



Department of Employment, Training and Rehabilitation
Employment Security Division

Request For Application (RFA) No. 01-11
for

**Career Enhancement Program
Small Business Loans for Veterans and Senior Citizens**

Release Date: March 4, 2011

Deadline for Submission and Opening Date and Time: April 8, 2011

For additional information, please contact:
Tamara Nash, Assistant to the Director
tnash@nvdestr.org
(775) 684-3891

**This document must be submitted in the "General
Minimum Qualifications" section/tab of vendor
application.**

See Page 9, for instructions on submitting applications.

Company Name _____

Address _____ City _____ State _____ Zip _____

Telephone (____) _____ Fax (____) _____

E-Mail Address: _____

Any prices and/or budgets contained in this application are subject to acceptance within____ calendar days.

Contact Person _____

Print Name & Title _____

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1. OVERVIEW OF PROJECT

The State of Nevada Department of Employment, Training and Rehabilitation (DETR) is the administrative agency with responsibility for overseeing the state's workforce investment system.

The mission of DETR is to develop a well educated, well trained, and self-sufficient workforce that can compete in the changing global marketplace. Essential to our mission is providing Nevada employers with a skilled, productive workforce that supports the economic needs of local communities.

Nevada Assembly Bill (AB) 338 was passed in the 2009 Legislative Session. The legislation requires that the Administrator of the Employment Security Division, DETR establish a program to disburse grants of money to a non-profit entity (ies) organized under the provisions of Nevada Revised Statutes Chapter 81 or 82 for the purpose of executing loans to Nevada veterans and senior citizens to start a small business in the state. Subsequent regulations established the criteria for the qualification of non-profit private entities to receive grants under the program. The associated regulations (Nevada Administrative Code) can be located at <http://www.leg.state.nv.us/Register/2009Register/R128-09I.pdf>.

This program is funded by Nevada's Career Enhancement Program (CEP), which is administered by DETR's Employment Security Division. CEP is funded by a .05% payroll assessment collected in conjunction with the Unemployment Insurance tax assessed on Nevada employers. No tax increase will be realized as this new program created by AB338 will be supported using existing resources.

DETR is announcing the availability of approximately \$50,000 (plus a maximum of \$5,000 for administrative costs) of CEP funds for the purpose of executing a pilot program to loan Nevada veterans and senior citizens public funds to start a small business in the state. An additional \$50,000 (plus a maximum of \$5,000 for administrative costs) has been set aside and will be made pending analysis of the pilot program.

2. ACRONYMS/DEFINITIONS

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

<i>Confidential Information</i>	Any information relating to the amount or source of any income, profits, losses or expenditures of a person, including data relating to cost or price submitted in support of a bid or application. The term does not include the amount of a bid or application. See NRS §333.020(5) (b).
<i>CEP</i>	Career Enhancement Program
<i>Contract</i>	The award of funds to a vendor for the services identified in this RFA. A contract may be provided through any legal agreement, including an agreement that the recipient or a vendor considers a contract.
<i>Division</i>	Department of Employment, Training and Rehabilitation, Employment Security Division
<i>DUNS Number</i>	Dun & Bradstreet (D&B) maintains a business database containing information on more than 100 million businesses worldwide. D&B provides a D-U-N-S number,

a unique 9-digit identification number, for each physical location of a business organization. D-U-N-S Number assignment is free for all businesses required to register with the U.S. Federal government for contracts or grants.

Evaluation Committee

An independent committee comprised of a majority of State officers or employees established to evaluate and score applications submitted in response to the RFA pursuant to NRS §333.335.

LOI

Letter of Intent to Fund-notification of the State's intent to award to a vendor, pending successful negotiations; all information remains confidential until the issuance of the formal Notification of Award and Funding.

May

Indicates something that is not mandatory but permissible.

NAC

Nevada Administrative Code

NRS

Nevada Revised Statutes

NOA

Notification of Award and Funding- formal notification of the State's decision to award, pending approval of said vendor, any non-confidential information becomes available upon written request.

Public Record

All books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential (see NRS §333.333 and NRS §600A.030 (5)) must be open to inspection by any person and may be fully copied or an abstract or memorandum may be prepared from those public books and public records.

RFA

Request for Applications - a written statement which sets forth the qualifications and requirements of a vendor to be awarded by competitive selection.

Shall/Must/Will

Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of the application or qualifications as non-responsive.

Should

Indicates something that is recommended but not mandatory. If the vendor fails to provide recommended information, the State may, at its sole option, ask the vendor to provide the information or evaluate the qualifications without the information.

State

The State of Nevada and any agency identified herein.

Subcontractor

Third party, not directly employed by the vendor, who will provide services identified in this RFA. This does not include third parties who provide support or incidental services to the vendor.

