLY if Contractor is requesting confidential treatment of any information submitted in its Proposal.***

Per the paragraph labeled as Public Records and Requests for Confidential Treatment in section 2 of the Request for Proposal (RFP), a Contractor requesting portions of its Proposal be maintained in confidence must complete this form and submit it with its Proposal. Contractors should read and familiarize themselves with chapter 22 of the Iowa Code regarding release of public records before completing this Form. Contractor shall refer to the paragraph labeled as Public Records and Requests for Confidential Treatment in section 2 of the RFP for instructions regarding how to request confidential treatment of portions of its Proposal.

**NOTE:**

- 1 **Completion of this Form is the sole means of requesting confidential treatment.**
- 2 **A CONTRACTOR MAY NOT REQUEST PRICING PROPOSALS BE HELD IN CONFIDENCE.**

Completion of the Form and Agency’s acceptance of Contractor’s submission does not guarantee the agency will grant Contractor’s request for confidentiality. The Agency may reject Contractor’s Proposal entirely in the event Contractor requests confidentiality and does submit a fully completed Form or requests confidentiality for portions of its Proposal that are improper under the RFP.

**To request confidentiality, Contractor must provide the following information:**

- 1  Contractor must conspicuously mark confidential material in its Proposal in accordance with the section titled Public Records and Requests for Confidential Treatment. **Check box when completed.**
- 2 Contractor must specifically identify and list the Proposal section(s) for which it seeks confidentiality and answer the following questions for each section listed:
  - Explain the specific grounds in *Iowa Code Chapter 22* or other applicable law which support treatment of the material as confidential.
  - Justify why the material should be kept in confidence.
  - Explain why disclosure of the material would not be in the best interest of the public.
  - Provide the name, address, telephone, and email for the Contractor’s person authorized to respond to inquiries by the Agency concerning the status of confidential materials.

**Please provide the information in the table below. Contractor may add additional lines if necessary or add additional pages using the same format as the table below.**

RFP Section:	Contractor must cite the specific grounds in <i>Iowa Code Chapter 22</i> or other applicable law which supports treatment of the material as confidential.	Contractor must justify why the material should be kept in confidence.	Contractor must explain why disclosure of the material would not be in the best interest of the public.	Contractor must provide the name, address, telephone, and email for the person at Contractor’s organization authorized to respond to inquiries by the Agency concerning the status of confidential materials.

- 3  Contractor must submit a Public Copy of its Proposal from which the confidential information has been excised. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the Proposal as possible. **Check box when completed.**

This Form must be signed by the individual who signed the Contractor’s Proposal. The Contractor shall place this Form completed and signed in its Proposal immediately following the transmittal letter. A copy of this document shall be placed in all Proposals submitted including the Public Copy.

***\*Failure to provide the information required on this Form may result in rejection of Contractor’s submittal to request confidentiality or rejection of the Proposal as being non-responsive.***

***\*Please note that this Form is to be completed and signed only if you are submitting a request for confidential treatment of any information submitted in your Proposal.***

\_\_\_\_\_  
Company

\_\_\_\_\_  
RFP Number

\_\_\_\_\_  
RFP Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

-----  
**Department of Administrative Services – Central Procurement Bureau Review**  
**(For Agency use only)**

- Contractor's Proposal is rejected as non-compliant because of one or more of the following reasons:
- Contractor's Proposal is rejected due to not submitting a fully completed Form 22 to either request or not request confidential treatment of information.
  - Contractor's Proposal is rejected due to the request to treat the entire response as confidential.
  - Contractor's Proposal is rejected due to the request to treat Proposal pricing as confidential.
  - Contractor requested confidentiality without submitting a ***fully completed*** Form 22.
  - Contractor requested confidentiality and failed to conspicuously mark such material as confidential within its Proposal in accordance with the RFP.
  - Contractor requested confidentiality without submitting a public copy of its Proposal with the confidential information redacted.
  - Contractor requested confidentiality on material in contravention of the RFP.
  - Other: \_\_\_\_\_.
- Contractor's submission is accepted.<sup>1</sup>

\_\_\_\_\_  
Purchasing Agent Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
RFP Number

\_\_\_\_\_  
RFP Title

\_\_\_\_\_  
**NOTE:** Agency's acceptance of Contractor's submission should not be construed as Agency's approval of Contractor's request for confidentiality. Instead, acceptance of Contractor's submission simply means that Agency believes Contractor's Form 22 appears fully completed in accordance with the RFP.

**Attachment #4 Exceptions to Terms and Conditions**

Proposed exceptions should be listed in this in this attachment of contractor’s proposal. Any proposed exceptions should be in a table similar to the one below:

<b>Section #</b>	<b>Original Text Referenced</b>	<b>Proposed Language</b>	<b>Reason for Exception</b>



**Attachment #5 Response Check List**

REFERENCE	RESPONSE INCLUDED	
	Yes	No
<b>Technical Proposal</b>		
One (1) original, three (3) copies of Proposal and One (1) electronic copy on digital media.		
One (1) Public Copy with Confidential Information Excised (If applicable)		
Exhibit 1 – Transmittal Letter		
Exhibit 2 – Executive Summary (If applicable, include Attachment #4)		
Exhibit 3 – Firm Proposal Terms		
Exhibit 4 – Respondent Background Information		
Exhibit 5 – Termination, Litigation, and Debarment		
Exhibit 6 – Acceptance of Terms and Conditions		
Exhibit 7 – Certification Letter (Include Attachment #1)		
Exhibit 8 – Authorization to Release Information (Include Attachment #2)		
Exhibit 9 – Addendums		
Exhibit 10 – Request for Confidentiality (Include Attachment #3)		
Exhibit 11 – Mandatory Specifications		
Exhibit 12 – Work Plan		
Exhibit 12A – Proposed Method of Performance		
Exhibit 12B – Expertise of Personnel Responsible for the Project		
Exhibit 12C – Location, Equipment and Facilities		
Exhibit 12D – Experience and Reliability of the Personnel Responsible for the Project		
Exhibit 12F – Experience of the Firm		
Exhibit 13 – Performance-Based Criteria		
<b>Cost Proposal</b>		
One (1) original, three (3) copies of Proposal and One (1) electronic copy on digital media. (Include Attachment #6 and Tables)		

**Attachment #6**  
**Schedule of Costs and Fees**

**Payment Terms**

Per *Iowa Code § 8A.514* the State of Iowa is allowed sixty (60) days to pay an invoice submitted by a vendor. What discount will you give for payment in 30 days?

**Cost Proposal**

The Contractor shall prepare and submit a Cost Proposal to include the Contractor's Schedule of Costs and Fees for typical environmental work as described in Section 3.3.1 that may be associated with the services described in this RFP or those services not identified in this RFP but which may be necessary for completion of the contract requirements. The schedule shall include a listing of standard rates and reimbursable expenses or fees that are expected to be paid by the Board and based on Net 60 Days Payment Terms. These are all subject to review, negotiation and a maximum, as agreed. The Schedule of Costs and Fees will be used as a starting point for Service Agreement negotiations.

**Attachment #6, TABLE 1: UST CLOSURE COST SUMMARY SHEET**

Provide costs for tank closures. Item 1 unit rates will be assessed for the first two (2) tanks and Item 2 unit rates will be assessed for sites with three (3) or more tanks to be closed at the one site.

1. Tank closure (removal) rates
  - a. Two tanks, less than or equal to 2000 gal. ea. \$ \_\_\_\_\_ per tank
  - b. Two tanks, 2001 to 6,000 gal. ea. \$ \_\_\_\_\_ per tank
  - c. Two tanks, 6,001 to 10,000 gal. ea. \$ \_\_\_\_\_ per tank
  - d. Two tanks, 10,001 to 15,000 gal. ea. \$ \_\_\_\_\_ per tank
  - e. Two tanks greater than 15,000 gal. ea. \$ \_\_\_\_\_ per tank
  
2. Additional tank closure rates

For each tank over the two identified in No. 1:

  - a. Each additional tank less than or equal to 2,000 gal. \$ \_\_\_\_\_ per tank
  - b. Each additional tank 2,001 to 6,000 gal. \$ \_\_\_\_\_ per tank
  - c. Each additional tank 6,001 to 10,000 gal. \$ \_\_\_\_\_ per tank
  - d. Each additional tank 10,001 to 15,000 gal. \$ \_\_\_\_\_ per tank
  - e. Each additional tank greater than 15,000 gal. \$ \_\_\_\_\_ per tank
  
3. Closure sample collection and analysis
  - a. OA-1 soil samples \$ \_\_\_\_\_ per sample
  - b. OA-2 soil samples \$ \_\_\_\_\_ per sample
  - c. OA-1 water samples \$ \_\_\_\_\_ per sample
  - d. OA-2 water samples \$ \_\_\_\_\_ per sample

4. Disposal costs
  - a. Tank contents \$ \_\_\_\_\_ per gallon
  - b. Contaminated backfill \$ \_\_\_\_\_ per cubic yd.
5. Tank closure report \$ \_\_\_\_\_ per report
6. Drill rig mobilization for boring or monitoring well installation \$ \_\_\_\_\_ per mobilization
7. Monitoring well for tank closure sampling (assume 25 ft deep, non-bedrock well) \$ \_\_\_\_\_ per well
8. For Tank/Piping Filling in Place
  - a. Tank preparation cost (including cleaning) \$ \_\_\_\_\_ per tank
  - b. Flowable Mortar for UST Closure in place \$ \_\_\_\_\_ per cu. yard
  - c. Soil borings for tank closure investigation \$ \_\_\_\_\_ per boring

**NOTE: The Cost Summary Sheet includes all expenses to complete closure activities.**

If you are including services not described above, which are necessary to complete closure activities, or any of the services required by the RFP, please detail them, their cost and unit breakdowns here. Do not include in the figures shown above. These will be reviewed should your firm be selected as the Contractor/Consultant.

