

**NEBRASKA STATE RECORDS BOARD
MEETING: July 24, 1997**

Nebraska State Capitol
Room 1507
Lincoln, NE
July 24, 1997
9:30 A.M.

SCOTT MOORE
SECRETARY OF STATE
(402) 471-2554 phone
(402) 471-3237 fax



SECRETARY OF STATE
Suite 2300 State Capitol
Lincoln, NE 68509
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NEBRASKA STATE RECORDS BOARD
AGENDA
1507 STATE CAPITOL
JULY 24, 1997 - 9:30 A.M.

1. Call to Order, Roll Call
2. Opening Comments, Chairman Moore
3. Legislative Input, Senators Bromm and Withem invited
4. Financial projections
5. Adoption of Interim Contract
6. Review of the ruling in Farmer's Mutual Lawsuit
7. Consideration of buy-out provision of existing contract between Nebraska Library Commission and Nebrask@ Interactive
8. Consideration of Request for Proposal for Network Manager Services process and staffing alternatives
9. Technical Advisory Committee
10. Miscellaneous Matters
11. Schedule Next Meeting
12. Adjournment

INTERIM CONTRACT FOR NETWORK MANAGER SERVICES
between
THE NEBRASKA STATE RECORDS BOARD
and
THE NEBRASKA LIBRARY COMMISSION
and
NEBRASK@ INTERACTIVE, INC.

This contract is between the Nebraska State Records Board and the Nebraska Library Commission public bodies created by law, and Nebrask@ Interactive, Inc., a for profit Nebraska corporation.

Whereas, With the passage of LB590 (Laws, 1997) (hereinafter LB590) the responsibility for the maintenance and management of a centralized electronic gateway to state government information has been vested in the State Records Board;

Whereas, The Nebraska Library Commission currently has a contract with Nebrask@ Interactive, Inc. to be the state's network manager for electronic access to state government information;

Whereas, It is the intent of the State Records Board to provide uninterrupted service to those parties currently using and relying on the network;

Whereas, LB590 with the emergency clause was signed by the Governor on June 6, 1997, and became operative effective June 7, 1997;

Now, Therefore, the parties, in order to maintain the current provision of electronic access to state government records through the gateway and comply with the provisions of LB590, do enter into this interim agreement:

I. Current agreements regarding providing state government information through a network manager between the Nebraska Library Commission and Nebrask@ Interactive Inc.; any other state agencies and The Nebraska Library Commission; and any other state agencies and Nebrask@ Interactive, Inc. shall be in full force and effect unless modified by this agreement or unless in direct conflict with the provisions of LB590.

II. Commencing July 30, 1997 and the day prior to the last business day of the month each month thereafter the Network Manager shall, prior to 9:00 A.M., deposit \$1.00 for each driver record and \$1.00 for each effective financing statement or ~~Uniform Commercial Code~~ name search electronically searched through Nebrask@ Online in the month prior to the month of deposit into the State Records Management Cash fund.

III. Commencing July 31, 1997, and the last business day of the month each month thereafter, prior to 12:00 Noon, the State Records Board shall make available for pick-up by the network manager a state warrant in an amount equal to ~~\$1.00~~ amounts due pursuant to the Contract for Network manager services and all addenda and interagency agreements resulting therefrom for each driver record, effective finance statement, or Uniform Commercial Code name search done electronically through Nebrask@ Online in the month immediately preceding the month of payment.

IV. With respect to sections II and III of this contract, the provisions become operative for moneys received for electronic searches commencing on June 7, 1997.

V. The Nebraska Library Commission shall amend current agreements with the Secretary of State and the Department of Motor Vehicles to reflect the provisions of sections II & III of this interim contract and the provisions LB590.

VI. Any amendments, addenda, other changes or new contracts for the provision of state government information for a fee through the network manager shall be subject to review approval by the State Records Board prior to execution.

VII. ~~This agreement remain in effect until a new master contract can be is negotiated between the State Records Board and the network manager as chosen by the competitive bid process outlined in LB590. This interim contract shall terminate on January 31, 1998, unless sooner terminated for cause, as set forth in the Contract for Network Manager Services.~~

Signed this ____ day of July, 1997:

Scott Moore, Secretary of State
Chair, State Records Board

Rod Wagner, Executive Director
Nebraska Library Commission

Sam Somerhalder, President
Nebraska Interactive, Inc.

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

FARMERS MUTUAL INSURANCE
COMPANY OF NEBRASKA,

Docket 531, Page 229.

Plaintiff,

vs.

THE NEBRASKA DEPARTMENT OF MOTOR
VEHICLES; THE NEBRASKA LIBRARY
COMMISSION; ALVIN ABRAMSON, in his
official capacity as Director of the Department of
Motor Vehicles; and RODNEY G. Wagner, in his
official capacity as Director of the Nebraska Library
Commission;

ORDER

Defendants,

DEPT. OF JUSTICE

JUL 17 1997

NEBRASKA@ INTERACTIVE, INC.,

STATE OF NEBRASKA

Intervenor.