Vendor

The organization/individual who submits an application or qualifications in response to this RFA.

3. QUALIFICATIONS

The process by which applications will be considered for funding under this RFA consists of two distinct stages. The first stage is a determination of whether or not the vendor qualifies under the set of General Minimum Qualifications. If a vendor is determined to not address and/or meet any one of these General Minimum Qualifications, the application in its entirety will not be considered for funding.

If the vendor meets all of the General Minimum Qualifications, the application will be evaluated to see if it meets the Technical Minimum Qualifications. Applications that do not meet the Technical Minimum Qualifications will not be considered for funding. Each application will be reviewed independently in the Technical Minimum Qualifications section.

3.1 General Minimum Qualifications

NOTE: If the applicant fails to address and/or meet any of the below General Minimum Qualifications, they will not be considered for funding.

The awarded vendor(s) will be solely responsible for, and the Division will have no obligation with respect to the following:

- 3.1.1. Withholding of income taxes, FICA or any other taxes or fees;
- 3.1.2. All insurance coverage required by the State of Nevada;
- 3.1.3. Nevada State Business License and or other licenses required by city or county in which project is located;
- 3.1.4. Compliance with registration, reporting, and/or quality requirements per statutes and regulations;
- 3.1.5. Participation in any group insurance plans available to employees of the State;
- 3.1.6. Participation or contributions by either the awarded vendor or the State to the Public Employees Retirement System;
- 3.1.7. Accumulation of vacation leave or sick leave;
- 3.1.8. Unemployment compensation provided by the State;
- 3.1.9. Neither the awarded vendor nor its employees shall be considered employees of the State.

3.2 Technical Minimum Qualifications

NOTE: It is mandatory that each component listed below in the Technical Minimum Qualifications be addressed. Failure to address each component will result in disqualification of application.

Vendors applying to receive funding through this RFA must provide a detailed description of their proposed project, which must include, at a minimum, the following information for each project for which funding is requested:

- 3.2.1. Entities must meet the criteria of being classified as a non-profit organization as defined under Chapter 81 and Chapter 82 of the Nevada Revised Statutes.

- 3.2.2. Entities, at a minimum, will be required to submit financial statements for the entity for the three (3) years immediately preceding the date of the application;
- 3.2.3. Entities will be required to demonstrate, to the satisfaction of the Administrator, fiduciary responsibility, principles of accounting practices, and fiscal mechanisms consistent with safeguarding public funds and the public interest;
- 3.2.4. Entities must be able to demonstrate related experience in the administration of similar loans.
- 3.2.5. Awarded vendor(s) will be responsible for conducting appropriate background and reference checks on its employees prior to any potential assignments and should be prepared to conduct more extensive background investigations when required.
- 3.2.6. Awarded vendor(s) will be required to provide quarterly written and financial reports. **Quarterly written and financial reports will be due by the 5th calendar day of the following month of the end of each calendar quarter.** Calendar quarters are as follows:

1st Quarter---January through March-----Quarterly Report Due by April 5th.
 2nd Quarter---April through June-----Quarterly Report Due by July 5th.
 3rd Quarter---July through September-----Quarterly Report Due by October 5th.
 4th Quarter---October through December-----Quarterly Report Due by January 5th.

4. COMPANY BACKGROUND AND REFERENCES

4.1 PRIMARY VENDOR INFORMATION

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

- 4.1.1 Company ownership (non-profit, sole proprietor, partnership, etc).
 - 4.1.1.1 Incorporated companies must identify the state in which the company is incorporated and the date of incorporation. **Please be advised**, pursuant to NRS §80.010, incorporated companies must register with the State of Nevada, Secretary of State’s Office as a foreign corporation before a contract can be executed between the State of Nevada and the awarded vendor(s), unless specifically exempted by NRS §80.015.
 - 4.1.1.2 The awarded vendor(s), prior to doing business in the State of Nevada, must be appropriately licensed by the Department of Taxation, in accordance with NRS §360.780.
- 4.1.2 Disclosure of any alleged significant prior or ongoing contract/contract failures, contract/contract breaches, any civil or criminal litigation or investigation pending which involves the vendor or in which the vendor has been judged guilty or liable with the State of Nevada.
- 4.1.3 Location(s) of the company offices and location of the office that will provide the services described in this RFA.
- 4.1.4 Is your firm a resident of Nevada or a resident of another state? If so, please list the state of residence. Does your resident state apply a preference, which is not afforded to bidders or vendors who are residents in the state of Nevada? This information may be utilized in determining whether an inverse preference applies pursuant to NRS §333.336.
- 4.1.5 Number of employees both locally and nationally.