<u>Service Description</u>	<u>Cost Description</u>	<u>Hours</u>	<u>Unit Rate</u>	<u>Total</u>
----------------------------	-------------------------	--------------	------------------	--------------

\_\_\_\_\_  
 AUTHORIZED SIGNATURE

\_\_\_\_\_  
 DATE

\_\_\_\_\_  
 LEGAL NAME OF FIRM

**Attachment #6, TABLE 2: TIER 1 / TIER 2 / SMR COST SUMMARY SHEET**

1.	<u>Soil borings, 25 ft. deep</u>	\$ _____ per boring
	a. Each additional ft. deeper than 25 ft.	\$ _____ per ft.
2.	<u>Non-bedrock monitoring well @ 25 ft. deep</u>	\$ _____ per well
	a. Each additional ft. deeper than 25 ft.	\$ _____ per ft.
3.	<u>Bedrock well (includes drilling @ 25 ft. deep</u>	\$ _____ per well
	a. Each additional ft. deeper than 25 ft.	\$ _____ per ft.
4.	<u>Soil samples (collection and analyses)</u>	
	a. OA-1 / MTBE samples	\$ _____ per sample
	b. OA-1 samples	\$ _____ per sample
	c. OA-2 sample	\$ _____ per sample
5.	<u>Water samples (collection and analyses)</u>	
	a. OA-1 / MTBE samples	\$ _____ per sample
	b. OA-1 samples	\$ _____ per sample
	c. OA-2 sample	\$ _____ per sample
6.	<u>Receptor Samples (water line / drinking water well / non-drinking water well / surface water body samples – collection and analyses)</u>	
	a. OA-1 / MTBE samples	\$ _____ per sample
	b. OA-1 samples	\$ _____ per sample
	c. OA-2 sample	\$ _____ per sample
7.	<u>Soil gas sampling</u>	
	a. Soil gas sampling point (drill-rig installation)	\$ _____ per point
	b. Soil gas sampling point (push-probe)	\$ _____ per point
	c. Soil gas samples	\$ _____ per sample
8.	<u>Personnel Mobilization including mileage &amp; vehicle</u>	\$ _____ per mobilization
9.	<u>Drill Rig Mobilization including mileage &amp; vehicle for rig and support crew</u>	\$ _____ per mobilization
10.	<u>Tier 1 Report (Original report)</u>	\$ _____ per report
11.	<u>Pathway Evaluation (Tier 2 reporting)</u>	\$ _____ per pathway
12.	<u>Tier 2 report (Original report)</u>	\$ _____ per report
13.	<u>Tier 2 report (Revised report)</u>	\$ _____ per report
14.	<u>SMR report (First report)</u>	\$ _____ per report
15.	<u>SMR report (Subsequent report)</u>	\$ _____ per report

- 16. Off-site access request \$\_\_\_\_\_ per request
- 17. Receptor Survey (Tier 1/Tier 2) \$\_\_\_\_\_ per survey
- 18. Receptor Survey (SMR) \$\_\_\_\_\_ per survey
- 19. Hydraulic Conductivity Testing \$\_\_\_\_\_ per test

**NOTE: The Cost Summary Sheet includes all expenses to complete either Tier 1, Tier 2 or SMR activities.** If you are including services not described above, which are necessary to complete Tier 1, Tier 2 or SMR activities, or any of the services required by the RFP, please detail them, their cost and unit breakdowns here. Do not include in the figures shown above. These will be reviewed should your firm be selected as the Contractor/Consultant.

<u>Service Description</u>	<u>Cost Description</u>	<u>Hours</u>	<u>Total</u>
----------------------------	-------------------------	--------------	--------------

\_\_\_\_\_  
 AUTHORIZED SIGNATURE

\_\_\_\_\_  
 DATE

\_\_\_\_\_  
 LEGAL NAME OF FIRM

**Attachment #6, TABLE 3: FREE PRODUCT RECOVERY & MONITORING WELL CLOSURE COST SUMMARY SHEET**

**FREE PRODUCT RECOVERY COST SUMMARY**

- 1. Mobilization for Free Product Recovery Event or Well Closure \$ \_\_\_\_\_ per event
- 2. Free Product Measurement & Recovery \$ \_\_\_\_\_ per well
- 3. Disposal of Water & Free Product \$ \_\_\_\_\_ per gallon
- 4. Free Product Assessment Report \$ \_\_\_\_\_ per report
- 5. Free Product Recovery Report \$ \_\_\_\_\_ per report

**MONITORING WELL CLOSURE ACTIVITIES**

- 6. Monitoring well abandonment, 25 ft. well \$ \_\_\_\_\_ per well
  - a. Each additional ft. deeper than 25 ft. \$ \_\_\_\_\_ per ft
- 7. Vapor well abandonment \$ \_\_\_\_\_ per well
- 8. Well Abandonment Report / NFA cert request \$ \_\_\_\_\_ per site
- 9. Site Access Request for well closure at NAR sites \$ \_\_\_\_\_ per request
- 10. County Recorder Legal Description & Filing Fee \$ \_\_\_\_\_ per site

**NOTE: The Cost Summary Sheet includes all expenses to complete free product recovery activities and activities associated with the closure of monitoring wells at site classified no action required (NAR).**

If you are including services not described above, which are necessary to complete free product recovery activities, or any of the services required by the RFP, please detail them, their cost and unit breakdowns here. Do not include in the figures shown above. These will be reviewed should your firm be selected as the Contractor/Consultant.

<u>Service Description</u>	<u>Cost Description</u>	<u>Hours</u>	<u>Total</u>
----------------------------	-------------------------	--------------	--------------

\_\_\_\_\_  
 AUTHORIZED SIGNATURE

\_\_\_\_\_  
 DATE

\_\_\_\_\_  
 LEGAL NAME OF FIRM

**Attachment #6, TABLE 4: EXPEDITED CORRECTIVE ACTION COST SUMMARY SHEET**

- 1. Excavation, disposal of soil, and backfill \$ \_\_\_\_\_ per cubic yard
  - a. Excavator mobilization to site \$ \_\_\_\_\_ per event
  - b. Roadstone for excavation resurfacing \$ \_\_\_\_\_ per ton
  - c. Onsite personnel for excavation monitoring \$ \_\_\_\_\_ per hour
- 2. Drinking/non-drinking water well plugging \$ \_\_\_\_\_ per well per foot
- 3. Expedited corrective action report \$ \_\_\_\_\_ per report

**NOTE: The Cost Summary Sheet includes all expenses to complete expedited corrective action activities.**

If you are including services not described above, which are necessary to complete expedited corrective action activities, or any of the services required by the RFP, please detail them, their cost and unit breakdowns here. Do not include in the figures shown above. These will be reviewed should your firm be selected as the Contractor/Consultant.

<u>Service Description</u>	<u>Cost Description</u>	<u>Hours</u>	<u>Total</u>
----------------------------	-------------------------	--------------	--------------

\_\_\_\_\_  
 AUTHORIZED SIGNATURE

\_\_\_\_\_  
 DATE

\_\_\_\_\_  
 LEGAL NAME OF FIRM

**Attachment #7 Sample Agreement**

**CONTRACT**

**FOR**

**ENVIRONMENTAL SUPPORT SERVICES**

**BETWEEN**

**IOWA COMPREHENSIVE PETROLEUM UNDERGROUND  
STORAGE TANK FUND BOARD**

**AND**

-----

**UST 1804-01: UST – Closure Contract Project**

-----

This Contract is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, by and between the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board ("Board"), and \_\_\_\_\_ ("Contractor"), of \_\_\_\_\_

The Board is authorized to enter into this Contract. The State of Iowa has empowered the Board to review and pay for the investigation and corrective action of petroleum releases from underground storage tanks regulated under Subtitle I of the Resource Conservation and Recovery Act (RCRA) not eligible for cleanup under Superfund. This Contract is entered into in furtherance of the performance of the work provided for under Iowa Code Section 455G.9 and subject to 455G.12A. This Contract is entered into pursuant to a 28E Agreement between the Iowa Department of Natural Resources ("DNR") and the Board.