This case was brought by Farmers Mutual Insurance Co. as a writ of mandamus pursuant to Neb. Rev. Stat. § 84-712.03, asserting a denial of access to public records by the defendants.

FINDINGS OF FACT

1. Farmers Mutual Insurance Company of Nebraska ("Farmers Mutual") is an incorporated mutual company with its principal place of business in Lancaster County, Nebraska, and is engaged in writing property and casualty insurance in the State of Nebraska.
2. Defendant, Nebraska Department of Motor Vehicles ("DMV") is an executive and administrative department of the State of Nebraska, established pursuant to Neb. Rev. Stat. § 81-101 (Reissue 1994).
3. Defendant, Nebraska Library Commission ("NLC") is an agency of the State of Nebraska,

established pursuant to Neb. Rev. Stat. § 51-403 (Reissue 1988), and charged with the powers and duties set forth in Neb. Rev. Stat. § 51-403 (Reissue 1988).

4. Defendants, Alvin Abramson and Rodney G. Wagner, were at all relevant times the Directors of the Nebraska Department of Motor Vehicles and the Nebraska Library Commission, respectively.

5. Intervenor, Nebrask@ Interactive, Inc., is a for-profit corporation doing business in and incorporated under the laws of the State of Nebraska. The corporations' principal place of business is Nebraska.

6. The Department of Motor Vehicles (DMV) for the State of Nebraska is required by statute to compile an operating record for each driver licensed by the state. Such a record includes the driver's traffic violations and accidents.

7. These records are stored on the DMV computer system. Prior to February 24, 1995, the DMV would provide either hard copy certified operating records or computer 'batch' tape non-certified operating records, for a fee of \$2.00 per record. This \$2.00 fee is set by statute for certified DMV operating records.

8. The plaintiff, Farmer's Mutual, does not contest the right of the DMV to sell batch computer DMV operating records for \$2.00 each.

9. In January of 1995, the DMV entered into an inter-agency agreement with the Nebraska Library Commission (NLC). This agreement gave the sole rights to computerized forms of DMV records to a third party, Nebrask@ Interactive, Inc. This third party had entered into a contract with NLC to provide an comprehensive interactive on-line state-wide computer information system, "Nebraska Online".

10. On March 26, 1995, Nebrask@ Interactive, Inc. informed the plaintiff, Farmer's Mutual,

that the fee for either 'batch' tape computer DMV records, or 'online' DMV records via a modem would be \$3.00 each.

11. 'Batch' DMV operating records are stored on a magnetized tape, which is then inserted into a machine to feed the operating records into a computer database.

12. 'Online' DMV operating records are stored in a computer network that is accessed via a modem, to allow the instantaneous transfer of the operating records to another computer database via the modem connection.

13. Pursuant to the Contract for Network Services between NLC and Nebrask@ Interactive, Inc, the \$3.00 fee charged for computerized DMV records is disbursed as follows: \$.25 is paid to the DMV, \$.75 is paid to the state general fund, \$.06 goes to NLC and \$.94 goes to Nebrask@ Interactive, Inc.

14. The \$.94 received by Nebrask@ Interactive, Inc. for each DMV operating record comprises the majority of revenue received by Nebrask@ Interactive, Inc. in providing the Nebraska Online service.

15. The DMV continues to provide hard copy certified records upon request by any member of the public for \$2.00 each.

16. After the \$1.00 per record increase for computer batch tapes, Farmers Mutual decided to request hard copy DMV operating records, rather than pay the increased fees.

17. Farmer's Mutual invested in computer equipment specifically designed to be compatible with batch processed computer tape DMV operating records.

18. Farmers Mutual relies on DMV operating records to determine underwriting risks involved in automobile insurance policies. DMV records are an essential component of the evaluation of each policy requested.

19. The hard-copy DMV records are certified copies. The computer batch records and on-line records are non-certified.

FINDINGS OF LAW

1. The operating records of Nebraska licensed drivers which are compiled by the DMV are 'public records' as defined by the Nebraska Public Records Act. Neb. Rev. Stat. § 84-712.01. Irregardless of the form of the record, whether a hard copy certified operating record, a 'batch' computer record or an interactive 'online' record, the information contained in the operating record is a public record 84-712.01(1).

2. Statutes relating to the same subject matter should be construed together so as to maintain a consistent and sensible scheme. *Solar Motors, Inc. v. First Nat. Bank of Chadron*, 249 Neb. 758, 545 N.W.2d 714 (1996). In this case, Neb Rev. Stat. § 84-712, § 84-712.01, § 84-712.03, § 84-713, § 84-713.01, § 60-483 and § 25-1280 are all related to public records, the right of access to public records, and fees for certified copies of public records

3. All citizens of the state of Nebraska, and other interested persons as designated by Neb. Rev. Stat. § 84-712.01, have the right to examine public records, and to makes memorandums and abstracts from public records, free of charge, during the ordinary business hours of the office where the records are housed. Neb. Rev. Stat. § 84-712

4. The plaintiff's right of access to public records under Neb. Rev. Stat. § 84-712 is fully met in this case by providing the public record in the form of a hard copy certified DMV operating record for \$2.00 per copy, pursuant to Neb. Rev. Stat. § 60-483.

