

STATE OF NORTH DAKOTA  
(11/2005)

**North Dakota Public Service Commission  
Public Utilities Division  
600 E Boulevard Ave, Dept 408  
Bismarck, ND 58505**

Request For Proposal (RFP)

RFP Title: ***RFP for Consultant Services in Otter Tail Power Company and Montana-Dakota Utilities Co. Advance Determination of Prudence Application, Case Nos. PU-06-481 and PU-06-482***

RFP Number: ***PU-06-481-482***

Date of Issue: ***January 5, 2007***

Purpose of RFP: ***To obtain consultant services in Otter Tail Power Company's Application for Advance Determination of Prudence of Otter Tail's participation and ownership interest in the Big Stone II Generating Plant and in Montana-Dakota Utilities Co.'s Application for an Advance Determination of Prudence of Montana-Dakota's participation and ownership interest in the Big Stone II Generating Station***

Offerors are not required to return this form.

**Procurement Officer: Annette Bendish**

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## SECTION ONE INTRODUCTION AND INSTRUCTIONS

### 1.01

#### **Purpose of the RFP**

The **North Dakota Public Service Commission, Public Utilities Division**, hereafter known as “purchasing agency” is soliciting proposals for **consultant services in Otter Tail Power Company’s Application for Advance Determination of Prudence of Otter Tail’s participation and ownership interest in the Big Stone II Generating Plant and in Montana-Dakota Utilities Co.’s Application for an Advance Determination of Prudence of Montana-Dakota’s participation and ownership interest in the Big Stone II Generating Station**

### 1.02

#### **Contact Person, Telephone, Fax, E-mail**

The procurement officer is the point of contact for this RFP. All vendor communications regarding this RFP must be directed to the procurement officer. Unauthorized contact regarding the RFP with other State employees of the purchasing agency may result in the vendor being disqualified, and the vendor may also be suspended or disbarred from the state bidders list.

PROCUREMENT OFFICER: **Annette Bendish**

PHONE: **701-328-2421**

FAX: **701-328-2410**

TTY Users call: 7-1-1

E-MAIL: **ndpsc@nd.gov**

### 1.03

#### **RFP Schedule**

This schedule of events represents the State’s best estimate of the schedule that will be followed for this RFP. If a component of this schedule, such as the deadline for receipt of proposals, is delayed, the rest of the schedule will be shifted by the same number of days.

The approximate RFP schedule is as follows:

- RFP Issued: **January 5, 2007**
- Deadline for receipt of questions and objections related to the RFP: **January 17, 2007**
- Responses to questions / RFP amendments (if required) **January 19, 2007**
- Proposals due by: **2:00 p.m. Central Time, January 26, 2007**
- Proposal Evaluation Committee evaluation completed by approximately : **February 1, 2007**
- State issues Notice of Intent to Award a Contract approximately: **February 2, 2007**
- State issues contract approximately: **February 12, 2007**
- Contract start: **February 15, 2007**

### 1.04

#### **Return Mailing Address and Deadline for Receipt of Proposals**

Offerors must submit **an original and seven** copies of their proposal in a sealed envelope or package.

Offerors must submit an electronic copy of their proposal on a disk or CD.

Envelopes or packages containing proposals must be clearly addressed as described below to ensure proper delivery and to avoid being opened by the State before the deadline for receipt. Envelopes or packages must be addressed as follows:

North Dakota Public Service Commission  
**Public Utilities Division**  
Request for Proposal (RFP): **RFP for Consultant Services in Otter Tail Power Company and Montana-Dakota Utilities Co. Advance Determination of Prudence Application, Case Nos. PU-06-481 and PU-06-482**  
RFP Number: **PU-06-481-482**  
**600 E Boulevard Ave, Dept 408**  
**Bismarck, ND 58505-0480**

Proposals must be received by the purchasing agency at the location specified no later than **2:00 P.M., CENTRAL**, Time on **January 26, 2007**. Proposals will not be publicly read at the opening.

Proposals may not be delivered orally, by facsimile transmission, by other telecommunication or electronic means. Offerors may fax or electronically transmit signed proposals to a third party who must deliver the proposal to the location indicated above by the date and time designated as the deadline for receipt of proposals.

Offerors assume the risk of the method of dispatch chosen. The State of North Dakota ("State") assumes no responsibility for delays caused by any delivery service. Postmarking by the due date will not substitute for actual proposal receipt by the State. An offeror's failure to submit its proposal prior to the deadline will cause the proposal to be rejected. Late proposals or amendments will not be opened or accepted for evaluation.

**1.05**  
**Assistance to Offerors with a Disability**

Offerors with a disability that need an accommodation should contact the procurement officer prior to the deadline for receipt of proposals so that reasonable accommodation can be made.

**1.06**  
**Deadline for Receipt of Questions and Objections**

Offerors must carefully review this solicitation, the contract, risk management provisions, and all attachments for defects, questionable, or objectionable material. All questions must be in writing and directed to the purchasing agency, addressed to the procurement officer, and cite the subject RFP number. The procurement officer must receive these written requests by the deadline specified in the RFP Schedule of Events to allow issuance of any necessary amendments.

This will also help prevent the opening of a defective solicitation and exposure of offeror's proposals upon which an award could not be made. Protests based on the content of the solicitation will be disallowed if these faults have not been brought to the attention of the procurement officer, in writing, before the time indicated in the Schedule of Events.

If the question may be answered by directing the questioner to a specific section of the RFP, then the procurement officer may answer the question over the telephone. Other questions may be more complex and may require a written amendment to the RFP. The procurement officer will make this determination. Oral communications is considered unofficial and non-binding on the State. The offeror must confirm telephone conversations in writing.

## **1.07**

### **Approved Vendor Registration Requirements**

#### **VENDORS MUST BE APPROVED BEFORE CONTRACT AWARD**

Proposals will be accepted from vendors that are not currently approved vendors on the State's bidders list; however, the successful offeror will be required to become approved prior to award.

To become an approved vendor, offerors must: 1) be registered with the North Dakota Secretary of State (fees apply), and 2) submit a completed Bidders List Application to the North Dakota Vendor Registry Office. Prospective offerors may access the Procurement Vendor Database on-line to verify whether their firm is currently on the bidders list. The bidders list that will be used for this solicitation is commodity code **91897**

The Procurement Vendor Database, registration instructions and forms are available on-line at: <http://www.nd.gov/spo/vendor/registry/>. Contact the Vendor Registry Office at 701-328-2773 or [infospo@state.nd.us](mailto:infospo@state.nd.us) for assistance.

The successful offeror must register and become approved within **30 CALENDAR DAYS** from the date of the Notice of Intent to Award. If an offeror fails to become approved by the time specified by the Procurement Officer, its proposal will be determined to be non-responsive, and its proposal will be rejected.

## **1.08**

### **Pre-proposal Conference**

No pre-proposal conference will be held for this RFP. Offerors are advised to carefully review the RFP and all attachments and submit all questions to the procurement officer by the deadline indicated for submission of questions in the schedule of events.

## **1.09**

### **Amendments to the RFP**

If an amendment to this RFP is issued, it will be provided to all offerors that were mailed a copy of the RFP and to those that have requested a copy of the RFP from the procurement officer.

## **1.10**

### **News Releases**

News releases related to this RFP will not be made without prior approval of the procurement officer or project manager designated by the State.

## **1.11**

### **Notice Provided**

Notice of this solicitation has been provided in accordance with N.D.C.C. 54-44.4-09.