Now, therefore, the Board and Contractor agree to the terms and conditions set forth below.



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SECTION 1.	IDENTITY OF THE PARTIES
SECTION 2.	PURPOSE
SECTION 3.	CONTRACT DURATION
SECTION 4.	DEFINITIONS
SECTION 5.	SCOPE OF SERVICES
SECTION 6.	COMPENSATION
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SECTION 17.	LIMITATION OF LIABILITY
SECTION 18.	WARRANTIES
SECTION 19.	CONTRACT ADMINISTRATION
SECTION 20.	LIQUIDATED DAMAGES
SECTION 21.	EXECUTION

## ATTACHMENTS

EXHIBIT 1 – RFP for UST 1804-01: UST – Closure Contract Project

EXHIBIT 2 – Contractor’s Technical Proposal for UST 1804-01: UST – Closure Contract Project

SCHEDULE 1 – Contractor’s Cost Proposal for UST 1804-01: UST – Closure Contract Project

## SECTION 1. IDENTITY OF THE PARTIES

**1.1** The Board has delegated the administration of this Contract to the Administrator of the Iowa Comprehensive Petroleum Underground Storage Tank Fund Program ("Administrator"). The Administrator is that entity retained by the Board to serve as the Board's representative in managing the UST Fund Program. The current program is administered by Aon Risk Services, Inc. The designated program Administrator is Dale T. Cira. The Administrator's mailing address is Iowa Underground Storage Tank Fund, 2700 Westown Parkway, Suite 320, West Des Moines, IA 50266.

**1.2** ("Contractor"), is organized under the laws of the State of \_\_\_\_\_ and is authorized to do business in the State of Iowa. The Contractor's address is \_\_\_\_\_

## SECTION 2. PURPOSE

**2.1** The purpose of this Request for Proposals (RFP) is to solicit Proposals from qualified service providers to provide, on an as-needed basis, corrective action related activities at underground storage tank (UST) sites where the DNR has determined corrective action is needed and either there is no responsible party able to pay for the corrective action or the responsible party is recalcitrant in undertaking the needed corrective action or UST system removal. Services provided by consultant contracts will be limited to 'corrective action' activities as defined in Iowa Code 455G.2 and may include site checks, UST closures, Tier 1 and Tier 2 RBCA investigations, site monitoring reports, monitoring well closures, and corrective action addressing emergency situations. Additional services may be provided at the Board's discretion to either the selected UST sites.

**2.2** The term "Work" means the services required of the Contractor by the Contract, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Contractor or one or more subcontractors to fulfill the Contractor's obligations under this Contract.

## SECTION 3. DURATION OF CONTRACT

The term of this Contract shall be in effect from \_\_\_\_\_ through \_\_\_\_\_, unless terminated earlier in accordance with the Termination section of this Contract. The Board shall have the option to renew this Contract for up to five additional one (1) year extensions by giving the Contractor written notice of the extension decision at least sixty (60) days prior to the expiration of the initial or renewal term.

## SECTION 4. DEFINITIONS

The following words shall be defined as set forth below:

**"Administrator"** shall mean James R. Gastineau, the UST Fund Administrator.

**"Board"** shall mean the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board

**"Contract"** shall mean all parts of this Contract including, without limitation and by way of example, the first portion of this Contract and the exhibits and attachments to this Contract.

**"Contract Administrator"** shall mean the primary point of contact for the State and the liaison between the Board and the Contractor.

**"Contractor"** shall mean \_\_\_\_\_

**"Department"** or **"DNR"** shall mean the Iowa Department of Natural Resources (DNR)

**"DNR Project Manager"** shall mean the DNR lead environmental specialist providing regulatory oversight to the project.

**"EC"** means environmental covenant

**"IC"** means institutional control

**"Iowa Certified Groundwater Professional"** shall mean a person certified pursuant to Iowa Code section 455B.474(9) and 567-Iowa Administrative Code (IAC) Chapter 134.

**"Project"** shall mean work performed in response to this Contract.

**"Proposal"** means the Respondent's proposal submitted in response to the RFP.

**"Registration Number"** means the number assigned by DNR to a registered underground storage tank site

**"Proposal"** shall mean the response by the Contractor to the RFP No. UST 1804-01: UST – Closure Contract Project, including any attachments, appendices, clarifications, addenda or other writings.

**"RFP"** shall mean Request for Proposal No. UST 1804-01: UST – Closure Contract Project, as issued by the Board on \_\_\_\_\_, including any attachments, appendices, clarifications, addenda or other writings.

**"SMR"** means Site Monitoring Report

**"State"** shall mean the The State of Iowa and Board identified on the Contract Declarations & Execution Page(s)

**“Tank Closure Report”** means a technical report which contains data about the underground storage tank which has been removed, such as date, location and lab analysis results

**“Tier 1”** means Tier 1 assessment resulting in a Tier 1 Report

**“Tier 2”** means Tier 2 assessment resulting in a Tier 2 Site Cleanup Report

**“Tier 3”** means Tier 3 assessment resulting in a Tier 3 Report

**“UST”** means Underground Storage Tank

**Work** means the services required of the Contractor by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Contractor or one or more subcontractors to fulfill the Contractor 's obligations under this Contract.

## **SECTION 5. SCOPE OF SERVICES**

**5.1** The Contractor shall conduct that work assigned for each specific site in accordance with the scope of work described in the RFP dated \_\_\_\_\_, as set forth in Exhibit 1 and the Contractor’s bid dated \_\_\_\_\_, as set forth in Exhibit 2 and made part of this Contract by this reference.

**5.2 Work.** The Work is generally described as those activities to investigate the risks presented by petroleum contamination at a specific site, as assigned by the Board, and may include activities to install additional soil borings and monitoring wells to assess an area of contamination, complete receptor surveys to evaluate risks, develop site specific reports of the activities completed, or RBCA assessment reports to identify receptors at risk. If an unreasonable risk is identified, the Work may include those actions necessary to address the contamination and/or abate the unreasonable risks.

**5.2.1 Work Plan and Budgets.** The Board retains sole discretion to determine the process and criteria for selecting contractors, assigning sites and projects and determining acceptable project costs, unit pricing and other terms and conditions. Project assignment and selection of contractors for specific sites and projects may include but is not limited to direct assignment of sites and projects to the Contractor or may include the solicitation of competitive bids and budgets between contractors who have been awarded contracts under the RFP.

**5.2.2** Following assignment of a site project to the Contractor and prior to initiating any service work at the project site, the Department will provide the relevant background information. The Department, Board, and Contractor will negotiate and discuss the appropriate scope of work for the assigned site. The Contractor will also delineate any perceived special conditions associated with the specific project assignment. The Contractor shall submit a site specific Work Plan and Budget for approval by the Contract Administrator. The Work Plan and Budget shall describe all proposed work tasks and all associated itemized costs based on the approved itemized costs for tasks in the budget. Separate Work Plan and Budgets shall be submitted for each phase of the site project.

**5.2.3** The Contractor’s Work Plan and Budget, cost proposal, and schedule will be used as the starting point for negotiating a specific project assignment Task Order. If a negotiated Task Order, acceptable to Contract Administrator, cannot be reached in a reasonable period of time, then the Contract Administrator will cease negotiation with the selected Contractor and negotiate with another Contractor from the available pool of Contractors. This process will be repeated, if necessary, until a specific project assignment Task Order, acceptable to Contract Administrator, is negotiated. The prospective Contractor will be advised that the Task Order will not be in force until it is approved and fully executed. The Contractor shall perform services as requested by the Contract Administrator, only after receipt of written authorization.

**5.3 Right of Entry and Indemnity Agreement.** The Department shall be responsible for contacting the property owner and obtaining the property owner’s signature on a Right of Entry and Indemnity Agreement before the Contractor shall have access to the site property. The Contractor is responsible for contacting adjacent property owners, as needed, to obtain access for work required outside the site property.

**5.4 Performance of Services:** The Contractor will perform all work under this Contract in accordance with the provisions of Chapters 135 of the Iowa Administrative Code (IAC) and all Iowa Department of Natural Resources (IDNR) rules and guidance applicable to this project.

**5.4.1 Reports.** The Contractor is responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports and other services to be furnished by the Contractor under this Contract. To the extent this Contract involves environmental measurements or data generation, the Contractor shall comply with Iowa Department of Natural Resources (DNR) quality assurance requirements. The Consultant shall without

additional compensation, correct or revise any errors, omissions or other deficiencies in his designs, drawings, specifications, reports and other services if deemed necessary by DNR as part of its regulatory review or the Board to satisfactorily complete each RBCA Tier 1, Tier 2, SMR, or CADR and to comply with the terms of this Contract

**5.4.2 The DNR's approval of drawings, designs, specifications, reports and incidental work or materials furnished hereunder shall not in any way relieve the Contractor of responsibility for the technical adequacy of the Work. The Department's and Board's review, approval, or acceptance shall not be construed as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract.**

**5.5 Necessary Materials:** The Contractor shall perform the services in a proper and satisfactory manner as determined by the DNR through its regulatory review process. The Contractor shall furnish all personnel, facilities, equipment, materials and services necessary for the performance of the Work.