- 4.1.6 Location(s) from which employees will be assigned.
- 4.1.7 Name, address and telephone number of the vendor's point of contact for a contract resulting from this RFA.
- 4.1.8 Company background/history and why vendor is qualified to provide the services described in this RFA.
- 4.1.9 Length of time vendor has been providing services described in this RFA to the **public and/or private sector**. Please provide a brief description.
- 4.1.10 Has the vendor ever been engaged under contract by any State of Nevada agency?
 Yes No If "Yes," specify when, for what duties, and for which agency.
- 4.1.11 Is the vendor a consultant that is providing an opinion or advice as defined in S.A.M. Chapter 300? (S.A.M. states "a consultant is a person that provides information, an opinion or advice for a fee.")
 Yes No
- 4.1.12 Is the vendor or any of the vendor's employees employed by the State of Nevada, any of its political subdivisions or by any other government?
 Yes No If "Yes," is that employee planning to render services while on annual leave, compensatory time, sick leave, or on his own time?
- 4.1.13 Were the vendor or any of the vendor's employees formerly employed by the State of Nevada within the past one (1) year?
 Yes No If "Yes," please provide employment termination date.
- 4.1.14 Resumes for key staff to be responsible for performance of any vendor resulting from this RFA.
- 4.1.15 **Financial information and documentation to be included in Part IV of your response in accordance with the Submittal Instructions.**
 - 4.1.15.1 Dun and Bradstreet number - Vendors who do not have a DUNS number can request one through the D&B D-U-N-S website at (<http://fedgov.dnb.com/webform>)
 - 4.1.15.2 Federal Tax Identification Number
 - 4.1.15.3 The last two - (2) years and current year interim:
 Profit and Loss Statement
 Balance Statement
 - 4.1.15.4 Audit A-133

4.2 REFERENCES

Vendor should provide a minimum of two (2) references from similar projects performed for private, state and/or large local government clients within the last three years. **Vendors are required to submit Attachment E, Reference Questionnaire to the business references they list. The business references must submit the Reference Form directly to the Employment Security Division (ESD).** It is the vendor's responsibility to ensure that completed forms are received by the ESD or inclusion in the evaluation process. Business References not received, or not complete, may adversely affect the vendor's score in the evaluation process. ESD may contact any or all business references for validation of information submitted.

- 4.2.1 Client name;
- 4.2.2 Project description;
- 4.2.3 Project dates (starting and ending);
- 4.2.4 Technical environment; (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware)

- 4.2.5 Staff assigned to reference engagement that will be designated for work per this RFA;
- 4.2.6 Client project manager name, telephone number, fax number and e-mail address.

4.3 SUBCONTRACTOR INFORMATION

4.3.1 Does this application include the use of subcontractors?

Yes _____ No _____ Unknown _____

If “Yes,” vendor must:

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

5. BUDGET

Note: All Budgets shall be submitted to the State as a designated in Part III of 7.3.1. Please refer to the Submittal Instructions for further instruction.

- 5.1 In addition to the approved loan amount, a maximum of 10% of the approved amount will be available to the vendor for administrative costs associated with the initial administration of each small business loan.
- 5.2 Vendor(s) must provide a complete itemized budget for project costs to include, but not limited to, operating, administrative and payroll expenses.
- 5.3 Vendor(s) must describe other program revenue that will be used to support services.

6. PAYMENT

- 6.1 Vendor(s) will provide timeframe for completion of project and expected payment terms. PLEASE NOTE: Payment to vendors for the awarded service(s) will be within 5 - 10 days upon the Division's approval of submitted invoice by vendor. NOTE: Payment(s) may not be released if vendor(s) is not in compliance with timely quarterly reporting requirements.

7. SUBMITTAL INSTRUCTIONS

- 7.1 In lieu of a pre-application conference, ESD will accept questions and/or comments in writing by e-mail or by facsimile regarding this RFA as follows:

Questions must reference the identifying RFA number in Word format and be addressed to the State of Nevada, DETR, Attn: Tamara Nash, Assistant to the Director, 500 E. Third St, Carson City, NV 89713, e-mailed to tnash@nvdestr.org. or faxed to (775) 684-3908. The deadline for submitting questions is March 18, 2011. Written responses will be e-mailed or faxed to prospective vendors on or about March 25, 2011. Please provide company name, address, phone number, e-mail address, fax number, and contact person when submitting questions.

- 7.2 RFA Timeline

<i>TASK</i>	<i>DATE/TIME</i>
Deadline for submitting questions	March 18, 2011
Written answers to questions via fax or e-mail	March 25, 2011
Deadline for submittal of reference questionnaires	March 31, 2011
<u>Deadline for submission and opening of applications</u>	<u>April 8, 2011</u>
Evaluation period	April 8 – 15, 2011
Selection of vendor	April 18, 2011

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

- 7.3 Application submission requirements:
- 7.3.1. Vendors shall submit their response in SEVEN (7) SETS. Each set is to consist of FOUR (4) parts labeled and tabbed as designated below. One (1) original set is to be marked "MASTER" with the other SIX (6) to be identical copies.