The Request for Proposal and any amendments to the RFP will be posted on the following website: [www.psc.state.nd.us](http://www.psc.state.nd.us)

## SECTION TWO BACKGROUND INFORMATION

### 2.01 Background Information

Background information concerning this project is as follows: ***Otter Tail Corporation and Montana-Dakota Utilities Co. have each submitted an application for advance determination of prudence for participation in the Big Stone II Generating Plant (Case Nos. PU-06-481 and PU-06-482 in accordance with North Dakota Century Code Section 49-05-16). These two companies, along with others, are proposing to construct a 630 MW pulverized coal energy conversion facility located adjacent to the existing Big Stone Plant in Big Stone City, South Dakota. Otter Tail would own 19.33% of Big Stone II and Montana-Dakota would own 19.33% of Big Stone II.***

### 2.02 Budget

Award will be contingent upon available funding.

## **SECTION THREE SCOPE OF WORK**

### **3.01 Scope of Work**

#### **Overview**

The North Dakota Public Service Commission Public Utilities Division, is soliciting proposals for consultant services. The Division seeks assistance in evaluating the overall prudence of the applicants' proposed participation in the proposed Big Stone II Generating Project. The consultant will identify, investigate, analyze and provide testimony regarding the applicants' need for additional generating resources, alternatives available for meeting those needs and the prudence of the applicants' proposal to participate in the Big Stone II project compared to other available resource alternatives. Consulting duties include:

1. Professional analysis and review of the filing.
2. Prepare and conduct discovery as necessary.
3. Monthly progress reports of discovery, conclusions and recommendations.
4. Prepare and file written testimony.
5. Provide oral testimony at the public hearing.
6. Assist staff in preparing cross-examination of the witnesses of other parties to the proceeding.
7. Assist staff in the preparation of proposed findings of fact.

The completion date for the investigation and filed written testimony is March 15, 2007. The technical hearing is scheduled for April 17-20, 2007.

### **3.02 Location of Work**

The State will not provide workspace for the contractor.

The contractor should include in its price proposal: transportation, lodging, and per diem costs sufficient to pay for **travel for any onsite investigations deemed necessary and four full days of formal hearings.**

### **3.03 Prior Experience**

No specific minimums have been set for this RFP.

### **3.04 Required Licenses**

At the time specified by the deadline for submission of proposals, the offeror must have and keep current any professional licenses and permits required by federal, state, and local laws for performance of this contract. Offerors that do not possess required licenses at the time proposals are due will be determined non-responsive.

## **SECTION FOUR GENERAL CONTRACT INFORMATION**

### **4.01**

#### **Contract Term, Extension and Renewal Options**

The State intends to enter into a contract with an effective date beginning **February 15, 2007** and ending **June 30, 2007**.

### **4.02**

#### **Contract Type**

This contract is a **firm fixed price** contract.

### **4.03**

#### **Standard Contract Provisions**

The successful offeror will be required to sign and submit the contract attached to this RFP (Appendix A). The contractor must comply with the contract provisions set out in this attachment. Any objections to the contract provisions must be set out in the offeror's proposal. No alteration of these provisions will be permitted without prior written approval from the purchasing agency.

Offerors are instructed to contact the procurement officer in writing by the deadline set for questions with any concerns regarding the contract provisions.

### **4.04**

#### **Proposal as a Part of the Contract**

Part or all of this RFP and the successful proposal may be incorporated into the contract.

### **4.05**

#### **Additional Terms and Conditions**

The State reserves the right to add, delete, or modify terms and conditions during contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

### **4.06**

#### **Supplemental Terms and Conditions**

Proposals including supplemental terms and conditions will be accepted, but supplemental conditions that conflict with those contained in this RFP or that diminish the State's rights under any contract resulting from the RFP will be considered null and void. The State is not responsible for identifying conflicting supplemental terms and conditions before issuing a contract award. After award of contract:

- (a) if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and
- (b) if the State's rights would be diminished as a result of application of a supplemental term or condition included in the proposal, the supplemental term or condition will be considered null and void.

### **4.07**

#### **Contract Approval**

This RFP does not, by itself, obligate the State. The State's obligation will commence when the purchasing agency approves the contract. Upon written notice to the contractor, the State may set a

different starting date for the contract. The State will not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the State.

#### **4.08**

##### **Contract Changes - Unanticipated Amendments**

During the course of this contract, the contractor may be required to perform additional work. That work will be within the general scope of the initial contract. When additional work is required, the project manager designated by the State will provide the contractor a written description of the additional work and request the contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work. Cost and pricing data must be provided to justify the cost of amendments.

The contractor will not commence additional work until the project director has secured any required State approvals necessary for the amendment and issued a written contract amendment, approved by the purchasing agency.

#### **4.09**

##### **Indemnification and Insurance Requirements**

Offerors must review the attached Risk Management Appendix for indemnification and insurance requirements. The indemnification and insurance provisions will be incorporated into the final contract.

Objections to any of the provisions of the Indemnification and Insurance Requirements must be made in writing to the attention of the procurement officer by the time and date set for receipt of questions. No alteration of these provisions will be permitted without prior written approval from the purchasing agency in consultation with the North Dakota Risk Management Division.

Upon receipt of the Notice of Intent to Award, the successful offeror must obtain the required insurance coverage and provide the procurement officer with proof of coverage prior to contract approval. The coverage must be satisfactory to the purchasing agency, in consultation with the North Dakota Risk Management Division. An offeror's failure to provide evidence of insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.

#### **4.10**

##### **Taxes and Taxpayer Identification**

The contractor must provide a valid Vendor Tax Identification Number as a provision of the contract.

The State is not responsible for and will not pay local, state, or federal taxes. The State sales tax exemption number is E-2001, and certificates will be furnished upon request by the purchasing agency.

A contractor performing any contract, including service contracts, for the United States Government, State of North Dakota, counties, cities, school districts, park board or any other political subdivisions within North Dakota is not exempt from payment of sales or use tax on material and supplies used or consumed in carrying out contracts. In these cases, the contractor is required to file returns and pay sales and use tax just as required for contracts with private parties. Contact the North Dakota Tax Department at 701-328-3470 or visit its website at [www.nd.gov/tax/](http://www.nd.gov/tax/) for more information.

A contractor performing any contract, including a service contract, within North Dakota is also subject to the corporation income tax, individual income tax, and withholding tax reporting requirements, whether the contract is performed by a corporation, partnership, or other business entity, or as an employee of the contractor. In the case of employees performing the services in the state, the contractor is required to withhold state income tax from the employees' compensation and remit to the state as required by law. Contact the North Dakota Tax Department at 701-328-3125 or visit its web site for more information

**4.11  
Proposed Payment Procedures**

The State will not make any advanced payments before performance by the contractor under this contract.

**4.12  
Contract Funding**

Award will be contingent upon available funding.

**4.13  
Payment Terms**

No payment will be made until the purchasing agency approves the contract.

Payment for commodities and services received under contracts will normally be made within 30 calendar days after receipt and acceptance by the purchasing agency or after receipt of a correct invoice, whichever is later. Payment inquiries must be directed to the purchasing agency.

Prompt Payment Discount Terms offered by the contractor may be taken by the purchasing agency if payment is made within the specified terms.

**4.14  
Contract Personnel**

The project manager designated by the purchasing agency must approve any change of the contractor's project team members named in the proposal, in advance and in writing. Personnel changes that are not approved by the State may be grounds for the State to terminate the contract.

**4.15  
Termination for Default**

If the project manager designated by the purchasing agency determines that the contractor has refused to perform the work or has failed to perform the work with diligence as to ensure its timely and accurate completion, the State may, by providing written notice to the contractor, terminate the contractor's right to proceed with part or all of the remaining work.

This clause does not restrict the State's right to termination under the contract provisions of the Service Contract, attached.

**4.16  
Open Records Laws - Confidentiality**

Any records that are obtained or generated by the contractor under this contract are subject to North Dakota open records law regarding public records and handling of confidential information.

**4.17  
Work Product, Equipment, and Material**

All work product, equipment or materials created or purchased under this contract belong to the State and must be delivered to State at State's request upon termination of this contract, unless otherwise agreed in writing by the purchasing agency.