**5.6 Changes In Conditions.** The Contractor must immediately notify the DNR Project Manager and Contract Administrator, in writing, upon discovery of a significant change in site conditions. The following are examples of significant changes in site conditions:

- 5.6.1** An emergency or imminent hazard which would require the Contractor to make changes to the Scope of Work to mitigate the hazard;
- 5.6.2** An increase in total contaminant of concern or free product thickness increases by more than 100% since last measurement, or the discovery of free product in a monitoring well;
- 5.6.3** A sensitive receptor has been impacted, such as a drinking water well, vapors in basements or sewers, or impact to a surface water body.

**5.7 Restoration Of Property.** Upon completion of activities at an assigned site, which may include the issuance of a No Action Required (NAR) classification by the DNR or as otherwise required by the DNR pursuant to its regulatory authority, the Site shall be restored to its pre-assessment condition as nearly as practicable and Contractor's duties shall cease. The dismantling of equipment and site restoration shall be the responsibility of the Contractor. All monitoring wells shall be abandoned in accordance with the applicable rules of the DNR and the County Water Well Authority within whose jurisdiction the Site is located.

**5.8 Services Performance.** The Contractor shall be liable in accordance with applicable law for all damages to the owner or operator of the property for the negligent performance of any of the services furnished under this Contract, except for errors, omissions or other deficiencies to the extent attributable to Board-furnished data.

**5.9 Access to Work.** The Contractor shall provide the Board, Administrator and Department access to the Work in progress wherever located.

**5.10 Supervision And Working Procedures.** The Contractor shall supervise, direct the work and shall be solely responsible for all means, methods, techniques, sequences, and procedures and also for coordinating all portions of the work under the contract. The Contractor shall employ competent supervisory personnel and/or necessary assistants who shall be in attendance at the site during appropriate phases of the work.

**5.11 Safety And Health.** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work to be performed. The Contractor shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying adjacent landowners. The Contractor shall be solely liable for any violation of applicable local, state, or federal health and safety laws or regulations.

**5.12 Permits And Responsibilities.** The Contractor shall secure, pay, and sign for all permits, licenses, and governmental fees necessary for the proper execution and completion of the work. The contractor shall be responsible for all permit requirements.

**5.13 Interference With Adjoining Properties.** The Contractor shall conduct all operations necessary for the execution of the work, so far as compliance with the requirements of the contract permit, so as not to interfere unnecessarily or improperly with the convenience of the public, or the access to, use of, and occupation of public or private roads and footpaths. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by the operations under this Contract.

**5.14 Key Personnel.** The Contractor shall be responsible for assuring that all persons, whether they are employees, agents, subcontractors or anyone acting for or on behalf of the Contractor, are properly licensed, certified or accredited as required under applicable state law and the Iowa Administrative Code. The Contractor shall provide standards for service providers who are not otherwise licensed, certified or accredited under state law or the Iowa Administrative Code. Services rendered pursuant to this Contract shall be supervised by an Iowa Certified Groundwater Professional.

**5.15 Industry Standards.** Contractor represents, warrants and covenants that all services to be performed under this Contract shall be performed in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Specifications of this Contract and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Board notifies Contractor of any services performed in violation of this standard, Contractor shall re-perform the services at no cost to the Board, such that the services are rendered in the above specified manner, or if the Contractor is unable to perform the services as warranted, Contractor shall reimburse the Board any fees or compensation paid to Contractor for the unsatisfactory services.

**5.16 Non-Exclusive Rights.** This Contract is not exclusive. The Board reserves the right to select other contractors to provide services similar or identical to the Scope of Services described in this Contract during the term of this Contract.

## **SECTION 6. COMPENSATION**

**6.1 Source of Funding.** The source of funding for this Contract is the Iowa Underground Storage Tank Fund provided pursuant to Iowa Code 455G.

**6.2 Budget.** The budget for this Contract shall be determined on the Contractor's Unit Prices which is based on the Cost Proposal prepared for this Contract by the Contractor dated \_\_\_\_\_ attached as Schedule 1. The contractor may submit a revised Cost Proposal with unit prices from that submitted with the RFP dated \_\_\_\_\_ as long as the unit prices are less than what was originally submitted and the revised Cost Proposal is approved by the Board.

### Assumptions:

- (1) The Contract Unit Prices are established based on the Cost Proposal prepared by the Contractor, dated \_\_\_\_\_ any other revised cost proposal approved by the Board as provided above.
- (2) It is the intent of the parties that the Contract Unit Prices and any revised Contract Unit Prices will serve as a basis for selection and assignment of projects to the Contractor and negotiation of site specific project costs. It is the intent of the parties that to the extent unit prices are applicable to a site specific scope of work they will be considered as not to exceed prices. The Board reserves sole discretion to negotiate final cost terms and conditions on a site specific basis and reject proposed Contractor budgets.
- (3) Change orders for work items not anticipated in the Schedule of Contract Unit Prices shall be negotiated in advance in accordance with applicable unit prices established in the Contractor's Cost Proposal for project dated \_\_\_\_\_ and any other revised cost proposal approved by the Board as provided above.
- (4) The Work Proposal and proposed cost for each task should be submitted to the Contract Administrator prior to beginning any of those activities, on a site-specific basis. Only those activities and costs pre-approved will be reimbursed upon proper completion of the activities.

## **SECTION 7.0 PROGRESS PAYMENTS**

**7.1 Submission of Invoices.** The Contractor shall submit invoices for payment based upon each approved Work proposal. The Contractor shall submit, on a monthly basis, invoice(s) for services rendered in accordance with this Contract. Each invoice shall itemize the work performed pursuant to the Contract and shall be based upon each pre-approved work proposal. Each invoice shall comply with all applicable rules concerning payment of such claims and shall contain appropriate documentation necessary to support the fees or charges included in the invoice. The Contract Administrator shall have the right to dispute any invoice item submitted for payment and to withhold payment of any disputed amount if the Contract Administrator reasonably believes the invoice is inaccurate or incorrect in any way. Original invoices shall be submitted to the Contract Administrator.

**7.2 Payment of Invoices.** The Board shall pay approved invoices in arrears and in conformance with Iowa Code section 8A.514. Unless otherwise agreed to in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State of Iowa for any services provided by or on behalf of the Contractor under this Contract.

**7.3 No advance payment.** No advance payments shall be made for any Deliverables provided by Contractor pursuant to this Contract.

**7.4 Delay of Payment Due to Contractor's Failure.** If the Board determines that the Contractor has failed to perform or deliver any service or product required by this Contract, then the Contractor shall not be entitled to any compensation or any further compensation if compensation has already occurred, under this Contract until such service or product is performed or delivered. The Board shall withhold that portion of the invoice amount which represents payment for the task or deliverable that was not completed, delivered and successfully deployed.

**7.5 Erroneous Payments and Credits.** Contractor shall promptly re-pay or refund to Board the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by Contractor or notification of the overpayment or erroneous payment.

**7.6 Set-off Against Sums Owed by Contractor.** In the event that Contractor owes the Board or the State of Iowa ("State") any sum (including any State taxes in arrears) under the terms of this Contract, any other Contract, pursuant to a judgment, or pursuant to any law, the Board may set off such sum against any sum invoiced to the Board by Contractor. This may be done in Board's sole discretion unless otherwise required by law.

**7.7 Subcontractors.** The Contractor is responsible for payment to its sub-contractors and the Contractor will make payment to those sub-contractors in a reasonable amount of time. The Contractor agrees and understands that the Board will not be liable to any vendor or subcontractor for any expenses or liabilities incurred under the subcontract and that the Contractor will be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

**7.8 Reimbursable Expenses.** There shall be no reimbursable expenses associated with this Contract separate from the compensation referred to in this section, unless agreed to by both parties in an amendment to this Contract or in a Change Order executed by both parties. Unless otherwise specifically provided for in this Contract, Contractor shall be solely responsible for all its costs and expenses, including travel, mileage, meals, lodging, equipment, supplies, personnel, training, salaries, benefits, insurance, conferences, long distance telephone, and all other costs and expenses of the Contractor.

**7.9 Stop Services.** In addition to its other remedies described herein, the Board shall have the right at any time during the Contract term to direct the services of the Contractor fully or partially suspended or stopped, if the deliverables or services fail to conform to applicable specifications and requirements under this Contract. Board shall give Contractor the reasons for the stop work directive.