Part I: General Minimum Qualifications in Response to RFA No. 01-11

THE MINIMUM QUALIFICATIONS MUST INCLUDE A SEPARATE TAB/SECTION LABELED "**General Minimum Qualifications**" WHICH SHALL INCLUDE:

- Page 1 of RFA
- All Amendments to the RFA

- All Attachments requiring signature
- Nevada State business license and any other licenses required by City or County.

Part II: Technical Minimum Qualifications in Response to RFA No. 01-11:

THE TECHNICAL MINIMUM QUALIFICATIONS MUST INCLUDE A SEPARATE TAB/SECTION LABELED “**Technical Minimum Qualifications**” WHICH SHALL INCLUDE RESPONSES TO ALL ITEMS UNDER SECTION 3.2., 4.1 AND 4.3.

Part III: Itemized Budget in Response to RFA No. 01-11:

THE ITEMIZED BUDGET MUST INCLUDE A SEPARATE TAB/SECTION LABELED “**Itemized Budget**” WHICH SHALL INCLUDE AN ITEMIZED BREAKDOWN FOR ALL FUNDS REQUESTED UNDER THIS RFA.

Part IV: Confidential Information in Response to RFA No. 01-11:

THE CONFIDENTIAL INFORMATION MUST INCLUDE A SEPARATE TAB/SECTION LABELED “**Confidential information**” WHICH SHALL INCLUDE CONFIDENTIAL INFORMATION, TRADE SECRETS AND/OR PROPRIETARY INFORMATION OF THE VENDOR. ALL INFORMATION MUST BE MARKED AS SUCH.

REQUEST FOR APPLICATION NO.: 01-11

APPLICATION OPENING DATE: April 8, 2011.

FOR: Career Enhancement Program: Small Business Loans for Veterans and Senior Citizens

- 7.3.2 **Application must be received at the address referenced below no later than 3:00 P.M., Pacific Time, April 8, 2011.** Applications that do not arrive by application opening time and date WILL NOT BE ACCEPTED. Vendor(s) may submit their application any time prior to the above stated deadline.
- 7.3.3 **Application shall be submitted to:**
 Department of Employment, Training and Rehabilitation
 Director’s Office
 Attn: Tamara Nash, Assistant to the Director
 500 E. Third Street
 Carson City, NV 89713
- 7.4 The State will not be held responsible for application envelopes mishandled as a result of the envelope not being properly prepared. Facsimile, e-mail or telephone applications will **NOT** be considered.
- 7.5 Although it is a public opening, only the names of the vendors submitting applications will be announced. Application and Budget details submitted will not be disclosed.

Assistance for handicapped, blind or hearing-impaired persons who wish to attend the RFA opening is available. If special arrangements are necessary, please notify the DETR designee as soon as possible and at least two days in advance of the opening.

- 7.6 If discrepancies are found between two or more copies of the application, the master copy will provide the basis for resolving such discrepancies. If one copy of the application is not clearly marked "MASTER," the State may reject the application. However, the State may at its sole option, select one copy to be used as the master.
- 7.7 For ease of evaluation, the application should be presented in a format that corresponds to and references sections outlined within this RFA and should be presented in the same order. Responses to each section and subsection should be labeled so as to indicate which item is being addressed. Exceptions to this will be considered during the evaluation process.
- 7.8 Applications are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFA. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. Emphasis should be concentrated on conformance to the RFA instructions, responsiveness to the RFA requirements, and on completeness and clarity of content.
- 7.9 The application must be signed by the individual(s) legally authorized to bind the vendor.
- 7.10 Vendors utilizing an electronic copy of the RFA in order to prepare their application should place their written response in *an easily distinguishable font* immediately following the applicable question.
- 7.11 ***For purposes of addressing questions concerning this RFA, the sole contact will be the Employment Security Division. Upon issuance of this RFA, other employees and representatives of the Department identified in the RFA will not answer questions or otherwise discuss the contents of this RFA with any prospective vendors or their representatives. Failure to observe this restriction may result in disqualification of any subsequent application NAC §333.155(3).*** This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.
- 7.12 Vendor who believes application requirements or specifications are unnecessarily restrictive or limit competition may submit a request for administrative review, in writing, to the Employment Security Division. To be considered, a request for review must be **received** no later than the deadline for submission of questions (March 18, 2011).