**4.18**

**Independent Entity**

The contractor is an independent entity under this contract and is not a State employee for any purpose. The contractor retains sole and absolute discretion in the manner and means of carrying out the contractor's activities and responsibilities under the contract, except to the extent specified in the contract.

**4.19****Assignment**

Contractor may not assign or otherwise transfer or delegate any right or duty without the State's express written consent. However, the contractor may enter into subcontracts provided that the subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments.

**4.20****Disputes - Applicable Law and Venue**

Any dispute arising out of this agreement will be resolved under the laws of the State of North Dakota.

**SECTION FIVE  
EVALUATION CRITERIA AND CONTRACTOR SELECTION**

**THE TOTAL NUMBER OF POINTS USED  
TO SCORE THIS CONTRACT IS 100**

**5.01**

**Understanding of the Project**

*Twenty Percent (20%)* of the total possible evaluation points will be assigned to this criterion.

Proposals will be evaluated against the questions set out below:

- [a] Has the offeror demonstrated a thorough understanding of the purpose and scope of the project?
- [b] How well has the offeror identified pertinent issues and potential problems related to the project?
- [c] Has the offeror demonstrated an understanding of the deliverables the State expects it to provide?
- [d] Has the offeror demonstrated an understanding of the State's time schedule and can meet it?
- [e] Is the proposal submitted responsive to all material requirements in the RFP?

**5.02**

**Methodology Used for the Project**

*Twenty-Five Percent (25%)* of the total possible evaluation points will be assigned to this criterion.

Proposals will be evaluated against the questions set out below:

- [a] Does the methodology depict a logical approach to fulfilling the requirements of the RFP?
- [b] Does the methodology match and achieve the objectives set out in the proposal?
- [c] Does the methodology interface with the time schedule in the proposal?
- [d] Does the methodology have provisions for quality assurance?
- [e] Does it appear that offeror can meet the schedule set out in the RFP?
- [f] Has the contractor gone beyond the minimum tasks necessary to meet the objectives of the RFP?
- [g] Is the proposal practical, feasible, and within budget?

**5.03 Experience, Qualifications, and Financial Strength**

*Twenty Percent (20%)* of the total possible points will be assigned to this criterion.

If the RFP required a minimum amount of experience or qualifications, no points will be awarded for meeting the minimum. Points will be awarded for experience and qualifications that exceed the stated minimums.

Proposals will be evaluated against the questions set out below.

**Questions regarding the personnel:**

[a] Do the individuals assigned to the project have experience on similar projects?

[b] Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the RFP requires?

[c] How extensive is the applicable education and experience of the personnel designated to work on the project?

**Questions regarding the firm:**

[d] Has the firm demonstrated experience in completing similar projects on time and within budget?

[e] How successful is the general history of the firm regarding timely and successful completion of projects?

[f] If references were required, did the references provide information to verify the satisfactory performance of the vendor?

[g] Has the firm provided letters of reference from previous clients?

[h] If a subcontractor will perform work on the project, how well does it measure up to the evaluation used for the offeror?

[i] If company financial statements were required, does the firm appear to be financially stable?

**5.04 Quality of Written Proposal**

**Five Percent (5%)** of the total possible evaluation points will be assigned to this criterion.

Proposals will be evaluated against the questions set out below:

[a] How well is the written proposal presented?

[b] How well is the proposal completely and clearly defined?

[c] Is the organization of the written proposal clear?

**5.05 Contract Cost**

**Thirty Percent (30%)** of the total possible evaluation points will be assigned to cost.

Any prompt payment discounts terms proposed by the offeror will not be considered in evaluating cost.

The cost amount used for evaluation may be affected by the application of North Dakota preference laws (North Dakota Century Code Section 44-08-01). The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be evaluated according to the method set forth in the Proposal Evaluation form attached to this RFP.

## **SECTION SIX PROPOSAL FORMAT AND CONTENT**

### **6.01**

#### **Proposal Format and Content**

The State discourages overly lengthy and costly proposals; however, in order for the State to evaluate proposals fairly and completely, offerors must follow the format set out in this RFP and provide all information requested.

### **6.02**

#### **Introduction**

Proposals must include the complete name and address of offeror's firm and the name, mailing address, and telephone number of the person the State should contact regarding the proposal.

Proposals must confirm that the offeror will comply with all provisions in this RFP. The proposal must disclose any instances where the firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g. employed by the State of North Dakota).

Proposals must be signed by a company officer empowered to bind the company. An offeror's failure to include these items in the proposals may cause the proposal to be determined to be non-responsive and the proposal may be rejected.

### **6.03**

#### **Understanding of the Project**

Offerors must provide comprehensive narrative statements that illustrate their understanding of the requirements of the project, deliverables, project schedule, and contract terms and conditions. Offerors must also identify any pertinent issues and potential problems related to the project.

### **6.04**

#### **Methodology Used for the Project**

Offerors must provide comprehensive narrative statements that set out the methodology it intends to employ. Offerors must illustrate how the methodology will serve to accomplish the work and provide the deliverables described in the scope of work within the State's project schedule.

### **6.05**

#### **Management Plan for the Project**

Offerors must provide comprehensive narrative statements that set out the management plan it intends to follow and illustrate how the plan will serve to accomplish the work and furnish the deliverables described in the scope of work within the State's project schedule. Offerors must provide a narrative or organizational chart that describes the organization of the project team. The organizational chart must illustrate the lines of authority, designate the individual responsible and accountable for the completion of each component and deliverable of the RFP, and indicate where the work will be performed.

### **6.06**

#### **Experience and Qualifications**

Offerors must describe the experience of their firm in completing similar projects. Additionally, offerors must provide information specific to the personnel assigned to accomplish the work called for in this RFP. Offerors must provide a narrative description of the organization of the project team and a personnel roster that identifies each person who will actually work on the contract and provide the following information about each person listed:

- (a) title;
- (b) resume;
- (c) description of the type of work the individual will perform; and
- (d) the number of estimated hours for each individual named above.

If an offeror intends to use subcontractors, the offeror must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

Offerors must provide **3** reference names and phone numbers for similar projects the offeror's firm has completed. The State reserves the right to contact any references provided by the offeror. Offerors are invited to provide letters of reference from previous clients.

#### **6.07 Cost Proposal**

Cost proposals must include an itemized list of all direct and indirect costs associated with the performance of the contract, including total number of hours at various hourly rates, direct expenses, payroll, supplies, overhead assigned to each person working on the project, percentage of each person's time devoted to the project, and profit.

All costs associated with the contract must be stated in U.S. currency. Any commodities being imported must be identified, and the price must include any applicable customs, brokerage agency fees, and duties.

Offerors should describe any discounts terms for prompt payment. Discounts for prompt payment will not be considered in evaluating cost.

Offerors must complete cost proposal attached to this RFP or prepare a cost proposal following the same format.

#### **6.08 Required Enclosures**

Offerors must provide all documents, samples, or other information specifically required in this RFP.

## **SECTION SEVEN STANDARD PROPOSAL INFORMATION**

### **7.01 Authorized Signature**

An individual authorized to bind the offeror to the provisions of the RFP must sign all proposals.

### **7.02 State Not Responsible for Preparation Costs**

The State will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal.

### **7.03 Conflict of Interest**

Offerors must disclose any instances where the firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g. employed by the State of North Dakota). The State reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the offeror's proposal. The State's determination regarding any questions of conflict of interest is final.

### **7.04 Offeror's Certification**

By signature on the proposal, an offeror certifies that it complies with:

- a) the laws of the State of North Dakota;
- b) North Dakota Administrative Code;
- c) all applicable local, state, and federal laws, code, and regulations;
- d) the applicable portion of the Federal Civil Rights Act of 1964;
- e) the Equal Employment Opportunity Act and the regulations issued by the federal government;
- f) the Americans with Disabilities Act of 1990 and the regulations issued by the federal government;
- g) all terms, conditions, and requirements set forth in this RFP;
- h) a condition that the proposal submitted was independently arrived at, without collusion;
- i) a condition that the offer will remain open and valid for the period indicated in this solicitation; and
- j) a condition that the firm and any individuals working on the contract do not have a possible conflict of interest (e.g. employed by the State of North Dakota).