**7.10 Dispute.** If a dispute concerning a payment cannot be resolved between the Board and the Contractor within sixty (60) days of the receipt of an invoice, then the dispute shall be decided by litigation in the Iowa District Court for Polk County or, at the sole election of the Board, by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect.

Pending final resolution of a claim including litigation or arbitration, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of this Contract and the Board shall continue to make payments in accordance with the Contract Documents.

**7.11 Payments Withheld.** Payments may be withheld on account of (1) defective Work not remedied, (2) claims filed by third parties, (3) failure of the Contractor to make payments properly to Subcontractors or for labor, materials, equipment or services, (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, (5) damage to the Owner, the Board or another contractor, (6) reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay, or (7) persistent failure to carry out the Work in accordance with the Contract Documents.

## SECTION 8. FINAL PAYMENT

**8.1** Upon completion of all Work, other than obligations which necessarily survive final payment, the Contractor shall submit a final application to the Administrator for payment under this Contract ("Final Application for Payment"), accompanied by a final Project Status Report. Final payment, constituting the earned unpaid balance of the Contract Sum, shall be made by the Board not more than 30 days after the Board verifies that the Contract has been fully performed, but no later than 60 days after Contractor's submission to the Board of the Final Application for Payment.

**8.2** The making of final payment shall not constitute a waiver of claims by the Board. Acceptance of final payment by the Contractor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## SECTION 9. ADDITIONAL WORK

**9.1 Board Authority.** Only the Board shall have the right to direct the Contractor to proceed with additional work. The Contractor shall not proceed with the work for additional activity, nor incur any costs, unless notified to proceed by Board. The Board reserves the exclusive right to (1) direct the Contractor to proceed with additional work under this Contract, (2) terminate a site assignment upon completion of any phase and not proceed with additional work, or (3) terminate this Contract upon completion of this phase and seek proposals for a new Contractor for the work contemplated in additional phases.

**9.2 Changes in Work.** Changes in the Work may be accomplished after execution of this Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Section 6 and elsewhere in the Contract Documents.

**9.3 Change Order Procedure.** The Board may at any time request a modification to the Scope of Services using a Change Order. The following procedures for a change order shall be followed:

**9.3.1 Written Request.** The Board shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Services.

**9.3.2 The Contractor's Response.** The Contractor shall submit to the Board a time and cost estimate for the requested Change Order within ten (10) business days of receiving the Change Order Request.

**9.3.2.1** The Contractor shall use the Unit Cost Prices as provided in the Contractor's Cost Proposal \_\_\_\_\_ as the basis of the Contractor's Response.

**9.3.2.2** Change Order requests for work items not anticipated in the Contract Unit Prices shall be negotiated in advance in accordance with applicable unit prices indicated in the Contractor's proposal dated \_\_\_\_\_. Only those activities and costs pre-approved will be reimbursed upon proper completion of the activities.

**9.3.3 Acceptance of the Contractor Estimate.** If the Board accepts the estimate presented by the Contractor within ten (10) business days of receiving the Contractor's response, the Contractor shall perform the modified services subject to the time and cost estimates included in the Contractor response. The Contractor's performance and the modified services shall be governed by the terms and conditions of this Contract.

**9.4 Adjustment to Compensation.** The parties acknowledge that a Change Order for this Contract may or may not entitle the Contractor to an equitable adjustment in the Contractor's compensation or the performance deadlines under this Contract.

**9.5** Changes in the Work shall be performed under applicable provisions of the Contract, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order.

**9.6** If the Contractor's original contract quantities are so changed in a proposed Change Order or Change Directive that application of unit prices to quantities of Work proposed will cause substantial inequity to the Board or Contractor, the applicable unit prices shall be equitably adjusted through negotiation.

## SECTION 10. DOCUMENTS

**10.1 Documents.** All documents required by the provisions of Chapter 135 I.A.C. shall be deemed to be public record and shall be treated in the same manner as other public records are under general law. This Contract may be unilaterally canceled by the Board for refusal by the Contractor to allow public access to such documents.

**10.2 Availability of Records.** The Contractor specifically agrees to provide to the Board, upon request, all necessary books, records and documents pertinent to performance under this Contract in order to assess the cost effectiveness of this Contract. The Board or their authorized representatives shall have access to such records during the term of this Contract and for three years following Contract completion.

## SECTION 11. TERMINATION

**11.1 Immediate Termination by the Board.** The Board may terminate this Contract for any of the following reasons effective immediately without advance notice:

**11.1.1** The Contractor shall employ at all times, as required by 567 Iowa Administrative Code 135.8(2), at least one Iowa Certified Groundwater Professional whose responsibility will be to supervise all activities of the project. In the event the Contractor no longer employs at least one Iowa Certified Groundwater Professional, the loss shall result in immediate termination of the Contract effective as of the date on which the Iowa Certified Groundwater Professional left employment or the date on which the Iowa Certified Groundwater Professional no longer possesses a valid certificate;

**11.1.2** The Board determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, a client's life, health or safety to be jeopardized;

**11.1.3** The Contractor fails to comply with confidentiality laws or provisions;

**11.1.4** The Contractor furnished any statement, representation or certification in connection with this Contract or the RFP which is materially false, deceptive, incorrect or incomplete.

**11.2 Termination for Cause.** The occurrence of any one or more of the following events shall constitute cause for the Board to declare the Contractor in default of its obligations under this Contract.

**11.2.1** The Contractor fails to perform, to the Board's satisfaction, any material requirement of this Contract or is in violation of a material provision of this Contract, including, but without limitation, the express warranties made by the Contractor;

**11.2.2** The Board determines that satisfactory performance of this Contract is substantially endangered or that a default is likely to occur;

**11.2.3** The Contractor fails to make substantial and timely progress toward performance of the Contract;

**11.2.4** The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the Board reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

**11.2.5** The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this Contract; or

**11.2.6** The Contractor has engaged in conduct that has or may expose the Board to liability, as determined in the Board's sole discretion.

**11.2.7** The Contractor has infringed any patent, trademark, copyright, traddress or any other intellectual property right.

**11.3 Notice of Default.** If there is a default event caused by the Contractor, the Board shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the Board's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the Board may either:



**11.3.1** Immediately terminate the Contract without additional written notice; or,

**11.3.2** Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

**11.4 Termination Upon Notice.** Following thirty (30) days' written notice, the Board may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this Contract to the Board up to and including the date of termination.

**11.5 Termination Due to Lack of Funds or Change in Law.** The Board's performance and obligation to pay under this Contract is contingent upon sufficient funds being available in the Iowa Underground Storage Tank Fund. The Board shall have the right to terminate this Contract without penalty by giving sixty (60) days written notice to the Contractor as a result of any of the following:

**11.5.1** Adequate funds are not appropriated or granted to allow the Board to operate as required and to fulfill its obligations under this Contract;

**11.5.2** Funds are de-appropriated or not allocated or if funds needed by the Board, at the Board's sole discretion, are insufficient for any reason;

**11.5.3** The Board's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Board;

**11.5.4** The Board's duties are substantially modified.

**11.6 Remedies of the Contractor in Event of Termination by the Board.** In the event of termination of this Contract for any reason by the Board, the Board shall pay only those amounts, if any, due and owing to the Contractor for services actually rendered up to and including the date of termination of the Contract and for which the Board is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the Board under this Contract in the event of termination. However, the Board shall not be liable for any of the following costs:

**11.6.1** The payment of unemployment compensation to the Contractor's employees;

**11.6.2** The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

**11.6.3** Any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;

**11.6.4** Any taxes that may be owed by the Contractor in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

**11.7 The Contractor's Termination Duties.** The Contractor upon receipt of notice of termination or upon request of the Board shall:

**11.7.1** Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, any other matters the Board may require.

**11.7.2** Immediately cease using and return to the Board any personal property or materials, whether tangible or intangible, provided by the Board to the Contractor.

**11.7.3** Comply with the Board's instructions for the timely transfer of any active files and work product produced by the Contractor under this Contract.

**11.7.4** Cooperate in good faith with the Board, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor.

**11.7.5** Immediately return to the Board any payments made by the Board for services that were not rendered by the Contractor.

**11.8 Termination for Cause by Contractor.** Contractor may only terminate this Contract for the breach by the Agency of any material term, condition or provision of this Contract, if such breach is not cured within sixty (60) days of the Agency's receipt of Contractor's written notice of breach.

## **SECTION 12. CONFIDENTIAL INFORMATION**

**12.1 Access to Confidential Information.** The Contractor's employees, agents and subcontractors may have access to confidential information maintained by the Board to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by the Board. The Contractor shall provide to the Board a written description of its policies and procedures to safeguard confidential information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract. The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Contract. The private or confidential information shall remain the property of the Agency at all times.