5. Farmers Mutual does not have statutory or constitutional right to DMV operating records specifically in batch computerized form.

6. Computerized DMV operating records, because they are not certified copies, do not fall

under Neb. Rev. Stat. § 60-483 or § 25-1280. Computerized DMV operating records include 'batch' records and 'online' interactive records. Neb. Rev. Stat. § 60-483 specifically delimits the \$2.00 fee as for "a certified abstract of the operating record of any person". Neb. Rev. Stat. § 25-1280 is also delimited to a "certified copy".

7. The fees for online interactive DMV operating records fall under Neb. Rev. Stat. § 84-712.01(2). This statute allows the charge of a "reasonable fee...for such specialized service". The \$3.00 fee is reasonable for online DMV operating records.

8. The fees for computerized batch DMV operating records are not delimited by statute. The setting of fees for access to public records is a legislative function. Neb. Rev. Stat. § 84-713.01(9). The NLC and Nebrask@ Interactive, Inc. exceeded their authority by setting the fee for batch processed computerized DMV records at \$3.00 per copy, without legislative authorization for such a fee.

9. When and/or until legislative action is taken to set the proper fee for 'batch' computerized non-certified DMV operating records, the NLC and Nebrask@ Interactive, Inc. should cease selling batch computer DVM operating records for a fee.

10. There is no statutory or constitutional obligation for NLC/Nebrask@ Interactive to provide computer batch DVM operating records to the public at no charge, given that certified hard copies of the operating records meet the standards of Neb. Rev. Stat. § 84-712.

11. Other than the setting of fees for batch computerized DVM operating records, the NLC has acted within its authority in this matter.

12. The DMV has acted within its authority in this matter.

13. The plaintiff has not been denied equal protection of the law.

14. The plaintiff has not been denied due process of the law.

19. The \$3.00 fee for online DMV records does not include a \$1.00 tax, because the payment of the \$3.00 fee is based on the voluntary act of accessing the online DVM operating records.

IT IS HEREBY ORDERED that the plaintiff's writ of mandamus requesting access to computer batch DMV operating records, either at a fee of \$2.00 per record or at no charge, be denied.

FURTHER, IT IS HEREBY ORDERED that the Nebraska Library Commission and Nebraska Interactive, Inc. cease selling batch computerized DVM operating records for a fee, until the legislature decides whether or not to authorize such fee and its amount.

Dated this 16 day of July, 1997.

BY THE COURT:

Earl J. Withhoff
Earl J. Withhoff, District Judge

cc: Robert T. Gruit, attorney for Plaintiff
Lauren L. Hill, Assistant Attorney General, attorney for Defendants
Rodney M. Confer & Jeanelle R. Robson, attorneys for Intervenor

Network, (hereinafter collectively "The Software") upon the following terms and conditions:

a. By January 31, 1996, NLC will inform NII of NLC's decision on whether or not to extend the contract period through January 31, 2000.

*b. If NLC decides to terminate the agreement at the end of three (3) years, that is, as of January 31, 1998, NII shall be entitled to compensation for a perpetual license to the Software in exchange for payment to NII as of January 31, 1998 in the amount of \$500,000.00. NLC will inform NII by July 31, 1997 as to what if any portions of the Software NLC desires to license from NII. Lower fees may be negotiated for portions of the Software less than all of it. If NLC does not desire any part of the Software, no compensation for license shall be due.

c. If NLC decides to extend the Contract through January 31, 2000, NLC shall be entitled to a perpetual license with rights to modify the Software as it desires, for the Software extant as of January 31, 2000, for no additional compensation.

d. The Software, or such portion as NLC may elect to license, shall be delivered to NLC upon the date of payment in b. above, or upon January 31, 2000 in c. above, whichever is applicable.

Upon termination or expiration of this Contract all other Network and manager records, work papers and operations documentation shall be delivered to NLC within thirty (30) days

NII will not pledge any assets of NLC in its care, custody or control, or cause any type of lien to attach to such.

*27. CONTINUATION OF OPERATIONS DURING TRANSITION PERIOD.

If for any reason this Contract shall be terminated or upon expiration of the Contract without extension, or at the end of any extension, NII shall, at the option of NLC, continue to operate under this Contract as network manager in accordance with all terms and conditions of this Contract, together with any amendments or modifications in existence at such time, for a period of up to 12 months from the time of expiration or notification of termination from NLC to NII. The intent of this provision is to insure continuation of network operations while a successor network manager is chosen and installed.