If any offeror fails to comply with the provisions stated in this paragraph, the State reserves the right to reject the proposal, terminate the contract, or consider the contractor in default.

### **7.05 Offer Held firm**

Proposals must remain open and valid for at least **90 DAYS** from the deadline specified for submission of proposals. In the event award is not made within **90 DAYS**, the State will send a written request to all offerors deemed susceptible for award asking offerors to hold their price firm for a longer specified period of time.

### **7.06 Amendments to Proposals and Withdrawals of Proposals**

Offerors may amend or withdraw proposals prior to the deadline set for receipt of proposals. No amendments will be accepted after the deadline unless they are in response to the State's request. After

the deadline, offerors may make a written request to withdraw proposals and provide evidence that a substantial mistake has been made. The procurement officer may permit withdrawal of the proposal upon verifying that a substantial mistake has been made, and the State may retain the offeror's bid bond or other bid type of bid security, if one was required.

### **7.07 Alternate Proposals**

Offerors may submit **ONLY ONE** proposal for evaluation.

Alternate proposals (proposals that offer something different than what is requested) will be **REJECTED**.

### **7.08 Subcontractors**

Subcontractors may be used to perform work under this contract. If an offeror intends to use subcontractors, the offeror must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

If a proposal with subcontractors is selected, the offeror must provide the following information concerning each prospective subcontractor within **FIVE WORKING DAYS** from the date of the State's request:

- (a) complete name of the subcontractor;
- (b) complete address of the subcontractor;
- (c) type of work the subcontractor will be performing;
- (d) percentage of work the subcontractor will be providing;
- (e) evidence, as set out in the relevant section of this RFP, that the subcontractor is registered and, if applicable, holds a valid North Dakota business license; and
- (f) a written statement, signed by each proposed subcontractor, that clearly verifies that the subcontractor is committed to render the services required by the contract.

An offeror's failure to provide this information, within the time set, may cause the State to consider its proposal non-responsive and reject it. The substitution of one subcontractor for another may be made only at the discretion and prior written approval of the State's procurement officer or project manager designated by the State.

### **7.09 Joint Ventures**

Joint ventures are acceptable. If submitting a proposal as a joint venture, the offeror must submit a copy of the joint venture agreement that identifies the principles involved and its rights and responsibilities regarding performance and payment.

### **7.10 Disclosure of Proposal Contents and Compliance with North Dakota Open Records Laws**

All proposals and other material submitted become the property of the State and may be returned only at the State's option. All proposals and related information, including detailed cost information, are exempt records and will be held in confidence until an award is made, in accordance with N.D.C.C. § 54-44.4-10(2).

Offerors may make a written request that trade secrets and other proprietary data contained in proposals be held confidential. Material considered confidential by the offeror must be clearly identified, and the offeror must include a brief statement that sets out the reasons for confidentiality. See the North Dakota Office of the Attorney General website for additional information.

<http://www.ag.state.nd.us/OpenRecords/ORM.htm>

After award, proposals will be subject to the North Dakota open records law. Records are closed or confidential only if specifically stated in law. If a request for public information is received, the procurement officer, in consultation with the Office of the Attorney General, will determine whether the information is an exception to the North Dakota open records law, and the information will be processed appropriately.

### **7.11 Evaluation of Proposals**

All proposals will be reviewed to determine if they are responsive to the requirements of this solicitation. The procurement officer or an evaluation committee will evaluate responsive proposals. The evaluation will be based solely on the evaluation factors set forth in this RFP. The evaluation will consider information obtained subsequent to any discussions with offerors determined to be reasonable for award and any demonstrations, oral presentations, or site inspections, if required in this RFP.

### **7.12 Right of Rejection**

The State reserves the right to reject any proposals, in whole or in part. Proposals received from debarred or suspended vendors will be rejected. The procurement officer may reject any proposal that is not responsive to all of the material and substantial terms, conditions, and performance requirements of the RFP.

Offerors may not qualify the proposal nor restrict the rights of the State. If an offeror does so, the procurement officer may determine the proposal to be a non-responsive counter-offer and the proposal may be rejected.

The procurement officer may waive minor informalities that:

- do not affect responsiveness;
- are merely a matter of form or format;
- do not change the relative standing or otherwise prejudice other offers;
- do not change the meaning or scope of the RFP;
- are insignificant, negligible, or immaterial in nature;
- do not reflect a material change in the work; or
- do not constitute a substantial reservation against a requirement or provision,

The State reserves the right to reject any proposal determined to be not responsive, and to reject the proposal of an offeror determined to be not responsible. The State also reserves the right to refrain from making an award if it determines it to be in its best interest.

### **7.13 Clarification of Offers**

In order to determine if a proposal is reasonably susceptible for award, communications by the procurement officer or the proposal evaluation committee are permitted with an offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal and determine responsiveness to the RFP requirements. Clarifications may not result in a material or substantive change to the proposal. The initial evaluation may be adjusted because of a clarification under this section.

After receipt of proposals, if there is a need for any substantial clarification or material change in the RFP, an amendment will be issued. The amendment will incorporate the clarification or change, and a new date and time established for new or amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals.

#### **7.14**

##### **Discussions and Best and Final Offers**

The State may conduct discussions or request best and final offers with offerors that have submitted proposals determined to be reasonably susceptible for award. The State is not obligated to do so, therefore, vendors should submit their best terms (cost and technical). The purpose of these discussions is to ensure full understanding of the requirements of the RFP and the offeror's proposal. Discussions will be limited to specific sections of the RFP or proposal identified by the procurement officer. Discussions, if held, will be after initial evaluation of proposals by the proposal evaluation committee. If modifications to the proposal are made as a result of these discussions, the modifications must be put in writing.

Offerors with a disability needing accommodation should contact the procurement officer prior to the date set for discussions so that reasonable accommodation can be made.

#### **7.15**

##### **Preference Laws**

The preference given to a resident North Dakota offeror will be equal to the preference given or required by the state of the nonresident bidder. A "resident" North Dakota bidder, offeror, seller, or contractor is one that has maintained a bona fide place of business within this State for at least one year prior to the date on which a contract was awarded. For a listing of state preference laws, visit the following website: [http://egov.oregon.gov/DAS/PFSS/SPO/reciprocal\\_detail.shtml](http://egov.oregon.gov/DAS/PFSS/SPO/reciprocal_detail.shtml) or contact the North Dakota State Procurement Office at 701-328-2683.

#### **7.16**

##### **Contract Negotiation**

After final evaluation, the procurement officer may negotiate with the offeror of the highest-ranked proposal. Negotiations, if held, will be within the scope of the request for proposals and limited to those items that would not have an effect on the ranking of proposals. If the highest-ranked offeror fails to provide necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the State may terminate negotiations and negotiate with the offeror of the next highest-ranked proposal.

If contract negotiations are commenced, they will be held:

***North Dakota Public Service Commission Hearing Room  
12 Floor, State Capitol  
600 E Boulevard Ave  
Bismarck, North Dakota***

Negotiations may be held via conference call initiated from the above location.

If contract negotiations are held, the offeror will be responsible for all cost including its travel and per diem expenses.

#### **7.17**

##### **Failure to Negotiate**

If the selected offeror:

- fails to provide the information required to begin negotiations in a timely manner;
- fails to negotiate in good faith;
- indicates it cannot perform the contract within the budgeted funds available for the project; or
- if the offeror and the State, after a good faith effort, cannot come to terms,

the State may terminate negotiations with the offeror initially selected and commence negotiations with

the next highest ranked offeror.