**12.2 No Dissemination of Confidential information.** No confidential information collected, maintained, or used in the course of performance of the Contract shall be disseminated by Contractor except as authorized by law and only with the prior written consent of the Agency, either during the period of the Contract or thereafter. Any data supplied by the Agency to the Contractor or created by the Contractor in the course of the performance of this Contract shall be considered the property of the Agency. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of the Agency. The Contractor may be held civilly or criminally liable for improper disclosure of confidential information.

**12.3 Subpoena.** In the event that a subpoena or other legal process is served upon the Contractor for the records containing confidential information, the Contractor shall promptly notify the Board and cooperate with the Board in any lawful effort to protect the confidential information.

**12.4 Reporting of Unauthorized Disclosure.** The Contractor shall immediately report to the Board any unauthorized disclosure of confidential information.

**12.5 Survives Termination.** The Contractor's obligation under this Contract shall survive termination of this Contract.

## **SECTION 13. INDEMNIFICATION**

**13.1 By the Contractor.** The Contractor agrees to indemnify and hold harmless the State and its officers, appointed and elected officials, board and commission members, employees, volunteers and agents (collectively the "Indemnified Parties"), from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments (including, without limitation, the reasonable value of the time spent by the Attorney General's Office, and the costs, expenses and attorneys' fees of other counsel retained by the Indemnified Parties directly or indirectly related to, resulting from, or arising out of this Contract, including but not limited to any claims related to, resulting from, or arising out of:

**13.1.1** Any breach of this Contract;

**13.1.2** Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor;

**13.1.3** The Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor;

**13.1.4** Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Iowa;

**13.1.5** Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any third party, including any claim that any Deliverable or any use thereof (or the exercise of any rights with respect thereto) infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other intellectual property right or proprietary right of any third party.

## **13.2 Indemnification by the Board**

**13.2.1** The Board shall, only to the extent consistent with Article VII, Section 1 of the Iowa Constitution and Iowa Code Chapter 669, indemnify and hold harmless the Contractor from and against any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments arising directly out of the negligence or wrongful acts or omissions of any employee of the Board while acting within the scope of the employee's office of employment in connection with the performance of this Contract.

**13.2.2** At the option of the Board, the Contractor shall be represented by the Attorney General of the State or special counsel retained by the State or the Attorney General of the State with respect to any litigation brought by or against the Board or such persons with respect to any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments to which such persons may be subject and to which they are entitled to be indemnified hereunder.

**13.2.3** If the Board makes any indemnity payments pursuant to this Section and the person to or on behalf of whom such payments are made thereafter collects any of such amounts from others, that person shall promptly repay such amounts to the Board, without interest.

**13.3 13.2 Survives Termination.** Contractor's duties and obligations under this section shall survive the termination of this Contract and shall apply to all acts or omissions taken or made in connection with the performance of this Contract regardless of the date any potential claim is made or discovered by the Board or any other Indemnified Party.

## **SECTION 14. INSURANCE**

**14.1 Insurance Requirements.** The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor's expense, insurance covering its work during the entire term of this Contract and any extensions or renewals. The Contractor's insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to the Contractor's performance of this Contract regardless of the date the claim is filed or expiration of the policy. The State of Iowa and the Board shall be named as additional insureds or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable. The policies shall also provide coverage for damages to the State's property on the Contractor's, or any subcontractor's, premises or premises under the control of the Contractor or any subcontractor.

**14.2 Types and Amounts of Insurance Required.** Unless otherwise requested by the Board in writing, the Contractor shall cause to be issued the insurance coverages set forth in the RFP for this project dated: .

**14.3 Certificates of Coverage.** All insurance policies required by this Contract shall remain in full force and effect during the entire term of this Contract and any extensions or renewals thereof and shall not be canceled or amended except with the advance written approval of the Board. The Contractor shall submit certificates of insurance, which indicate coverage and notice provisions as required by this Contract, to the Board upon execution of this Contract. The certificates shall be subject to approval by the Board. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the Board. Approval of the insurance certificates by the Board shall not relieve the Contractor of any obligation under this Contract.

**14.4 Self-Insured.** Pursuant to Iowa Code chapter 669, the Board and the State of Iowa are self-insured against all risks and hazards relating to this Contract. No separate fund has been established to provide self-insurance, and the State of Iowa is not obligated to establish any such fund during the term of this Contract.

**14.5 Waiver of Subrogation Rights.** The Contractor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the State

**14.6** Should the Contractor fail to provide or maintain any of the insurance coverages required to in this Section, the Board shall have the right, but no obligation, to obtain and maintain such coverage, or coverage affording equivalent protection, at the Contractor's expense, either by direct charge or set-off.

## **SECTION 15. BONDS**

**15.1 Performance Bond.** If requested by the Board, the Contractor shall furnish and deliver prior to the commencement of Work, a Performance and Payment Bond satisfactory to the Board in the minimum amount of one-hundred percent (100%) of the Contract Sum to cover the faithful performance of the Contract, all bills, labor, equipment and materials and the payment of all obligations thereunder. Such bonds shall be written by insurance/surety companies acceptable to the Board and having a Best's or equivalent of "A" or better. The bond shall be in a form customarily used in the **environmental services** industry and shall be written by a surety authorized to do business in Iowa, having a Best's or equivalent of "A" or better, and that is acceptable to the Board. The bond shall be in effect at all times during the term of this Contract and any extensions or renewals thereof and for one (1) year following the conclusion of the Contract. The Contractor warrants that it will maintain the required performance bond coverage as described herein without any lapse in coverage. A lapse of the bond will be a material breach of the Contract and shall be considered cause for the Board to declare the Contractor in default under this Contract.

In the event that the Contractor or any subcontractor or any officer, director, employee or agent of the Contractor or any subcontractor or any parent or subsidiary corporation of the Contractor or any subcontractor fails to fully and faithfully perform each material requirement of this Contract, including without limitation the Contractor's obligation to indemnify the Board and pay damages to the Board, the performance bond shall be forfeited to the Board.

## **SECTION 16. PROJECT MANAGEMENT AND REPORTING**

**16.1 Project Manager.** At the time of execution of this Contract, the Project Manager for the Contractor shall be \_\_\_\_\_, to serve until the expiration of this Contract or the designation of a substitute Project Manager. At the time of execution of this Contract, the Project Manager for the Board shall be \_\_\_\_\_, to serve until the expiration of this Contract or the designation of a substitute Project Manager. During the term of this Contract, each Project Manager shall be available to meet monthly, unless otherwise mutually agreed, to review and plan the services being provided under this Contract.

**16.2 Status Reports.** The Contractor shall provide the Board and DNR Project Manager a status report on a monthly basis identifying the tasks completed, tasks occurring, and scheduled activities. Reports must indicate where the contract stands in relation to the required activities and tasks. Reports shall list any problem or concern encountered in the course of Contract performance including, but not limited to:

**16.2.1** Any event not within the control of the Contractor or the Board that accounts for the problem;

**16.2.2** Modifications to the Contract agreed to by the parties in order to remedy or solve the identified problem;

**16.2.3** Damages incurred as a result of any party's failure to perform its obligations under this Contract; and

**16.2.4** Any request or demand for services by one party that another party believes are not included within the terms of this Contract.

**16.3 Problem Reporting Omissions.** The Board's acceptance of a status report shall not relieve the Contractor of any obligation under this Contract or waive any other remedy under this Contract or at law or equity that the Board may have. The Board's failure to identify the extent of a problem or the extent of damages incurred as a result of a problem shall not act as a waiver of performance under this Contract. Where other provisions of this Contract require notification of an event in writing, the written report shall be considered a valid notice under this Contract provided the parties required to receive notice are notified.

**16.4 Correction of Work.** The Contractor shall promptly and without additional compensation correct work rejected by the Administrator, or the Department, for failing to conform to the requirements of the DNR document submittal or the terms of this Contract, whether observed before or after completion and whether or not installed or completed, and shall correct any Work found to be not in accordance with the requirements of the Contract Documents within a period of one year from the date of Completion

of the Contract. These provisions apply to work done by Subcontractors and Sub-subcontractors as well as to work done by direct employees of the Contractor.

The Board's approval of drawings, designs, specifications, reports and incidental work or materials furnished hereunder shall not in any way relieve the Contractor of responsibility for the technical adequacy of the Work. The Board's review, approval, or acceptance shall not be construed as a waiver of any rights under this Contract of any cause of action arising out of the performance of this Contract.

## **SECTION 17. LIMITATION OF LIABILITY**

The Contractor expressly acknowledges that the UST 1804-01: UST – Closure Contract Project is subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the Board or Board funding, the Contractor shall not hold the Board liable in any manner for the resulting changes. The Board shall use best efforts to provide thirty (30) days' written notice to the Contractor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair the Board's right to terminate the Contract pursuant to the termination provisions.

## **SECTION 18. WARRANTIES**

**18.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law.** All warranties made by the Contractor in all provisions of this Contract and the Proposal by the Contractor, whether or not this Contract specifically denominates the Contractor's promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the Board, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Contractor. The provisions of this Section apply during the term of this Contract and any extensions or renewals thereof.