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

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

8. QUALIFICATION EVALUATIONS AND AWARD PROCESS

- 8.1 General Minimum Qualifications shall be evaluated on a pass/fail basis. Only vendors who meet the General Minimum Qualifications will have their Technical applications considered. Technical applications shall be consistently evaluated and scored based upon the following criteria listed:

Program Minimum Qualifications

- Demonstrated competence
- Geographical location covered by this application
- Experience in performance of comparable engagements
- Conformance with the general minimum qualifications of this RFA
- Conformance with the technical minimum qualifications of this RFA
- Expertise and availability of key personnel
- Reasonableness of budget

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

Applications shall be kept confidential until a contract is awarded.

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

subject to disclosure to competing vendors unless and until an agreement is reached. Any award shall not be effective unless and until approved by the Director.

9. TERMS, CONDITIONS AND EXCEPTIONS

- 9.1 The State reserves the right to alter, amend, or modify any provisions of this RFA, or to withdraw this RFA, at any time prior to the vendor award pursuant hereto, if it is in the best interest of the State to do so.
- 9.2 The State reserves the right to waive informalities and minor irregularities in applications received.
- 9.3 The State reserves the right to reject any or all applications received prior to vendor award.
- 9.4 The State shall not be obligated to accept the lowest priced application, but will make an award in the best interests of the State of Nevada after all factors have been evaluated.
- 9.5 Any irregularities or lack of clarity in the RFA should be brought to the designee's attention as soon as possible so that corrective addenda may be furnished to prospective vendors.
- 9.6 Alterations, modifications or variations to an application may not be considered unless authorized by the RFA or by addendum or amendment.
- 9.7 Applications which appear unrealistic in the terms of technical commitments, lack of technical competence, or are indicative of failure to comprehend the complexity and risk of this RFA, may be rejected.
- 9.8 Applications may be withdrawn by written or facsimile notice received prior to the application opening time. Withdrawals received after the application opening time will not be considered.
- 9.9 The price and amount of this application must have been arrived at independently and without consultation, communication, agreement or disclosure with or to any other contractor, vendor or prospective vendor. Collaboration among competing vendors about potential applications submitted pursuant to this RFA is prohibited and may disqualify the vendor.
- 9.10 No attempt may be made at any time to induce any firm or person to refrain from submitting an application or to submit any intentionally high or noncompetitive application. All applications must be made in good faith and without collusion.
- 9.11 The Budget offered by vendors in their applications is an irrevocable offer for the term of the contract and any extensions. The awarded vendor agrees to provide the purchased services at the costs, rates and fees as set forth in their Budget response to this RFA. No other costs, rates or fees shall be payable to the awarded vendor for implementation of their application.

- 9.12 The State is not liable for any costs incurred by vendors prior to entering into a formal contract. Costs of developing the application or any other such expenses incurred by the vendor in responding to the RFA, are entirely the responsibility of the vendor, and shall not be reimbursed in any manner by the State.
- 9.13 All applications submitted become the property of the State, selection or rejection does not affect this right; applications will be returned only at the State's option and at the vendor's request and expense. The "MASTER" copy and Confidential Information of each response shall be retained for official files. Only the "MASTER" technical and "MASTER" budget application will become public record after the award of a vendor. The failure to clearly mark Part IV – which contains Confidential Information, Trade Secrets and/or Proprietary Information, shall constitute a complete waiver of any and all claims for damages caused by release of the information by the State.
- 9.14 An application submitted in response to this RFA must identify any subcontractors, and outline the contractual relationship between the awarded vendor and each subcontractor. An official of each proposed subcontractor must sign, and include as part of the qualifications submitted in response to this RFA, a statement to the effect that the subcontractor has read and will agree to abide by the awarded vendor's obligations.
- 9.15 The awarded vendor will be the sole point of contract responsibility. The State will look solely to the awarded vendor for the performance of all contractual obligations which may result from an award based on this RFA, and the awarded vendor shall not be relieved for the non-performance of any or all subcontractors.
- 9.16 The awarded vendor must maintain, for the duration of its contract, insurance coverages as set forth in the Insurance Schedule marked as Attachment D of this RFA. Work on the project shall not begin until after the awarded vendor has submitted acceptable evidence of the required insurance coverage. Failure to maintain any required insurance coverage or acceptable alternative method of insurance will be deemed a breach of contract.

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

- 9.17 Each vendor must disclose any existing or potential conflict of interest relative to the performance of the contract resulting from this RFA. Any such relationship that might be perceived or represented as a conflict should be disclosed. By submitting qualifications in response to this RFA, vendors affirm that they have not given, nor intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or any employee or representative of same, in connection with this procurement. Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest will automatically result in the disqualification of a vendor's application. An award will not be made where a conflict of

interest exists. The State will determine whether a conflict of interest exists and whether it may reflect negatively on the State's selection of a vendor. The State reserves the right to disqualify any vendor on the grounds of actual or apparent conflict of interest.