28. AGREEMENT NOT TO COMPETE.

As a condition to commencing operations as network manager under the terms of this Contract, NII shall deliver to NLC signed statements by NII (which also bind its successors and assigns) and its shareholders, officers, and directors, in substantially the following form:

In consideration for the award of the contract for providing electronic access to state information and other

1. Introduction

This document summarizes a review of the State of Nebraska Request for Proposal (RFP) SCA-0032 released September 28, 1994. The topic of the RFP is the procurement of a Network Manager to perform services on behalf of the Nebraska Library Commission and other Nebraska State government entities participating in a Nebraska Information Consortium.

The review is being conducted at the bequest of the Nebraska State Records Board and the Nebraska Department of Administrative Services. Prompting the review is recent legislation (Legislative Bill 590) which, among many other items, stipulates that "the board shall employ or contract with a network manager."

Since the requirements for a network manager are expected to be similar to that of the 1994 requirements, it is useful to assess the original procurement for current utility. The informational assessment contained in this document was derived in an independent and impartial manner and reflects the opinions of Emerald Management Systems which has no stake in the existing network manager contract or any future network manager contracts.

2. Approach

The approach used in deriving the assessment is both objective and subjective. When possible objective criteria was used assess the RFP and evaluation methodology. Primary examples of objective criteria relate to whether or not the RFP met specific procurement procedures as defined by the Department of Administrative Services Materiel Division.

Since the nature of the procurement for services process must be flexible to account for pronounced differences in service contracts, most of the assessment is subjective in nature.

The following documentation was used during the assessment:

- Request for Proposal for Contractual Services - Contract No. SCA-0032
- Evaluation Worksheets (blank and completed)
- LB 590
- Documentation from Nebraska@Online
- Other Miscellaneous Material

3. RFP Assessment

This section of the document presents the results of the assessment. Each section of the RFP was reviewed for format and content. Where appropriate recommendations are provided. Criticism of the RFP is provided for the purpose of identifying areas that may need improvement should it be determined that this RFP be used as a baseline for a new network manager RFP by the State Records Board.

3.1 Part One

Part One of the RFP is made up of the following subsections:

1. General Provisions
2. Special Contract Conditions
3. General Requirements
4. Bidding Instructions
5. Evaluation of Proposals

Each subsection is discussed below.

General Provisions

The General Provision section is preceded by a brief RFP purpose and description of the Nebraska Information Consortium. The paragraphs were adequate for this proposal with the exception that additional details of the consortium should have been provided. A further description would have served to define the scope of other entities involved in the project.

It is also recommended that this introductory information be expanded in a new RFP. Additional information about the first contract, Nebraska@Online, the current technical environment, and LB 590 (including a description of the State Records Board responsibilities) should be included in a new RFP for a network manager.

The General Provisions section itself includes a mixture of the contractor's general responsibilities and, procurement instructions, and terms and conditions. Eighteen items are included which range from instructions for bidders on preparing and submitting the proposal to items such as tax and performance bond requirements. The section is a bit confusing and redundant especially in light of the fact that both a Bidding Instructions and General Terms and Conditions sections already exist in the RFP.

It is recommended that procurement instructions items be included a more general section dealing with procurement procedures and the terms and conditions items be consolidated into one Terms and Conditions section.

Special Contract Conditions

Like the General Provisions section, the Special Contract Conditions section contains a mixture of concepts. There are requirements of the network manager surrounding provision of literature and protection of the network during transition as well as terms and conditions of the contract like termination for cause and hold harmless.

It is recommended that the individual items that are requirements based be included with the General Requirements (or another section titled Project Description and Scope of Work) and the terms and condition items be consolidated with similar items from the General Provisions section into one Terms and Conditions section.

General Requirements

Overall this section does a good job of describing the requirements of the network manager. It describes the nature of the application, analytical and research and development requirements, technical and user interface requirements, documentation, and audit requirements. It also describes the ongoing staff responsibilities of the network manager for maintenance of the application and infrastructure, duties surrounding marketing of the network, promotion and expansion of the services provided, and fiscal management of the network and application. A clear picture of what the network manager must be responsible for is provided.

However, there are a few items in this section which directly violate the procurement procedures. A few of the items are actually bidders instructions related to providing alternative solutions, description of performance monitoring, and unit pricing. These items should not be contained in this section. In addition there also is one item (Waiver) that should be included in a terms and conditions section rather than here.

With the exception updating of the requirements or adding new requirements (based on specific needs of the board or new technology based requirements) the content of this section can be reused in a new RFP. For the sake of clarity it is recommended that they be packaged into a section titled Project Description and Scope of Work.

Bidding Instructions

Assessed in isolation the Bidding Instructions section is adequate although more specificity should have been provided. To facilitate the evaluation process the instructions should include very

specific chapter or section titles for the bidders. The statement "Format: Bids must be prepared and submitted in the exact format sequence as this RFP" is vague and confusing. It is not clear whether this statement means the RFP responses must have individual sections that map to the outline of the RFP or that the responses must adhere to the header sections in the Bidders Instructions section.

Evidence of the lack of specificity may be seen in the two proposals received as a result of this RFP. Although both proposals address the RFP requirements they do so with proposals that are structured very differently. At a minimum the difference in proposal formats makes the evaluation very difficult. Taken to the extreme and depending on the interpretation of the above quoted statement, both proposals could have been rejected.