**7.18  
Notice of Intent to Award - Offeror Notification of Selection**

After the completion of contract negotiation the procurement officer will issue a written Notice of Intent to Award and send copies to all offerors. The Notice of Intent Award will set out the names and addresses of all offerors and identify the proposal selected for award. The scores and placement of other offerors will not be part of the Notice of Intent to Award.

The successful offeror named in the Notice of Intent to Award is advised not to begin work, purchase materials, or enter into subcontracts relating to the project until both the successful offeror and the State sign the contract.

**7.19  
Protest and Appeal**

North Dakota law provides that an interested party may protest a solicitation. If an interested party wishes to protest the content of this RFP, the protest must be received, in writing, by the procurement officer at least seven calendar days before the deadline for receipt of proposals.

An interested party may protest the award or proposed award of a contract. If an offeror wishes to protest the award of a contract or proposed award of a contract, the protest must be received, in writing, by the procurement officer within seven calendar days after the date the Notice of Intent to Award was issued.

## **SECTION EIGHT ATTACHMENTS**

### **8.01 Attachments**

1. Proposal Evaluation Form
2. Contract Form
3. Indemnification and Insurance Requirements Appendix
4. Cost Proposal Format
5. Sample Notice of Award
6. Offeror Checklist

## ATTACHMENT 1

### PROPOSAL EVALUATION FORM

All proposals will be reviewed for responsiveness and then evaluated using the criteria set out herein.

#### INSTRUCTIONS FOR EVALUATORS

Each evaluation criterion has been assigned a specific number of points. The questions under each evaluated area help you measure the quality of the offeror's response. Do not assign points to individual questions, instead, award a total score for each evaluation criterion.

#### RATING SCALE FOR ASSESSING VENDOR RESPONSES

This rating scale is intended to establish guidelines within that range to ensure members of the RFP evaluation committee perform their evaluation with consistency. You may assign any value for a given criteria from 0 to the maximum number of points. A zero value typically constitutes no response or an inability of the vendor to meet the criterion. In contrast, the maximum value should constitute a high standard of meeting the criterion. If a specific criterion would only yield a yes or no response (e.g., offeror can submit an electronic report in required format by noon Friday), the evaluator should award either the maximum points or a zero.

For Example: "Experience and Qualifications" is an evaluation criteria receiving a weighting of 20% of the total possible points. Using a 100 Point Scale, a maximum of 20 points can be awarded. The rating scale would be:

Rating Scale ( <b>20 POINT</b> Maximum)	
Point Value	Explanation
<b>0</b>	None. Not addressed or response of no value
<b>1-5</b>	Fair. Limited applicability
<b>6-10</b>	Good. Some applicability
<b>11-15</b>	Very Good. Substantial applicability
<b>16-20</b>	Excellent. Total applicability

#### COST PROPOSAL

If offerors were required to place cost proposals in a separate sealed envelope, do not open the cost proposal until the technical proposals have been evaluated.

Not all members of the evaluation need to evaluate the cost proposal. The cost proposals may be evaluated by selected members of the evaluation committee, reviewed by group, and recorded on the evaluation summary sheets.

Any prompt payment discounts terms offered by the vendor are not taken into consideration in evaluating cost. However, the cost proposals of nonresident offerors may be adjusted by the application of preference laws, if applicable. Contact the State Procurement Office at 701-328-2683 for assistance in applying preference laws.

**EVALUATION CRITERIA AND SCORING**

Person or Firm Name \_\_\_\_\_

Name of Proposal Evaluation (PEC) Member \_\_\_\_\_

Date of Review \_\_\_\_\_

RFP Title/Number \_\_\_\_\_

**THE TOTAL NUMBER OF POINTS USED TO SCORE THIS CONTRACT IS 100**

**7.01  
Understanding of the Project**

Weight **20 Percent**. Maximum Point Value for this Section  
100 Points x **20 Percent** = **20 Points**

Rating Scale ( <b>20 POINT</b> Maximum)	
Point Value	Explanation
<b>1</b>	None. Not addressed or response of no value
<b>2</b>	Fair. Limited applicability
<b>3</b>	Good. Some applicability
<b>4</b>	Very Good. Substantial applicability
<b>5</b>	Excellent. Total applicability

Proposals will be evaluated against the questions set out below. Do not assign points to individual questions, instead, award a total score for each evaluation criterion.

[a] Has the offeror demonstrated a thorough understanding of the purpose and scope of the project?

EVALUATOR'S NOTES \_\_\_\_\_

\_\_\_\_\_

[b] How well has the offeror identified pertinent issues and potential problems related to the project?

EVALUATOR'S NOTES \_\_\_\_\_

\_\_\_\_\_

[c] Has the offeror demonstrated an understanding of the deliverables the State expects it to provide?

EVALUATOR'S NOTES \_\_\_\_\_

\_\_\_\_\_

[d] Has the offeror demonstrated an understanding of the State's time schedule and can meet it?

EVALUATOR'S NOTES \_\_\_\_\_

\_\_\_\_\_

---

[e] Is the proposal submitted responsive to all material requirements in the RFP?

EVALUATOR'S NOTES \_\_\_\_\_

---

**EVALUATOR'S POINT TOTAL FOR 7.01** \_\_\_\_\_

**7.02  
Methodology Used for the Project**

Weight **25 Percent**. Maximum Point Value for this Section  
100 Points x **25 Percent** = **25 Points**

Rating Scale ( <b>25 POINT</b> Maximum)	
Point Value	Explanation
<b>0</b>	None. Not addressed or response of no value
<b>1-5</b>	Fair. Limited applicability
<b>6-10</b>	Good. Some applicability
<b>11-15</b>	Very Good. Substantial applicability
<b>16-20</b>	Excellent. Total applicability

Proposals will be evaluated against the questions set out below. Do not assign points to individual questions, instead, award a total score for each evaluation criterion.

[a] Does the methodology depict a logical approach to fulfilling the requirements of the RFP?

EVALUATOR'S NOTES \_\_\_\_\_

---

[b] Does the methodology match and achieve the objectives set out in the proposal?

EVALUATOR'S NOTES \_\_\_\_\_

---

[c] Does the methodology interface with the time schedule in the proposal?

EVALUATOR'S NOTES \_\_\_\_\_

---

[d] Does the methodology have provisions for quality assurance?

EVALUATOR'S NOTES \_\_\_\_\_

---

[e] Does it appear that offeror can meet the schedule set out in the RFP?

EVALUATOR'S NOTES \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[f] Has the contractor gone beyond the minimum tasks necessary to meet the objectives of the RFP?

EVALUATOR'S NOTES \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[g] Is the proposal practical, feasible, and within budget?

EVALUATOR'S NOTES \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EVALUATOR'S POINT TOTAL FOR 7.02** \_\_\_\_\_

**7.03  
Experience and Qualifications**

Weight **20 Percent**. Maximum Point Value for this Section  
100 Points x **20 Percent** = **20 Points**

Rating Scale ( <b>15 POINT</b> Maximum)	
Point Value	Explanation
<b>0</b>	None. Not addressed or response of no value
<b>1-3</b>	Fair. Limited applicability
<b>4-5</b>	Good. Some applicability
<b>6-10</b>	Very Good. Substantial applicability
<b>11-15</b>	Excellent. Total applicability

Proposals will be evaluated against the questions set out below. Do not assign points to individual questions, instead, award a total score for each evaluation criterion.

**Questions regarding the personnel.**

[a] Do the individuals assigned to the project have experience on similar projects?

EVALUATOR'S NOTES \_\_\_\_\_

[b] Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the RFP requires?

EVALUATOR'S NOTES \_\_\_\_\_

[c] How extensive is the applicable education and experience of the personnel designated to work on the project?

EVALUATOR'S NOTES \_\_\_\_\_

**Questions regarding the firm.**

[d] Has the firm demonstrated experience in completing similar projects on time and within budget?