- 9.18 The State will not be liable for Federal, State, or Local excise taxes NRS 372.325.
- 9.19 Attachment B of this RFA shall constitute an agreement to all terms and conditions specified in the RFA, including, without limitation, the Attachment C and D and all terms and conditions therein, except such terms and conditions that the vendor expressly excludes. Exceptions will be taken into consideration as part of the evaluation process.
- 9.20 The State reserves the right to negotiate final terms with any vendor selected. The contract between the parties will consist of the RFA together with any modifications thereto, and the awarded vendor's application, together with any modifications and clarifications thereto that are submitted at the request of the State during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, the RFA, any modifications and clarifications to the awarded vendor's application, and the awarded vendor's application. Specific exceptions to this general rule may be noted in the final executed contract.
- 9.21 Vendor understands and acknowledges that the representations above are material and important, and will be relied on by the State in evaluation of the application. Any vendor misrepresentation shall be treated as fraudulent concealment from the State of the true facts relating to the application.
- 9.22 No announcement concerning the award of a vendor as a result of this RFA can be made without the prior written approval of the State.
- 9.23 The Nevada Attorney General will not render any type of legal opinion regarding this transaction.
- 9.24 Any unsuccessful vendor may file an appeal in strict compliance with NRS 333.370 and chapter 333 of the Nevada Administrative Code.
- 9.25 Local governments (as defined in NRS 332.015) are intended third party beneficiaries of any vendor resulting from this RFA and any local government may join or use any vendor resulting from this RFA subject to all terms and conditions thereof pursuant to NRS 332.195. The State is not liable for the obligations of any local government which joins or uses any vendor resulting from this RFA.
- 9.26 Any person who requests or receives a Federal contract, grant, loan or cooperative agreement shall file with the using agency a certification that the person making the declaration has not made, and will not make, any payment prohibited by subsection (a) of 31 U.S.C. §1352.

10. SUBMISSION CHECKLIST

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

Part I: Completed

- 1. Required number of “**General Minimum**” and “**Technical Minimum Qualifications**” applications (per Submittal Instructions) _____

- 2. **Required Forms to be submitted with “Technical Minimum Qualifications”.** _____
 - a. Page 1 of the RFA completed _____
 - b. All Amendments completed and signed _____
 - c. Primary Vendor Attachments A & B signed _____
 - d. Subcontractor Attachment A & B signed (if applicable) _____
 - e. Insurance Schedule Attachment D signed _____
 - f. Primary Vendor Information provided _____
 - g. Subcontractor Information provided (if applicable) _____
 - h. State, County & City Business Licenses as applicable _____
 - i. Vendor Registration Form W-9 Attachment G _____

Part II:

- 1. Required number of Applications (per Submittal Instructions) _____

- 2. Responses to all items under the following
 - a. Responses to all items under 3.2 _____
 - b. Responses to all items under 4.3 _____

Part III:

- 1. Required number of “**Itemized Budget**” copies (per Submittal Instructions) _____

- 2. Itemized Budget for Project _____

Part IV:

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

- 2. All information that is considered Confidential Information, Trade Secrets, and/or Proprietary Information _____

3. Financial Information and information requested in 4.1 _____

REMINDERS:

1. Send out Reference forms for Primary Vendor (with Part A completed) _____

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

Attachment A
CONFIDENTIALITY OF APPLICATIONS AND
CERTIFICATION OF INDEMNIFICATION
PRIMARY VENDOR

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

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

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

This qualification contains Confidential Information, Trade Secrets and/or Proprietary information as defined in Section 2 “ACRONYMS/DEFINITIONS.”

YES _____

NO _____

SIGNATURE _____
Primary Vendor

_____ Date

PRINT NAME _____
Primary Vendor

This document must be submitted in the “General Minimum Qualifications” section/tab of vendor’s application.

Attachment A
CONFIDENTIALITY OF APPLICATIONS AND
CERTIFICATION OF INDEMNIFICATION
SUBCONTRACTOR

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

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

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

This qualification contains Confidential Information, Trade Secrets and/or Proprietary information as defined in Section 2 “ACRONYMS/DEFINITIONS.”

YES _____

NO _____

SIGNATURE _____
Subcontractor

_____ Date

PRINT NAME _____
Subcontractor

**This document must be submitted in the “Gneral
Minimum Qualifications” section/tab of vendor’s
application.**

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

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

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

YES _____ I agree. NO _____ Exceptions below:

SIGNATURE _____
Primary Vendor

Date

PRINT NAME _____
Primary Vendor

EXCEPTION SUMMARY FORM

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

Attach additional sheets if necessary. Please use this format.

This document must be submitted in the “General Minimum Qualifications” section/tab of vendor’s application.