There is an additional issue related with the Bidding Instructions section. Part Three of the RFP (General Terms and Conditions) paragraph 5 subparagraph E includes very specific format instructions. These instructions are not consistent with the Bidding Instructions section. They are very specific as to what sections the bidders must include in their proposals. If this is in fact the official instructions to the bidders then the Nebraska@Interactive proposal could have been rejected for not following those instructions. The duplicate and inconsistent instructions to the bidders section is the single largest flaw of the RFP. This issue could have put the procurement at risk.

Evaluation of Proposals

This section of the RFP includes a description to the bidders of the items that will be evaluated for award. The key concern with this section may only be recognized when reviewed in context of the proposal evaluation worksheets. The worksheets themselves are very detailed and require the evaluators to search for compliance with almost each passage of the RFP. There is however a slight inconsistency between the Evaluation Scoring Sheet Section V (Rating) and the narrative material in the RFP. RFP section 5.2 states that "proposals will be evaluated on supplying

technical and non-technical literature specified in the RFP.” There is no place to score this item on the worksheet.

It is recommended that a more comprehensive evaluation methodology be developed that includes some consideration to weighting of evaluation factors.

3.2 Part Two

There are no issues with Part Two (Schedule of Events) of the RFP.

3.3 Part Three

Section Three of the RFP (General Terms and Conditions) is a mixture of terms and conditions bidder instructions, and proposal format requirements. The result is confusion and redundancy with other RFP sections. It is recommended that terms and conditions that currently exist in other RFP sections be consolidated in this section. Items in the Terms and Conditions section related to bidder instructions and proposal format be moved to a section containing other such instructions.

3.4 Other

In addition to the specific sections the RFP other items including drug free workplace requirements form, Request for Proposal for Contractual Services form, and RFP distribution and advertisement were reviewed. There is no issue with any of these items of the RFP.

4. Additional Requirements

The evolving arena of electronic commerce is a possible source of additional requirements for a network manager. There is little doubt that electronic commerce is one of the fastest growing economic trends in the United States and the world today. Most of the growth being attributed to

the Internet. Government is in the position to both increase or inhibit that growth depending on how it wishes to define its role.

With most social or economic advances that involve computers or computer technology, technology is far ahead of public or human acceptance or understanding. This is true of electronic commerce. Certain aspects of electronic commerce have been "solved" technologically but are still being debated publicly. One of those key aspects are the use of electronic signatures. Technology already offers solutions now that are feasible and implementable for using electronic signatures.

A signature (ink or electronic) is a social event not a technological event. It is an act whereby an individual affixes approval of a document so that someone else can understand and perceive that approval. One of the available technologies for electronic signatures involves the assigning of specific strings of data, through keys, to an individual. This method, known as public-key cryptography, allows a user to approve documents with a private secure key but also allows for a public key to be recognized by others.

Another method that is available employs pen biometric technology. This method uses an input pad and electronic pen which allows for capture and storage of signature image. Technology is also available for this solution.

Certainly the State of Nebraska needs to be cognizant of the advances in this technology. However, relative to an assessment of RFP SCA-0032, it is not recommended that an additional requirement be added to a new RFP which stipulates implementation of electronic signatures.

There are multiple reasons for this recommendation. The legal and social aspects surrounding electronic signatures are fluid at best. As with many of the issues surrounding electronic information most experts (including the Federal Government) believe that the market will define the application of electronic signatures through an evolutionary manner. The existing RFP is well bounded in scope around the electronic access to certain areas of governmental information. It is

not intended to become a universal electronic front end to all citizen interaction with the State of Nebraska. The impact of electronic signatures goes beyond the scope of what should be contracted out to a network manager.

Also it is not reasonable to expect the citizens of Nebraska to have to upgrade their own personal technology to gain access to the State's information. Electronic signature technology at minimum means additional software required on the "client" machines and in some cases new hardware as well. The purpose of the system is to facilitate access to information not further complicate it for the citizens of Nebraska.

Despite the recommendation to not include specific requirements for electronic signature in a new RFP, it may be appropriate that a requirement associated with the more global issue of electronic commerce be included in a new RFP. The current RFP already has a related requirement in section 3.2.1.7. That requirement states that the network manager "assist the Commission and other members of the Nebraska Information Consortium in seeking advice from the general public, its subscribers, professional associations, academic groups, institutions, and individuals with knowledge of an interest in areas of networking, electronic mail, public information access, gateway services, add-on services and electronic filing of information."

It may be appropriate to formulate more specific verbiage related to electronic commerce and include it as a new RFP requirement. It may also be appropriate to specifically define a requirement of the network manager to provide periodic updates on topics of the Board's choosing.

5. Conclusion

It should be noted that many of the comments contained in this document were based on revised procurement procedures from DAS Materiel Division dated April 1995. Therefore, many of the issues raised were based on a comparison of the RFP to procedures that were not yet available.