**18.2 Concepts, Materials, and Works Produced.** Contractor represents and warrants that all the concepts, materials and Works produced, or provided to the Board pursuant to the terms of this Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and Works. The Contractor represents and warrants that the concepts, materials and Works and the Board's use of same and the exercise by the Board of the rights granted by this Contract shall not infringe upon any other work, other than material provided by the Contract to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the software, the materials owned by the Contractor and any other materials, works and methodologies used in connection with providing the services contemplated by this Contract.

**18.3 Professional Practices.** The Contractor represents and warrants that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

**18.4 Conformity with Contractual Requirements.** The Contractor represents and warrants that the Works will appear and operate in conformance with the terms and conditions of this Contract.

**18.5 Authority to Enter into Contract.** The Contractor represents and warrants that it has full authority to enter into this Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the Board.

**18.6 Obligations Owed to Third Parties.** The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that the Board will not have any obligations with respect thereto.

**18.7 Property and Equipment.** Title to all tangible property procured with funds provided in whole or in part by the Board during the performance of this Contract with an acquisition cost in excess of \$2,000 shall vest at the time of purchase in the Board, including without limitation all property which is assembled, constructed, fabricated, or produced from equipment, material, structures, and/or test apparatus with unit costs of less than or equal to \$2,000 but with an aggregate cost in excess of \$2,000.

Upon completion of the Contract, the Board shall have the option, upon written notice as set forth in the following paragraph, to relinquish to Contractor certain or all items of property. Contractor shall exercise reasonable care in the custody and maintenance of all such property in its control and shall obtain and maintain adequate insurance coverage to satisfy all claims of any kind arising from Contractor's custody and maintenance of such property until disposal of such property by the Board.

Contractor shall identify each item of property that falls under these provisions by notifying the Administrator and providing inventory logs. Contractor shall maintain a list of all property purchased hereunder which is the property of the Board. Such list, at a minimum, shall describe each item and state the acquisition date, acquisition cost, serial number, general location and inventory tag number of each. A copy of the property list then current shall be submitted to the Board upon completion of this Contract. Within sixty (60) days of the submittal of such list, the Board may notify the Contractor in writing that it is exercising its option to relinquish to Contractor certain or all of the items on the list, stating with specificity which items are so relinquished, unless all items are to be relinquished, in which case the notice shall so state. Upon the giving of such notice title in the relinquished property shall transfer to the Contractor. The parties agree to cooperate in the execution and recording of such additional and further documents as may be necessary to effectuate and perfect the transfer of title of the relinquished items of property to the Contractor.

**18.8 Other deliverables.** Contractor agrees that the State and the Board shall become the sole and exclusive owners of all Work. Contractor hereby irrevocably assigns, transfers and conveys to the State and the Board all right, title and interest in and to all Work and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Work, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto. Contractor represents and warrants that the State and the Board shall acquire good and clear title to all Work, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Contractor or of any third party, including any employee, agent, contractor, subcontractor, subsidiary or affiliate of Contractor. The Contractor (and Contractor's employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the Work and shall not use any Work, in whole or in part, for any purpose, without the prior written consent of the Board and the payment of such royalties or other compensation as the Board deems appropriate. Unless otherwise requested by the Board, upon completion or termination of this Contract, Contractor will immediately turn over to Board all Work not previously delivered to the Board, and no copies thereof shall be retained by Contractor or its employees, agents, subcontractors or affiliates, without the prior written consent of the Board.

**18.9 Waiver.** To the extent any of Contractor's rights in any Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Contractor hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the State's rights in and to the Deliverables.

**18.10 Publicity.** The Contractor shall not make publicity releases of any nature in connection with this Contract without prior approval by the Board.

**18.11 Industry Standards.** The Contractor represents and expressly warrants that all aspects of the goods and services provided or used by it shall conform to the standards in the environmental remediation Industry in the performance of this Contract. All personnel used by the Contractor in the performance of the work shall be qualified by training and experience to perform successfully their assigned tasks.

## **SECTION 19. CONTRACT ADMINISTRATION**

**19.1 Disputes.** For purposes of payment and otherwise, the Administrator will interpret and decide matters concerning performance under and requirements of the Contract Documents. The Administrator will make initial decisions on all claims, disputes or other matters in question between the Board and the Contractor, but will not be liable for damages as the result of any interpretations or decisions rendered in good faith. All decisions of the Administrator, except those which have been waived by acceptance of final payment, shall be subject to final determination under Section 19.2 upon the written demand of either party.

**19.2 Choice of Law and Forum.** The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the Board or the State of Iowa.

All claims or disputes between the Contractor and the Board arising out or relating to this Contract, or the breach thereof, shall be decided by litigation in the Polk County District Court for the State of Iowa, Des Moines, Iowa or, at the sole election of the Board, by

arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. An initial presentation of the claim or dispute to the Administrator pursuant to this Section 19.1 is a prerequisite to either litigation or arbitration. If the Board elects to arbitrate, notice of the demand for arbitration shall be filed in writing with the other party to this Contract and with the American Arbitration Association and shall be made within a reasonable time after the dispute has arisen. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to the Contract Documents shall include, by consolidation, joinder, or in any other manner, any person or entity not a party to the Contract under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, (3) the interest or responsibility of such person or entity in the matter is not insubstantial, and (4) such person or entity is not the Administrator or any of the Administrator's employees or Contractors.

**19.3 Independent Contractor.** The status of the Contractor shall be that of an independent contractor. The Contractor, its employees, agents and any subcontractors performing under this Contract are not employees or agents of the State of Iowa or any Board, division or department of the state. Neither the Contractor nor its employees shall be considered employees of the Board or the State of Iowa for federal or state tax purposes. The Board will not withhold taxes on behalf of the Contractor (unless required by law).

**19.4 Incorporation of Documents.** The RFP, and amendments and written responses to bidders' questions (collectively RFP) and the Contractor's Proposal submitted in response to the RFP, form the Contract between the Contractor and the Board and are incorporated herein by reference. The parties are obligated to perform all services described in the RFP and Proposal unless the Contract specifically directs otherwise.

**19.5 Order of Priority.** In the event of a conflict between the Contract, the RFP and the Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the RFP; (3) Proposal.

**19.6 Compliance with the Law.** The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or suppliers. The Contractor may be required to provide a copy of its affirmative action plan, containing goals and time specifications, and non-discrimination and accessibility plans and policies regarding services to clients. Failure to comply with this provision may cause this contract to be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for future state contracts or be subject to other sanctions as provided by law or rule. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract. The Contractor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 IAC chapter 4. The Contractor shall keep the DNR, Board and past and present tank owners/property owners indemnified against all penalties and liability of every kind for breach of any such statute, ordinance, law, or regulation. The Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible.

**19.7 Procurement.** Contractor shall use procurement procedures that comply with all applicable federal, state, and local laws and regulations.

**19.8 Compliance with Iowa Code chapter 8F.** If the Contract is subject to the provisions of Iowa Code chapter 8F, the Contractor shall comply with Iowa Code chapter 8F with respect to any subcontracts it enters into pursuant to this Contract. Any compliance documentation, including but not limited to certifications, received from subcontractors by the Contractor shall be forwarded to the Board.

**19.7 Amendments.** This Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to this Contract must be in writing and fully executed by the parties.

**19.8 Third Party Beneficiaries.** There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State, the Board and the Contractor.

**19.9 Assignment and Delegation.** Contractor may not assign, transfer or convey in whole or in part this Contract without the prior written consent of the Agency. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor

shall be considered an assignment. The Contractor may not delegate any of its obligations or duties under this Contract without the prior written consent of the Agency. The Contractor may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber, any payments that may or will be made to the Contractor under this Contract.

**19.10 Use of Third Parties.** The Board acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. All subcontracts shall be subject to prior approval by the Board. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all services performed under this Contract. All restrictions, obligations and responsibilities of the Contractor under this Contract shall also apply to the subcontractors. The Board shall have the right to request the removal of a subcontractor from the Contract for good cause.

**19.11 Integration.** This Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in this Contract.

**19.12 Headings or Captions.** The paragraph headings or captions used in this Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

**19.13 Not a Joint Venture.** Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.

**19.14 Joint and Several Liability.** If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default of activities and obligations.

**19.15 Supersedes Former Contracts or Agreements.** This Contract supersedes all prior Contracts or Agreements between the Board and the Contractor for the services provided in connection with this Contract.

**19.16 Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of the Board and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

**19.17 Notice**

**19.17.1** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth as follows:

If to the Board, to be mailed to the attention of:

- \*
- \*

If to the Contractor, to be mailed to the attention of:

- \*
- \*

**19.17.2** Each such notice shall be deemed to have been provided:

- 19.17.2.1** At the time it is actually received; or,
- 19.17.2.2** Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,
- 19.17.2.3** Within five (5) days after it is deposited the U.S. Mail in the case of registered U.S. Mail.