ATTACHMENT C

INSURANCE SCHEDULE

INDEMNIFICATION CLAUSE:

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

INSURANCE REQUIREMENTS:

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

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

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

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

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

- General Aggregate \$1,000,000
- Products – Completed Operations Aggregate \$ 500,000
- Personal and Advertising Injury \$ 500,000
- Each Occurrence \$ 500,000

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

2. **Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) **Waived**

a. The policy shall be endorsed to include the following additional insured language: "***The State of Nevada shall be named as an additional insured with respect to liability arising out of the***

activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor".

3. Worker's Compensation and Employers' Liability

Workers' Compensation

Statutory

Employers' Liability

Each Accident \$100,000

Disease – Each Employee \$100,000

Disease – Policy Limit \$500,000

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

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

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

C. NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the State, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to **The State of Nevada, Department of Employment, Training and Rehabilitation, Attn: Tamara Nash, 500 E. Third St, Carson City, NV 89713.**

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

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

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

All certificates required by this RFA shall be sent directly to **The State of Nevada, Department of Employment, Training and Rehabilitation, Attn: Tamara Nash, 500 E. Third St, Carson City, NV 89713.** State RFA number and project description shall be noted on the certificate of insurance. The State reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

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

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

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

Independent Vendor's Signature Date

Independent Vendor's Title

Larry J. Mosley Date

Director, Department of Employment, Training & Rehabilitation
Title

This document must be submitted in the "General Minimum Qualifications" section/tab of vendor's application.

Attachment D

REFERENCE QUESTIONNAIRE

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

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

A # 01-11 REFERENCE QUESTIONNAIRE FOR:

Part A:

_____ (Name of company requesting reference)

- As Primary Vendor
 As Subcontractor of _____
Name of Primary Vendor

Part B:

This form is being submitted to your company for completion as a business reference for the company listed above. This form is to be returned to the State of Nevada, Employment Security Division, via e-mail at tnash@nvdestr.org or facsimile at (775) 684-3891, no later than March 31, 2011, and **must not** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the State of Nevada Director's Office, by telephone at (775) 684-3891 or by e-mail at tnash@nvdestr.org. When contacting us, please be sure to include the Request for Application number listed at the top of this page.

CONFIDENTIAL INFORMATION WHEN COMPLETED

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

QUESTIONS:

1. In what capacity have you worked with this vendor in the past?
COMMENTS:

2. How would you rate this firm's knowledge and expertise?
____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

3. How would you rate the vendor's flexibility relative to changes in the project scope and timelines?
____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

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

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

6. Who were the vendor's principal representatives involved in your project and how would you rate them individually? Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating?
(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
Name: _____ Rating:
Name: _____ Rating:
Name: _____ Rating:
Name: _____ Rating:
COMMENTS:

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

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

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

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

Attachment E

SAMPLE SCORE SHEET

STATE OF NEVADA, EMPLOYMENT SECURITY DIVISION
RFA 01-11
NEVADA DEPARTMENT OF EMPLOYMENT, TRAINING AND
REHABILITATION

Career Enhancement Program
SMALL BUSINESS LOANS FOR VETERANS AND SENIOR CITIZENS
Application Opening Date: April 8, 2011 @ 3:00 p.m.

VENDOR NAME: _____

Evaluator Initials: _____

Item	Evaluation Criteria	Weight	Score (1-10)	Revised Score (1-10)
1.	Demonstrated competence	25%		
2.	Geographical location covered by this application	5%		
3.	Experience in performance of comparable engagements	25%		
4.	Conformance with the general minimum qualifications of this RFA	10%		
5.	Conformance with the technical minimum qualifications of this RFA	10%		
6.	Expertise and availability of key personnel	10%		
7.	Reasonableness of Budget	15%		
10.	TOTAL	100%		

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

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

1. Demonstrated competence. Did the vendor provide sufficient data to convince you that it will do a good job for the State? Was the proof compelling? Are you confident that this vendor has the knowledge, skills and abilities to perform all its tasks well? Will the vendor's resources be adequate to serve the State's needs? Does the vendor suggest new ways to enhance performance? Does the vendor have the flexible capacity to handle all the needs of the State as they continue to change? Did the vendor present sufficient performance history to convince you of its ability? Has the vendor been in business long enough to provide good stability? Has the vendor experienced ownership changes that would impact its services? Has there been any censure or litigation history?

2. Geographical location covered by this application. What city or area of Nevada will this entity serve?

3. Experience in performance of comparable engagements. Does the vendor have prior experience that will ensure all the skills necessary to perform tasks well? Did the vendor have success in other work for a private or governmental entity? Does the vendor's previous work convince you of its successful completion of these duties? Has the vendor provided adequate references? (During the evaluation meeting, State Purchasing shall provide reference responses to questionnaires.)