The true measurement of a procurement like this is a successful contract and system. The scope of this review was not to evaluate the system that resulted from the RFP. However, as part of understanding the whole picture, a cursory review of Nebraska@Online was done. Based on that review the procurement was successful. It would appear that the tangible and intangible requirements of the RFP have been met by Nebraska@Online.

The substantive requirements stated in the RFP in the General Requirements section define the scope of the project and the duties and responsibilities of the network manager. These requirements are of sufficient detail to allow for vendor responses. They provide enough specificity for bidders to understand what their near and long term responsibilities are as the network manager.

The major item of concern related to the RFP is with the conflicting and vague guidance relative to the bidder proposal format. As discussed previously, by including the guidance in multiple places there is too much of a chance of bidder interpretation. The result (the submitted proposals) bears this out. The different proposal structures complicate the evaluation process and may result in an uneven evaluation.

The following table is a general estimate of the RFP paragraph content that is considered reusable in the construction of an updated RFP for a network manager. Each paragraph of the RFP is identified by its number (1.1, 1.2, etc.) or text heading. Column one of the table is the major section of the RFP, column two contains the RFP paragraphs from the RFP needing minor modifications but are appropriate for a new RFP, column three contains the references to the outline that follows the table, and column four contains those paragraphs in the RFP that need major rework.

Section/Subsection	Paragraphs Reusable With Some Modification	Recommended Placement Section in New RFP	Paragraphs Needing Major Changes
Part One - 1. General Provisions	1.1 1.2 1.3 1.4 1.5 1.6 1.7 1.8 1.9 1.10 1.11 1.12 1.13 1.14 1.15 1.16 1.17 1.18	Section 1.0 Section 1.0 Section 2.0 Section 2.0 Section 2.0 Section 5.0 Section 5.0 Section 5.0 Section 5.0 Section 5.0 Section 2.0 Section 2.0 Section 2.0 Section 2.0 Section 2.0 Section 2.0 Section 5.0 Section 2.0 Section 2.0 Section 2.0	Purpose Nebraska Information Consortium
Part One - 2. Special Contract Conditions	2.1 2.2 2.3 2.4 2.5 2.6 2.7 2.8 2.9 2.10 2.11 2.12 2.13	Section 1.0 Section 5.0 Section 4.0 Section 5.0 Section 4.0 Section 5.0 Section 5.0 Section 5.0 Section 5.0 Section 5.0 Section 5.0 Section 5.0 Section 5.0 Section 5.0	
Part One - 3. General Requirements	3.1 3.2 3.3 3.4 3.5 3.6 3.7	Section 5.0 Section 4.0 except 3.2.7.7, 3.2.7.8, and 3.2.7.9 Section 2.0 Section 4.0 Section 4.0 Section 4.0 Section 5.0 Section 5.0	
Part One - 4. Bidding Instructions	4.3 4.4	Section 3.0 Section 3.0 Section 3.0 Section 3.0	4.1 4.2

Section/Subsection	Paragraphs Reusable With Some Modification	Recommended Placement Section in New RFP	Paragraphs Needing Major Changes
	4.5 4.6 4.7 4.8 4.9 4.10 4.11 4.12 4.13 4.14 4.15 4.16	Section 3.0 Section 3.0 Section 3.0 Section 3.0 Section 3.0 Section 3.0 Section 3.0 Section 3.0 Section 3.0 Section 3.0 Section 3.0 Section 3.0	
Part One - 5. Evaluation of Proposals	5.1 5.2 5.3 5.4 5.5 5.6 5.7	Section 2.0 Section 2.0 Section 2.0 Section 3.0 Section 2.0 Section 2.0 Section 5.0	
Part Two		Section 2.0	Schedule of Events
Part Three	1. 2. 3. 4. 5. 6. 7. - 34.	Section 1.0 Section 1.0 Section 2.0 Section 2.0 Section 3.0 Section 2.0 Section 5.0	

Since it is the overall assessment that the specific content of the individual sections was adequate and resulted in a successful bidder selection, the major areas that should be improved relate to RFP structure. Choosing an alternative RFP format would eliminate many of the identified problems. Below is a recommendation of section or chapter titles for a new RFP. The section recommendations below correlates to column three of the above table. Following these recommendations may more clearly present the State's requirements and eliminates redundancy among the sections.

Sample RFP Section Recommendation

1.0 Introduction

This section will include items such as, RFP objective and background, procuring office and contact person, description of the responsibilities of the State Records Board, description of Nebraska@Online, and technical architecture overview.

2.0 Procurement Procedures

This section will provide an overview procedures that will guide this procurement. It may include items such as procurement schedule of events, pre-proposal conference instructions, proposal submission instructions, proposal evaluation procedures, and protest/grievance procedures.

3.0 Proposal Content Requirements

This section will define how the bidders must respond to this procurement. It will define the format and content of each section of the proposals. It will be made very clear to the bidders through the instructions provided in this section what must be contained in the technical proposal as well as the cost proposal.

