

# STATE OF NORTH DAKOTA

**North Dakota Public Service Commission  
600 E Boulevard Ave, Dept. 408  
Bismarck, ND 58505-0480**

## Request for Proposal (RFP)

RFP Title: ***RFP for Consultant Services in Case No. PU-08-862***

RFP Number: ***PU-08-862***

Date of Issue: ***November 20, 2008***

Purpose of RFP: ***To acquire consulting services for analyzing Otter Tail Power Company's electric rate increase application***

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**, is soliciting proposals for **analyzing the electric rate increase application filed by Otter Tail Power Company**.

### 1.02

#### Contact Person, Telephone, Fax, and 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 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: **abendish@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: **November 20, 2008**
- Deadline for receipt of questions and objections related to the RFP: **December 3, 2008**
- Responses to questions / RFP amendments (if required) **December 8, 2008**
- Proposals due by: **December 12, 2008**
- Proposal Evaluation Committee evaluation completed by approximately : **December 17, 2008**
- State issues Notice of Intent to Award a Contract approximately: **December 19, 2008**
- State issues contract approximately: **December 29, 2008**
- Contract start: **Upon signing**

### 1.04

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

Offerors must submit **an original and seven copies** of its 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 Case No. PU-08-862**  
RFP Number: **PU-08-862**  
**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 **December 12, 2008**. 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 **918 Consulting Services, sub-class 97, Utilities: Gas, Water, Electric Consulting.**

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 **10 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 North Dakota Century Code section 54-44.4-09.

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

## **SECTION TWO BACKGROUND INFORMATION**

### **2.01**

#### **Background Information**

Background information concerning this project is as follows: On November 3, 2008, Otter Tail Power Company (Otter Tail) filed an Application for Authority to Increase Electric Rates in North Dakota with the North Dakota Public Service Commission. Otter Tail proposes an annual increase of electric revenues of \$6,084,003 or 5.14%. For further details, please see the Application in its entirety on the Commission's website, [www.psc.state.nd.us](http://www.psc.state.nd.us).

Otter Tail states that the revenue deficiency is largely a result of increases in rate base and investment-related costs along with increased labor costs and fuel costs not fully recovered in the Fuel Clause Adjustment. Otter Tail is requesting that all usage rates be subject to the fuel cost adjustment and that declining block rates be eliminated.

The completion date for the investigation and pre-filed written testimony is March 16, 2009. The Commission plans to hold the hearing on this matter on April 27-29, 2009.

### **2.02**

#### **Budget**

The last rate increase application review contract during 2008 was issued for \$50,000, which did not include analysis of or testimony on the cost of capital. This request for proposals does not contain a price cap, but the cost of submitted proposals will be given a 20% weight when determining which offeror will be awarded the contract.

## **SECTION THREE SCOPE OF WORK**

### **3.01 Scope of Work**

The North Dakota Public Service Commission, Public Utilities Division is soliciting proposals for consulting services. The Division wants assistance in evaluating rate base, required rate of return, revenues, expenses, cost allocations, and rate design for the rate increase application filed by Otter Tail Power Company, Case No. PU-08-862. The chosen offeror will review Otter Tail's application for reasonableness, make any necessary adjustments, and offer advice on policy matters to ensure reliable electric service at the lowest cost. The chosen offeror is expected to review Otter Tail's application and determine the most critical and substantive elements of the application and make sure that each is appropriately reviewed and investigated. The chosen offeror will work with Commission staff to ensure proper direction, provide pre-filed written testimony, appear as an expert witness at the formal hearing on the application, work with the commission attorney in developing testimony and cross-examination questions for Otter Tail's witnesses and other information that may be required.

Issues to be evaluated include:

- Determination of whether the proposed rate base is reasonable
- Determination of whether capital structure is reasonable
- Determination of whether the jurisdictional and class cost of service studies are appropriate
- Determination of whether the proposed rate design is appropriate

This list of issues is not an exhaustive list. The Public Utilities Division expects the chosen offeror to complete a thorough and thoughtful analysis of Otter Tail's filing. The goal of this project is to set Otter Tail's electric rates at a fair and reasonable level.