4. Conformance with the general minimum qualifications of this RFA. Did the vendor's application provide all the necessary information requested in the RFA. Did the application cause doubt regarding its ability to complete the necessary tasks? Was the application easy to understand and did it provide answers to questions, or create more questions?

5. Conformance with the technical minimum qualifications of this RFA. Did the vendor's application provide all the necessary information requested in the RFA. Did the application cause doubt regarding its ability to complete the necessary tasks? Was the application easy to understand and did it provide answers to questions, or create more questions?

6. Expertise and availability of key personnel. Is the staff that will be assigned to this project by the vendor the best qualified to complete the tasks? Will they be available to insure completion of the project? Will they be available for follow-up issues? Is sufficient staff assigned to handle these duties? Is there a Nevada office or contact person? Will assigned staff respond to issues within a reasonable amount of time?

7. Reasonableness of Budget. Has the vendor established a cost that is reasonable for the project? Does the fee appear cost-effective? Are the costs reasonable compared to the competition? Will there be any additional costs or other ongoing expenses?

Attachment F

Vendor Registration Form-W-9

The State of Nevada, as a part of the RFA process, requires proposing vendors to submit a Vendor Registration W-9 form. The purpose of this form is for the State to assign a vendor number for the State of Nevada Controller's Office payment system. Without a vendor number set up in the State payment system, the Employment Security Division will not be able to pay the awarded funds per this RFA.

The proposing vendor is required to complete this form and submit this within the vendor response in the "General Minimum Qualifications" section/tab of the vendor application. To access this form access the following website:

http://controller.nv.gov/VendorServices/Forms/KTLVEN-01_Registration_Substitute_IRS_Form-W-9.pdf

Upon award to the vendor, the Employment Security Division will process this form to set up the vendor number within the State payment system. Payment will be made per section 6 of this RFA. Forms from any vendor not awarded per this RFA will be destroyed.

This document must be submitted in the "General Minimum Qualifications" section/tab of vendor's application.

Attachment G

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

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

**Department of Employment, Training and Rehabilitation
Employment Security Division**

Contact: Tamara Nash ~ tnash@nvdetr.org

500 E Third Street

Carson City NV 89713

ph: (775) 684-3891 ~ fx: (775) 684-3908

and

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

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

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

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

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

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

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

4. **NOTICE.** Unless otherwise specified, termination shall not be effective until **30** calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.

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

ATTACHMENT AA: STATE SOLICITATION OR RFP # _____ and AMENDMENT(S) #____;
ATTACHMENT BB: INSURANCE SCHEDULE; AND
ATTACHMENT CC: CONTRACTOR'S RESPONSE

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

6. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in paragraph five (5) **at a cost of \$ _____ per _____ (state the exact cost or hourly, daily, or weekly rate exclusive of travel or per diem**

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

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

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

9. INSPECTION & AUDIT.

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

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

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

10. CONTRACT TERMINATION.

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

b. State Termination for Non-appropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

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

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

ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

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

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

v. If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of

the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
vi. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph four (4), and the subsequent failure of the defaulting party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

e. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;

ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Contracting Agency;

iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the Contracting Agency;

iv. Contractor shall preserve, protect and promptly deliver into State possession all proprietary information in accordance with paragraph twenty-one (21).

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

12. LIMITED LIABILITY. The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed one hundred and fifty percent (150%) of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

13. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

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

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

the Contract negotiated in order to determine "independent contractor" status, and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

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

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

The Contractor shall not commence work before:

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

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

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

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

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

General Requirements:

- a. **Additional Insured:** By endorsement to the general liability insurance policy evidenced by Contractor, the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.

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

Evidence of Insurance:

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

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

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

- 2) Additional Insured Endorsement: An Additional Insured Endorsement (CG 20 10 11 85 or CG 20 26 11 85) , signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per General Requirements, subsection a above.
- 3) Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

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

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

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

19. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

20. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations nor duties under this Contract without the prior written consent of the State.

21. STATE OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the State and all such materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the State. Notwithstanding the foregoing, the State shall have no proprietary interest in any materials licensed for use by the State that are subject to patent, trademark or copyright protection.

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

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

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

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

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

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

26. WARRANTIES.

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

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

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

28. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this Contract.

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

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

Independent Contractor's Signature

Date

Independent's Contractor's Title

Cynthia Jones

Date

Administrator, Employment Security Division
Title

Larry J. Mosley

Date

Director, Department of Employment, Training and Rehabilitation
Title

Signature - Board of Examiners

APPROVED BY BOARD OF EXAMINERS

Approved as to form by:

On _____
(Date)

Deputy Attorney General for Attorney General

On _____
(Date)