4.0 Project Description and Scope of Work

This section will include the business and system requirements that define the scope of work for this procurement. The requirements should items such as hardware and software, telecommunications, look and feel of a new system, system volume and size estimate, performance and response time, project management responsibilities, and bidder staff responsibilities.

5.0 Terms and Conditions

This section will define the general and specific terms and conditions of this procurement. It will contain the standard or "boiler plate" terms and conditions but will also include terms and conditions that have been customized for this procurement.

There are of course other acceptable RFP formats that may be followed. The above format has been used on multiple RFPs for the State of Nebraska and has proved a solid means of presenting the State's requirements which have resulted in solid bidder responses.

E. BENJAMIN NELSON
GOVERNOR



LAWRENCE S. PRIMEAU
DIRECTOR

Department of Administrative Services

Memorandum

DATE: July 23, 1997
TO: Greg Lemon
FROM: Barbara Lawson
SUBJECT: McGowan Consulting Report

I have reviewed Mark's recommendation for a new RFP document. There have been many changes in the RFP process through state purchasing since 1994, which is not stated but needs to be clarified. The issues brought forward by the recommendations are now standard procedures in the RFP process.

The reference of format and evaluation processes are correct. The more precise a proposal is submitted, the greater the state's understanding of what service will be provided. The evaluation process is the most critical in the RFP process.

I would question time being invested in a document that is three years old and which the RFP format has already been changed. I believe that Mark should have evaluated the technical nature, reference verbage and clarity, in the RFP document instead of a process that has already been changed and that he himself has utilized.

I appreciate your requesting my comments on this report.

CC: Larry Primeau
Bill Miller

18 direction of the board.

19 (3) The board shall finance the operation and maintenance
20 of the gateway or electronic network from revenue generated
21 pursuant to sections 52-1316 and 60-483, section 9-411, Uniform
22 Commercial Code, and section 8 of this act.

23 Sec. 7. The board shall establish a technical advisory
24 committee to assist it in the performance of its duties. The
25 committee shall consist of individuals who have technical
26 experience and expertise in electronic access and information
27 technology. The committee shall have three members. The members
28 shall include a representative from a state agency that is

1 responsible for providing public records, a representative from the
2 central data processing division of the Department of
3 Administrative Services, and a representative from the computer
4 services group of the Legislative Council.

5 Sec. 8. Except as provided in sections 52-1316 and
6 60-483 and section 9-411, Uniform Commercial Code, the board may
7 establish reasonable fees for electronic access to public records
8 through the gateway. The fees shall not exceed the statutory fee
9 for distribution of the public records in other forms. Any fee
10 established by the board under this section may be collected for a
11 one-year period and shall terminate at the end of the one-year
12 period unless enacted by the Legislature. Any fees collected under
13 this section shall be deposited in the Records Management Cash
14 Fund.

15 Sec. 9. (1) Any state agency desiring to enter into an
16 agreement to or otherwise provide electronic access to public
17 records through a gateway for a fee shall make a written request
18 for approval to the board. The request shall include, but not be
19 limited to, (a) a copy of the contract under consideration if the
20 electronic access is to be provided through a contractual
21 arrangement, (b) the public records which are the subject of the

Nebraska Library Commission



The Atrium • 1200 N St. • Suite 120 • Lincoln NE 68508-2023 • 402-471-2045 • Fax 402-471-2083

January 12, 1996

Sam Somerhalder
Network General Manager
Nebrask@ Online
1221 N Street, Suite 303
Lincoln, NE 68508

Dear Sam:

The Nebraska Library Commission has approved a two year extension of our current agreement per terms of the contract. In addition to other provisions, this extension, through January 31, 2000, entitles the Commission to a perpetual license with rights to modify software as it (NLC) desires for the software extant as of January 31, 2000, for no additional compensation.

Please let me know if any further action is required to affirm the contract extension.

Sincerely,

A handwritten signature in cursive script that reads "Rod Wagner".

Rod Wagner
Director

Nebraska Library Commission

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June 3, 1996

Sam Somerhalder
President & CEO
Nebrask@ Interactive, Inc.
1221 N Street, Suite 303
Lincoln, NE 68508

Dear Sam:

As you are well aware, legislation (LB 1375) enacted by the 1996 Legislature and signed into law by the Governor establishes new requirements for state agencies related to contracts for electronic access to public records.

While the lawfulness of some Nebrask@ Online access fees is currently being addressed through judicial process, I understand an intent of LB 1375 is that the Commission's contract with Nebrask@ Interactive be terminated on January 31, 1998. With our mutual agreement, the contract is terminated effective January 31, 1998 (midnight) pursuant to the second paragraph of section 17, and the first paragraph of section 25 of the contract.

It is my understanding that Nebrask@ Interactive, Inc. agrees to not pursue any claim for damages for rescinding the two year extension previously approved by the Nebraska Library Commission and stated in the Commission's letter dated January 12, 1996. If this understanding is correct, please sign the enclosed copy of this letter in the space provided, and return to me.