EVALUATOR'S NOTES \_\_\_\_\_

[e] How successful is the general history of the firm regarding timely and successful completion of projects?

EVALUATOR'S NOTES \_\_\_\_\_

[f] If references were required, did the references provide information to verify the satisfactory performance of the vendor?

EVALUATOR'S NOTES \_\_\_\_\_

[g] Has the firm provided letters of reference from previous clients?

EVALUATOR'S NOTES \_\_\_\_\_

[h] If a subcontractor will perform work on the project, how well does it measure up to the evaluation used for the offeror?

EVALUATOR'S NOTES \_\_\_\_\_

**EVALUATOR'S POINT TOTAL FOR 7.04** \_\_\_\_\_

**7.04**

**Quality of Written Proposal**

Weight **5 Percent**. Maximum Point Value for this Section  
100 Points x **5 Percent** = **5 Points**

Rating Scale ( <b>20 POINT</b> Maximum)	
Point Value	Explanation
<b>0</b>	None. Not addressed or response of no value
<b>1</b>	Fair. Limited applicability
<b>2</b>	Good. Some applicability
<b>3</b>	Very Good. Substantial applicability
<b>4-5</b>	Excellent. Total applicability

Proposals will be evaluated against the questions set out below. Do not assign points to individual questions, instead, award a total score for each evaluation criterion.

[a] How well is the written proposal presented?

EVALUATOR'S NOTES \_\_\_\_\_  
\_\_\_\_\_

[b] How well is the proposal completely and clearly defined?

EVALUATOR'S NOTES \_\_\_\_\_  
\_\_\_\_\_

[c] Is the organization of the written proposal clear?

EVALUATOR'S NOTES \_\_\_\_\_  
\_\_\_\_\_

**EVALUATOR'S POINT TOTAL FOR 7.04** \_\_\_\_\_

**7.05**

**Contract Cost**

Weight **30 Percent**. Maximum Point Value for this Section  
100 Points x **30 Percent** = **30 Points**

**Applying Preference Laws**

Any prompt payment discounts terms proposed by the offeror will not be considered in evaluating cost. The cost amount used for evaluation may be affected by the application of North Dakota preference laws ( N.D.C.C. § 44-08-01). The preference given to a resident offeror will be equal to the preference given or

required by the state of the nonresident offeror (i.e. reciprocal preference).

When evaluating cost proposals from nonresident (out-of-state) offerors, determine whether the offeror's state of residence has a preference law for vendors resident in that state. The cost proposal of the nonresident offeror will be increased by the same percentage of preference given to vendors resident in that state.

For example, if the state law of the nonresident offeror requires a 5% preference for vendors resident in that state, the procurement officer will increase that offeror's cost proposal by 5% before evaluation.

See [http://www.oregon.gov/DAS/SSD/SPO/reciprocal\\_detail.shtml](http://www.oregon.gov/DAS/SSD/SPO/reciprocal_detail.shtml) for a list of States Preference Laws or contact the North Dakota State Procurement Office at 701-328-2683.

### **Converting Cost to Points**

After applying any reciprocal preference, the lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined as follows:

$$\frac{\text{Price of Lowest Cost Proposal}}{\text{Price of Proposal Being Rated}} \times \text{Total Points for Cost Available} = \text{Awarded Points}$$

## **COST PROPOSAL EVALUATION**

**EVALUATOR'S POINT TOTAL FOR 7.05**

---

**Request for Proposal**

**Request for Proposal  
Evaluation Summary**

**Evaluation Summary**

Name of RFP:		
RFP Number		
Vendor Being Evaluated:		
Evaluator Name:		
Date:		
<b>Technical Evaluation (Maximum 70 Points)</b>	<b>Maximum Points by Category</b>	<b>Score</b>
1. Understanding of the Project	<b>20</b>	
2. Methodology of the Project	<b>25</b>	
3. Experience, Qualifications, and Financial Strength	<b>20</b>	
4. Quality of Written Proposal	<b>5</b>	
<b>Cost Evaluation (Maximum 30 Points)</b>		
1. Make adjustments for reciprocal preference, if necessary. See list of States Preference Laws: <a href="http://www.state.nd.us/csd/spo/resources.html">http://www.state.nd.us/csd/spo/resources.html</a>  2. Calculated points awarded for price.  <u>Price of Lowest Cost Proposal</u> Price of Proposal Being Rated X <b>30 points</b> = Awarded Points		
8. Cost	<b>30</b>	
Total		

**Request for Proposal  
Evaluation Totals**

Name of RFP:						
Name of Offeror:						
Date:						
Technical Evaluation Criteria	60 POINTS Maximum	Evaluator	Evaluator	Evaluator	Evaluator	Evaluator
1. Understanding of the Project	<b>20</b>					
2. Methodology Used for the Project – Proposed Work Approach	<b>25</b>					
3. Experience, Qualifications, and Financial Strength	<b>20</b>					
4. Quality of Written Proposal	<b>5</b>					
Evaluator Totals						
Grand Total		Note: Sum of all individual scores.				
Technical Proposal Score		Note: Total of individual points divided by the number of evaluators ( <b>70 POINT MAXIMUM</b> ).				
Cost Propose Score		Note: ( <b>30 POINT MAXIMUM</b> )				
TOTAL						

**ATTACHMENT 2  
PERSONAL SERVICE CONTRACT**

<b>Administrator:</b>	State of North Dakota Public Service Commission State Capitol - 12th Floor Bismarck, ND 58505-0480 (701) 328-2400	
<b>Date:</b>		
_____	_____	_____
<b>Susan E. Wefald Commissioner</b>	<b>Tony Clark President</b>	<b>Kevin Cramer Commissioner</b>

<b>Contractor</b>		
<b>Name</b>		
<b>Address</b>	<b>City/State/Zip</b>	<b>Phone</b>
<b>Typed Name</b>	<b>Title</b>	
<b>Signature</b>	<b>Date</b>	

<b>Agreement Information</b>	
Contract No.:	_____
Start Date:	_____
End Date:	_____
Program Title:	_____
<b>Type of Contract:</b>	<input type="checkbox"/> Fixed Price <input type="checkbox"/> Cost Reimb. <input type="checkbox"/> Unit Price <input type="checkbox"/> Other

<b>Budget Information</b>	
Cost Center:	_____
Services:	_____
Optional on-site review:	0
Expenses:	0
ID	
<b>Type of Contractor:</b>	<input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Public Agency <input type="checkbox"/> Nonprofit Organization <input type="checkbox"/> Other

This contract is entered into between the State of North Dakota acting through the Public Service Commission (State) and \_\_\_\_\_ (Contractor). This contract consists of this sheet, general provisions and specific provisions.



## GENERAL PROVISIONS

### CONTRACTUAL FEATURES

#### LEGAL AUTHORITY

The Contractor assures that it possesses legal authority to participate in this contract.

#### ASSIGNMENT/SUBCONTRACTING

The Contractor may not assign this contract or any part thereof, or assign any of the monies to be paid hereunder, nor shall any part of the work done or material furnished under this contract be sublet without the State's express written consent.

However, the Contract may enter into subcontracts provided that any subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. Contractor is solely responsible for the performance of any subcontractor. Contractor has no authority to contract for or incur obligations on behalf of the State.

#### TERMINATION

The State, by written notice of default listing causes and reasons, may terminate this contract in whole or in part if (1) the Contractor fails to provide services required by this contract within the time specified or any extension agreed to by the State; or (2) the Contractor fails to perform any of the other conditions or provisions of this contract, or so fails to pursue the work so as to endanger performance of this contract in accordance with its terms. The State will be liable only for payment provisions of this contract for services satisfactorily rendered prior to the effective date of termination.

Significant deviation from performance standards in this contract may result in reduced or terminated financial participation of the Contractor, subsequent to negotiations with the State.