**19.17.3** From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

**19.18 Cumulative Rights.** The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

**19.19 Severability.** If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.

**19.20 Time is of the Essence.** Time is of the essence with respect to the Contractor's performance of the terms of this Contract. Contractor shall ensure that all personnel providing Deliverables to the Board are responsive to the Board's requirements and requests in all respects.

**19.21 Authorization.** Each party to this Contract represents and warrants to the other parties that:

**19.21.1** It has the right, power and authority to enter into and perform its obligations under this Contract.

**19.21.2** It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Contract, and this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

**19.22 Successors in Interest.** All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

**19.23 Technical Guidance.** The Contractor agrees to provide technical guidance and other assistance to counsel representing the Board in legal proceedings arising from or relating to reports, documents, findings or other information pertaining to, arising from, or relating to the work completed under this Contract. In the event of such legal proceedings, the Contractor shall cooperate with the Board's designated counsel in discussions, written questions/answers, depositions, interrogatories, trial testimony, and all other reasonable requests for information, consultation and services pertaining to the tasks performed. The Contractor shall direct its employees to similarly cooperate with the Board's designated counsel and shall use its best efforts to cause all Subcontractors to cooperate in a similar manner.

**19.24 Record Retention and Access.** The Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the Board throughout the term of this Contract for a period of at least **five (5)** years following the date of final payment or completion of any required audit, whichever is later. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five (5) year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five (5) year period, whichever is later. Records to be maintained include both financial records and service records. The Contractor shall permit the Board, Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records.

Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies). Any adjustments resulting from such audits shall be promptly paid in full by Contractor or the Board, as the case may be. If the audit results in a reduction of the amount owed to the Contractor, the Contractor will receive no further payments until it pays the Board the amount of adjustment. The Contractor agrees to disclose all information and reports resulting from access to records under this clause to any authorized agencies.

The Contractor must maintain the following records for each assignment:

**19.24.1** The Contractor, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the reports filed with the Board.

**19.24.2** The Contractor shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring and evaluating its program.

**19.25 Solicitation.** The Contractor warrants that no person or selling agency has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

**19.26 Express Warranties.** The Contractor expressly warrants, within the standards of care used within the industry, all aspects of the goods and services provided or used by it in the performance of this Contract. The Contractor further warrants that all of the services to be performed under this Contract will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

**19.27 Obligations Beyond Contract Term.** This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. All obligations of the Board and the Contractor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Contract.

**19.28 Counterparts.** The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

**19.29 Additional Provisions.** The parties agree that if an Addendum, Rider or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

**19.30 Further Assurances and Corrective Instruments.** The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Contract.

**19.31 Delay or Impossibility of Performance.** Neither party shall be in default under the Contract if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure." The term "force majeure" as used in this Contract includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided.

Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. "Force majeure" does not include: financial difficulties of the Contractor or any parent, subsidiary, affiliated or associated company of Contractor; claims or court orders that restrict Contractor's ability to deliver the Deliverables contemplated by this Contract; strikes; labor unrest; or supply chain disruptions. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contract unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Contract. If a "force majeure" delays or prevents the Contractor's performance, the Contractor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Board. The party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

**19.32 Suspensions and Debarment.** The Contractor certifies pursuant to 48 CFR Part 9 that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal Agency or agency. The Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contracts with the State of Iowa.

**19.33 Conflict of Interest.** Contractor represents, warrants, and covenants that no relationship exists or will exist during the Contract period between the Contractor and the Board that is a conflict of interest. No employee, officer or agent of the Contractor or subcontractor shall participate in the selection or in the award or administration of a subcontract if a conflict of interest, real or

apparent, exists. The provisions of Iowa Code Ch. 68B shall apply to this Contract. If a conflict of interest is proven to the Board, the Board may terminate this Contract, and the Contractor shall be liable for any excess costs to the Board as a result of the conflict of interest. The Contractor shall establish safeguards to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by the desire for private gain for themselves or others with whom they have family, business, or other ties. The Contractor shall report any potential, real, or apparent conflict of interest to the Board and to the Department.

**19.34 Certification regarding sales and use tax.** By executing this Contract, the Contractor certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 423; or (b) not a “retailer” or a “retailer maintaining a place of business in this state” as those terms are defined in Iowa Code subsections 423.1(42) & (43). The Contractor also acknowledges that the Board may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Board or its representative filing for damages for breach of contract.

**19.35 Right to Address the Board of Directors or Other Managing Entity.** The Agency reserves the right to address the Contractor’s board of directors or other managing entity of the Contractor regarding performance, expenditures and any other issue as appropriate. The Agency determines appropriateness.

**19.36 Repayment Obligation.** In the event that any State and/or federal funds are deferred and/or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, the Contractor shall be liable to the Agency for the full amount of any claim disallowed and for all related penalties incurred. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

## **SECTION 20. LIQUIDATED DAMAGES**

### **20.1 General**

**20.1.1** In the event of damages incurred by or to Board, the parties agree that the liquidated damages as specified in all the Sections below are reasonable and will remain reasonable as long as the Contract is in force.

**20.1.2** In no case shall liquidated damages be measured in terms of potential lost revenue or potential lost net profit to the Board, unless and to the extent that the Board determines or alternatively, that a court of competent jurisdiction determines that actual loss can be measured precisely and that the written liquidated damages provision is unreasonable and/or unenforceable as a matter of law.

**20.1.3** Assessment of liquidated damages shall be in addition to and not in lieu of such other remedies as may be available to the Board. Except and to the extent expressly provided herein, the Board shall be entitled to recover liquidated damages under each Section applicable to any given incident.

**20.2 Notification of Liquidated Damages.** All assessments of liquidated damages shall be made by the Board. Upon determination that liquidated damages are to or may be assessed, the Board shall notify the Contractor of the assessment in writing.

**20.3 Schedules of Work Tasks and Assessment of Liquidated Damages.** Specific projects will be metered in as necessary. Within 30 days of the submittal of an assignment, the Contractor shall provide the Board with a schedule of work tasks which includes dates the expected tasks are to occur during the course of the project.

Time extensions must receive prior approval from the Board Administrator and the DNR Project Manager. Good faith efforts will be considered when granting extensions. Adherence to scheduled start-up duties for individual work tasks and early detection of potential delays will be considered when determining good faith efforts. Should the Board Administrator determine good faith efforts were not used, liquidated damages of **\$250** for each day after 90 days to complete each individual work task shall be assessed. The amount of liquidated damages approximates the reasonable amount of damages to the project anticipated by the Board for delays in not completing each required individual work task on time.

### **20.4 Conditions for Termination of Liquidated Damages**

**20.4.1** As determined appropriate by the Board, the following are the conditions under which the Contractor may obtain relief from the continued assessment of liquidated damages that have been imposed.

**20.4.2** Except as waived in writing by the Board, no liquidated damages imposed shall be terminated or suspended until the Contractor issues a written notice verifying the corrections of the condition(s) for which liquidated damages were imposed and all the Contractor corrections have been made subject to verification at the discretion of the Board.

**20.4.3** If appropriate, the Contractor shall conduct systems testing of any correction as the Board deems necessary. Such testing shall be developed jointly by the Board and the Contractor and approved by the Board including the test script, test environment and the test result.

**20.4.4** The documentation necessary for verification and approval shall be determined by the Board. The Board shall be the sole judge of the accuracy of any documentation provided.

**20.4.5** A Contractor notice of correction will not be accepted until the correction is verified by the Board.

**20.5 Severability of Individual Liquidated Damages.** If any portion of the liquidated damages provisions is determined to be unenforceable in one or more applications, that portion remains in effect in all applications not determined to be invalid and is severable from the invalid applications. If any portion of the liquidated damages provisions is determined to be unenforceable, the other provision or provisions shall remain in full force and effect.

**20.6 Waivers of Liquidated Damages.** It is expressly agreed that the waiver of any liquidated damages due the Board shall constitute a waiver only as to such liquidated damages and not a waiver of any future liquidated damages. Failure to demand payment of liquidated damages within any period of time shall not constitute a waiver of such claim by the Board.

**20.7 Payment of Liquidated Damages.** All assessed liquidated damages shall be deducted from any moneys owed the Contractor by the Board; and in the event the amount due to the Contractor is not sufficient to satisfy the amount of the liquidated damages, the Contractor shall have the damages deducted from subsequent invoices. Recovery of liquidated damages will be accomplished by either invoice deduction, lump sum payment or a combination thereof within thirty (30) days. At the Board's sole option, the Board may obtain payment of assessed liquidated damages through one (1) or more claims upon the Performance Bond supplied by the Contractor.

**SECTION 21. EXECUTION**

**IN WITNESS WHEREOF**, in consideration of the mutual covenants set forth above and for other goods and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Contract and have caused their duly authorized representatives to execute this Contract.

**IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD**

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

**Contractor Name**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_