Sincerely,

Handwritten signature of Rod Wagner in black ink.

Rod Wagner
Director

Accepted and Agreed:

Handwritten signature of Sam Somerhalder in black ink.

Sam Somerhalder, President & CEO
Nebrask@ Interactive, Inc.

Date:

6-4-96

AFFIDAVIT OF PUBLICATION

State of Nebraska }
LANCASTER COUNTY, } ss.

The undersigned, being first duly sworn, deposes and says that she/he is a Clerk of the Lincoln Journal Star, legal newspaper printed, published and having a general circulation in the County of Lancaster and State of Nebraska, and that the attached printed notice was published in said newspaper one ~~XXXXXX~~ time successive..... the first insertion having been on the 21st day of..... July..... A.D., 19...97
~~XX~~
and thereafter on....., 19.....

Notice is hereby given that a meeting of the Nebraska State Records Commission will be held at 2:00 p.m. in Room 212 of the State Capitol Building, Lincoln, Nebraska, on July 26, 1998. The office of Secretary of State will be open for inspection during regular business hours.

and that said newspaper is the legal newspaper under the statutes of the State of Nebraska. The above facts are within my personal knowledge and are further verified by my personal inspection of each notice in each of said issues.

.....
Subscribed in my presence and sworn to before me this 21st day of July, 19 97

Ronald Kalkwarf.....Notary Public

Printer's Fee, \$ 4.40

GENERAL NOTARY-State of Nebraska
RONALD KALKWARF
My Comm. Exp. July 26, 1998

83104

Nebraska State Legislature

SENATOR CURT BROMM

District No. 23
1448 North Pine Street
Wahoo, Nebraska 68066

Legislative Address:
State Capitol
PO Box 94604
Lincoln, Nebraska 68509-4604
(402) 471-2719
E-MAIL
cbromm@unicam3.lcs.state.ne.us



Ninety-Fifth Legislature

COMMITTEES

Vice Chairman, Natural Resources
Vice Chairman, Rules
Education
Executive Board
Reference
Legislative Council

July 24, 1997

Secretary of State Scott Moore
Administrator, State Records Board
Suite 2300, State Capitol
Lincoln, NE 68509

Dear Secretary Moore:

I apologize for not being able to attend the meeting of the State Records Board (Board) today, but when contacted yesterday, my schedule did not permit me to travel to Lincoln this morning. I know you are on a tight time schedule, and the meeting was arranged on relatively short notice.

The Board will play an important role for the State of Nebraska in providing access to public records, and I want to thank each member of the Board for being willing to serve and lend direction in this area. I have been very involved in this subject as a Legislator over the past few years, introducing LB 1375 during the 1996 session. I also introduced LB 792 and worked with Senator Withem on LB 590 during the 1997 session. My main concerns, which have not and do not cease with the end of the Legislative session, are simple: public records are an integral part of government; the public's right to access their records should be done as efficiently as possible, at the lowest, reasonable cost, in a manner that is not restrictive to the citizen. This philosophy has guided me during the public policy debate which has occurred the past two years in the Legislature.

The Legislature saw fit to mandate a fresh start on the task of providing the public electronic access to their records. Originally, the process and contract had the perception of being tainted. The Legislature has been very unified about wanting this fresh start. The bidding needs to be open and fair, with all parties being given equal consideration. I know you will be under considerable pressure to not have any disruption in service as a paramount consideration. I would urge you to keep the longer range interests of all Nebraskans in mind as you select a network manager, even if it means a temporary cessation of services to some commercial users.

I do not believe it was the intent of the Legislature to purchase the software for \$500,000. That is not to say that if it is needed, that it would be out of line for the Board to negotiate for

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 NAS320 PROCESSED
 08 53 PM 07/22/97

STATE OF NEBRASKA
 DEPARTMENT OF ADMINISTRATIVE SERVICES
 ACCOUNTING DIVISION

PACKET PAGE 2 DIVISION PAGE 1

REPORT PAGE 9

CASH AND INVESTMENT STATUS
 AS OF 7/22/97

- INDICATES CREDIT

AGENCY 9 SECRETARY OF STATE
 DIVISION 1 RECORDS MANAGEMENT DIV

FUND NUMBER AND NAME ACCOUNT AND DESCRIPTION	BEGINNING BALANCE	-----NET ACTIVITY-----			ENDING BALANCE	FUTURE VOUCHERS
		TRAN TYPE RT	TRAN TYPE JE,IT	TRAN TYPE WC,EP,WW		
2093 RECORDS MANAGEMENT CASH						
1111 GENERAL CASH	2,701.09	.00	.00	.00	2,701.09	.00
1112 STATE RECORDS BOARD	15,755.07	768.00	.00	.00	16,523.07	.00
CASH ACCOUNTS TOTAL :	18,456.16	768.00	.00	.00	19,224.16	.00
5090 MICROGRAPHICS SERVICES						
1111 GENERAL CASH	52,423.73	.00	1,684.39	21.99-	54,086.13	.00