This contract may be terminated in whole or in part without cause by mutual consent of the Contractor and the State. The parties shall agree upon the termination conditions including effective date and in the case of partial terminations, that portion to be terminated.

The State may terminate this contract effective upon delivery of written notice to the Contractor or on any later date stated in the notice in the event (1) funding from federal, state

or other sources is not obtained and continued at levels sufficient to allow for purchases of the services or supplies in the indicated quantities or term; (2) federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract; or (3) any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.

Any contract that extends beyond the current biennium may be terminated by the State if sufficient funds are unavailable, if the law regarding the contract is changed, or without cause at any time.

The rights and remedies of the State provided in the termination provisions related to defaults by the Contractor are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

#### FORCE MAJUEURE

Contractor will not be held responsible for delay or default caused by fire, riot, acts or God or war if the event is beyond the Contractor's reasonable control and the Contractor gives notice to the State immediately upon occurrence of the event causing the delay or default or which is reasonably expected to cause a delay or default.

#### RENEWAL

This contract will not automatically renew. State will provide written notice to Contractor of its intent to renew this contract at least sixty days before the scheduled termination date.

#### DISPUTES

The Contractor agrees to attempt to resolve disputes arising from this contract by informal administrative process and negotiations in lieu of litigation. Continued performance by the Contractor during disputes is assured.

The State does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolutions. The parties have the right to enforce their rights and remedies in judicial proceedings. The State does not waive any right to a jury trial.

#### MERGER AND MODIFICATION

This contract constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this contract. This contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

#### SEVERABILITY

If any term of this contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms shall not be affected, and if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

#### NOTICE

All notices or other communications required under this contract shall be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

State

Contractor

#### APPLICABLE LAW AND VENUE

**THIS CONTRACT IS GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH DAKOTA. ANY ACTION TO ENFORCE THIS CONTRACT MUST BE BROUGHT IN THE DISTRICT COURT OF BURLEIGH COUNTY, NORTH DAKOTA.**

#### SPOILIATION – NOTICE OF POTENTIAL CLAIMS

Contractor shall promptly notify State of all potential claims that arise or result from this contract. Contractor shall also take all

reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the State the opportunity to review and inspect the evidence, including the scene of an accident.

#### INDEMNITY

**CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF NORTH DAKOTA, ITS AGENCIES, OFFICERS AND EMPLOYEES, FROM ANY AND ALL CLAIMS OF ANY NATURE INCLUDING ALL COSTS, EXPENSES AND ATTORNEYS' FEES, THAT MAY IN ANY MANNER RESULT FROM OR ARISE OUT OF THIS AGREEMENT, EXCEPT FOR CLAIMS RESULTING FROM OR ARISING OUT OF THE STATE'S SOLE NEGLIGENCE. THE LEGAL DEFENSE PROVIDED BY CONTRACTOR TO THE STATE UNDER THIS PROVISION MUST BE FREE OF ANY CONFLICTS OF INTEREST, EVEN IF RETENTION OF SEPARATE LEGAL COUNSEL FOR THE STATE IS NECESSARY. CONTRACTOR ALSO AGREES TO DEFEND, INDEMNIFY, AND HOLD THE STATE HARMLESS FOR ALL COSTS, EXPENSES AND ATTORNEYS' FEES INCURRED IN ESTABLISHING AND LITIGATING THE INDEMNIFICATION COVERAGE PROVIDED HEREIN. THIS OBLIGATION SHALL CONTINUE AFTER THE TERMINATION OF THIS AGREEMENT, OR ANY EXTENSIONS OR RENEWALS OF IT.**

#### CONFIDENTIALITY

**CONTRACTOR AGREES NOT TO USE OR DISCLOSE ANY INFORMATION IT RECEIVES FROM THE STATE UNDER THIS CONTRACT THAT THE STATE HAS PREVIOUSLY IDENTIFIED AS CONFIDENTIAL OR EXEMPT FROM MANDATORY PUBLIC DISCLOSURE EXCEPT AS NECESSARY TO CARRY OUT THE PURPOSES OF THIS CONTRACT OR AS AUTHORIZED IN ADVANCE BY THE STATE. THE STATE AGREES NOT TO DISCLOSE ANY INFORMATION IT RECEIVES FROM CONTRACTOR THAT THE CONTRACTOR HAS PREVIOUSLY IDENTIFIED AS CONFIDENTIAL AND WHICH THE STATE**

***DETERMINES IN ITS SOLE DISCRETION IS PROTECTED FROM MANDATORY PUBLIC DISCLOSURE UNDER A SPECIFIC EXCEPTION TO THE NORTH DAKOTA OPEN RECORDS LAW, N.D.C.C. § 44-04-18. THE DUTY OF THE STATE AND CONTRACTOR TO MAINTAIN CONFIDENTIALITY OF INFORMATION UNDER THIS SECTION CONTINUES BEYOND THE TERM OF THIS CONTRACT, OR ANY EXTENSIONS OR RENEWALS OF IT.***

Contractor understands that, except for disclosures prohibited in N.D.C.C. Chapter 47-25.1, the State must disclose to the public upon request any records it receives from Contractor. Contractor further understands that any records that are obtained or generated by the Contractor under this contract, except for records that are confidential under N.D.C.C. Chapter 47-25.1, may, under certain circumstances, be open to the public upon request under North Dakota open records law. Contractor agrees to contact the State immediately upon receiving a request for information under the open records law and to comply with the State's instructions on how to respond to the request.

**INSURANCE**

**a. Required Coverages.** Contractor shall secure and keep in force during the term of this contract, from an insurance company, government self-insurance pool or government self-retention fund authorized to do business in North Dakota, the following insurance coverages covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from this contract:

- (1) Commercial general liability, including products or completed operations coverage (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- (2) Professional errors and omissions, including a three year "tail coverage endorsement," with minimum liability limits of \$1,000,000 per occurrence and in the aggregate.
- (3) Automobile liability, including owned (if any), hired, and non-owned vehicles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.

- (4) Workers compensation coverage meeting all North Dakota statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- (5) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance if Contractor is domiciled outside the State of North Dakota.

**b. General Insurance Requirements.** The insurance coverages listed above must meet the following additional requirements:

- (1) Any deductible or self insured retention amount or similar obligation under the policies shall be the sole responsibility of the Contractor. The amount of any deductible or self-retention is subject to approval by the State.
- (2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A" rating must be approved by the State. The policies shall be in for and terms approved by the State.
- (3) The State will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this agreement shall not be limited by the insurance required in this contract.
- (4) The State of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional

insureds. The State shall have all the rights and coverages as Contractor under said policies. The additional Insured endorsement for the commercial general liability policy shall be written on a form equivalent to ISO 1985 CG 20 10-form, or such other form as approved by the State, and the endorsement shall not limit or delete State's coverage in any way based upon State's acts or omissions.

- (5) The insurance required in this agreement, through a policy or endorsement, shall include:
- a. a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
  - b. a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior notice to the undersigned State representative;
  - c. a provision that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08;
  - d. a provision that Contractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the State, and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Contractor's insurance and shall not contribute with it;
  - e. cross liability/severability of interest for all policies and endorsements.

- (6) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary.
- (7) The Contractor shall furnish a certificate of insurance and all endorsements to the undersigned State representative prior to commencement of this agreement.
- (8) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

#### **ATTORNEY FEES**

In the event a lawsuit is instituted by the State to obtain performance due of any kind under this contract, and the State is the prevailing party, Contractor shall, except when prohibited by N.D.C.C. § 28-26-04, pay the State's reasonable attorney fees and costs in connection with the lawsuit.

#### **INDEPENDENT ENTITY**

Contractor is an independent entity under this contract and is not a State employee for any purpose, including but not limited to the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workers' Compensation Act. The Contractor retains sole and absolute discretion in the manner and means of carrying out the Contractor's activities and responsibilities under this contract, except to the extent specified in the contract.

#### **FISCAL RESPONSIBILITIES**

#### **RECORDS**

All records, regardless of physical form, and the accounting practices and procedures of the Contractor relevant to this contract are subject to examination by the North Dakota State Auditor or the Auditor's designee. The Contractor shall maintain such records for four years at least three years following completion of this contract.

**NO CLAIM FOR ADDITIONAL WORK**

No claim for additional services not specifically herein provided, done, or furnished by the Contractor will be allowed, nor shall the Contractor do any work or furnish any material not covered by the contract, unless such work is ordered in writing by the State.

**TIME KEEPING PROCEDURES**

The Contractor shall require employees and subcontractors, if applicable, whose positions are funded under this contract or included as match, to maintain adequate documentation for services provided. For positions that are funded from more than one source, an analysis of duties performed by program shall also be prepared.

**MONITORING, EVALUATION AND AUDIT**

The Contractor agrees to cooperate with any monitoring, evaluating and/or audit conducted by the State, or their designees who shall have full access to and the right to examine all books, records and other relevant documents.

The Contractor agrees to take immediate corrective action on deficiencies disclosed through program monitoring of costs disallowed in the course of an audit, review, or monitoring.

**PREPAYMENT**

The State will not make any advance payments before performance by the Contractor under this contract.

**TAXPAYER ID**

Contractor's North Dakota tax ID number is: \_\_\_\_\_.

Contractor's federal employer ID number is: \_\_\_\_\_.

**PROGRAM REQUIREMENTS**

**COMPLIANCE WITH LAWS**

Contractor agrees to comply with all applicable laws, rules, regulations and policies, including but not limited to those relating to nondiscrimination, accessibility and civil rights. Contractor agrees to timely file all required reports, make required payroll deductions, and

timely pay all taxes and premiums owed, including but not limited to sales and use taxes and unemployment compensation and workers' compensation premiums. Contractor shall have and keep current at all times during the term of this contract all licenses and permits required by law and shall be authorized to do business in the State of North Dakota.

**EQUAL OPPORTUNITY**

No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with this contract because of race, color, disability, or political affiliation or belief.

The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, national origin, disability, age, sex, political affiliation or belief or citizenship.

**NONDISCRIMINATION**

This contract and any subcontract hereunder is subject to the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act, Title VI of the Civil Rights of 1964 and the Americans with Disabilities Act of 1990.

**WORK PRODUCT, EQUIPMENT AND MATERIALS**

*All work product, equipment or materials created or purchased under this contract belong to the State and must be delivered to the State at the State's request upon termination of this contract. Contractor agrees that all materials prepared under this contract are "works for hire" within the meaning of copyright laws of the United States and assigns to State all rights and interests Contractor may have in*

***the materials it prepares under this contract, including any right to derivative use of the material. Contractor shall execute all necessary documents to enable State to protect its rights under this section. Contractor shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts entered into relating to this project.***

#### EFFECTIVENESS OF CONTRACT

This contract is not effective until fully executed by both parties.

## SPECIFIC PROVISIONS

(Date)

### **PURPOSE**

The consultant will identify, investigate, analyze and provide testimony regarding the applicants' need for additional generating resources, alternatives available for meeting those needs and the prudence of the applicants' proposal to participate in the Big Stone II project compared to other available resource alternatives. Consulting duties include:

1. Professional analysis and review of the filing.
2. Prepare and conduct discovery as necessary.
3. Monthly progress reports of discovery, conclusions and recommendations.
4. Prepare and file written testimony.
5. Provide oral testimony at the public hearing.
6. Assist staff in preparing cross-examination of the witnesses of other parties to the proceeding.
7. Assist staff in the preparation of proposed findings of fact.

The completion date for the investigation and filed written testimony is March 15, 2007. The technical hearing is scheduled for April 17-20, 2007.

## ATTACHMENT 3

### RISK MANAGEMENT APPENDIX

#### INTERMEDIATE EXPOSURE WITH ADDITIONAL INSURED ENDORSEMENT – GOODS AND SERVICES (**ENDORSEMENT TO POLICY IS NECESSARY**)

##### Indemnification

Contractor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from claims resulting from the performance of the contractor or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this agreement. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Contractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

##### Insurance

Contractor shall secure and keep in force during the term of this agreement and Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- 5) Professional errors and omissions, including a three year "tail coverage endorsement," with minimum liability limits of \$1,000,000 per occurrence and in the aggregate.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The State will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this agreement shall not be limited by the insurance required in this agreement.
- 4) The State of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies.
- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
  - a) a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;

- b) a provision that the policy and endorsements may not be canceled or modified without thirty days' prior written notice to the undersigned State representative;
  - c) a provision that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under North Dakota Century Code Section 54-12-08;
  - d) a provision that Contractor's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the state and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Contractor's insurance and shall not contribute with it;
  - e) cross liability/severability of interest for all policies and endorsements;
- 6) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary.
  - 7) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
  - 8) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

**ATTACHMENT 4**

**COST PROPOSAL FORMAT**

Direct Costs

Total number of hours at various hourly rates

Direct Expenses

Indirect Costs

Supplies

Overhead

Profit

List any applicable Prompt Payment Discount Terms.

**ATTACHMENT 5**

**STATE OF NORTH DAKOTA  
North Dakota Public Service Commission  
600 E Boulevard Ave, Dept 408  
Bismarck, ND 58505-0480  
701-328-2400  
Fax 701-328-2410**

**DATE**

**NOTICE OF INTENT TO AWARD**

Request for Proposal (RFP) **RFP for Consultant Services in Otter Tail Power Company and Montana-Dakota Utilities Co. Advance Determination of Prudence Application, Case Nos. PU-06-481 and PU-06-482**; RFP Number: **PU-06-481-482** was issued by the **North Dakota Public Service Commission** on **January 5, 2007**.

The following vendors submitted proposals in response to the RFP:

**LIST NAMES AND ADDRESSES OF ALL OFFERORS THAT SUBMITTED PROPOSALS OR INCLUDE AS AN ATTACHMENT.**

A committee evaluated the proposals based upon the criteria stated in the RFP to select the offeror that submitted the most advantageous proposal. We announce our intent to award a contract to **NAME OF SUCCESSFUL OFFEROR**.

The successful offeror is instructed not to begin work, purchase materials, or enter into subcontracts relating to the project until both the recipient and the State sign the contract.

An offeror may protest this Notice of Intent to Award by submitting a written protest to the procurement officer within seven calendar days after the date of this notice.

On behalf of the **North Dakota Public Service Commission**, thank you for your efforts in preparing a proposal in response to this solicitation. We appreciate your interest in doing business with the State of North Dakota, and your company will remain our bidders list for any future solicitations of a similar nature.

If you have any questions, please feel free to contact me at (701) **328-2421**.

Sincerely,

**Annette Bendish**

Procurement Officer

## ATTACHMENT 6

### CHECKLIST FOR OFFERORS

- Submit any questions, comments, or requests for clarification to the procurement officer by the deadline for submission of questions.
- Review the Appendixes A and B. State any objections to any of the provisions in the Contract Form or Indemnification and Insurance Requirements prior to the deadline for submission of questions.
- Be sure an individual authorized to bind the offeror to the provisions of the RFP signs the proposal.
- Comply with the North Dakota Secretary of State and the North Dakota State Procurement Office Registration requirements prior to the deadline stated in the RFP.
- Comply with minimum requirements for experience.
- Comply with professional licensing requirements, and provide copies of certifications, if required.
- Provide the information about the qualifications of the firm and individuals that will be working on the project.
- Identify all known federal requirements that apply to the proposal, the evaluation, or the contract.
- Provide the required number of references.
- Provide all documents or materials that must be submitted with the RFP.
- Identify and label and sections of the proposal you feel contain confidential information.