#### ***State-Furnished Property/Services***

The Commission Staff assigned to advocate for ratepayers in the rate proceeding will work with the consultant on a limited basis. The Commission Staff will provide past Commission decisions and interests, direction and suggestions regarding the issues that need to be addressed, review and assistance with pre-filed testimony, legal assistance, and support for receiving information from the company.

#### ***Description of Specific, Results-Oriented Tasks***

Essential, results-oriented tasks necessary to achieve the desired results include a thorough investigation of all costs to provide reliable electric service, complete and well-written testimony, ability to endure cross-examination, and exhibit a clear understanding of ratemaking process and principles.

#### ***Quality Assurance***

Quality of performance will be monitored through ongoing discussions during the investigation as well as the resulting written pre-filed testimony and hearing testimony and cross-examination. Payments will be made on a monthly basis based on the number of hours worked times the contract rate plus any necessary costs to travel for investigations and the Commission hearing.

### **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 any onsite inspections and travel to any formal Commission hearings. Travel to other locations will not be required.

### **3.03**

#### **Prior Experience**

No specific minimums have been set for this RFP.

### **3.04**

#### **Contract Schedule**

This schedule of events represents the State's best estimate of the contract schedule that will be followed. If a component of this schedule, such as the award date, is delayed, the rest of the schedule will be shifted by the same number of days.

The approximate contract schedule is as follows:

- First draft of pre-filed testimony: **March 1, 2009**
- Final draft of pre-filed testimony: **March 16, 2009**
- Formal Commission hearing: **end of April 2009**
- Legal briefs: **May 22, 2009**
- Reply briefs and findings of fact: **June 9, 2009**
- Contract end: **July 2009**

**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 **January 1, 2009** and ending **July 2009**.

**Extension Option**

The State reserves the right to extend the contract period for an additional period, not to exceed beyond the normal expiration date of the contract, upon mutual written agreement by both parties.

**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 because 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 make payments based on a monthly payment schedule. Each billing must consist of an invoice showing hours, rate, and task completed. No payment will be made until an invoice is received and approved by the project manager.

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

#### **4.12**

##### **Contract Funding**

Payment for the contract is subject to funds already appropriated and identified.

#### **4.13**

##### **Payment Terms**

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

Payment for 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**

##### **Inspection & Modification - Reimbursement for Unacceptable Deliverables**

The contractor is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the project manager designated by the State. The State may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. Should the project manager determine that corrections or modifications are necessary in order to accomplish its intent; the project manager may direct the contractor to make changes. The contractor will not unreasonably withhold changes.

Substantial failure of the contractor to perform the contract may cause the State to terminate the contract. In this event, the State may require the contractor to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages.

#### **4.16**

##### **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.

#### **4.17**

##### **Open Records Law - 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.

#### **4.18**

##### **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.

#### **4.19**

##### **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.

#### **4.20**

##### **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.

#### **4.21**

##### **Disputes - Applicable Law and Venue**

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

#### **4.22**

##### **Informal Debriefing**

When the contract is completed, an informal debriefing may be performed at the discretion of the procurement officer or project manager designated by the State. If performed, the scope of the debriefing will be limited to the work performed by the contractor. The debriefing time and location will be negotiated between the purchasing agency and contractor.

**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* 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**

*Thirty* 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?
- [f] Has the offeror gone beyond the minimum tasks necessary to meet the objectives of the RFP?
- [g] Is the proposal practical and feasible?

**5.03  
Quality of Written Proposal**

*Ten* 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 defined?
- [c] Is the organization of the written proposal clear?

## **5.04**

### **Experience and Qualifications**

*Twenty* 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] Has the firm provided letters of reference from previous clients?

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

## **5.05**

### **Contract Cost**

*Twenty* 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 (N.D. Cent. Code § 44-08-01). The lowest cost proposal will receive the maximum number of points allocated to cost.

## **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 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 **three** 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.

### 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 from 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 North Dakota Century Code Section 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, completely 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 because 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 because 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  
12th Floor, State Capitol  
600 E Boulevard Ave  
Bismarck, ND 58505***

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**

#### **Attachments**

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

**ATTACHMENT 1  
SERVICE CONTRACT**

CONTRACT # PU-

PURCHASE OF SERVICE AGREEMENT

The State of North Dakota, acting through its North Dakota Service Commission, Public Utilities Division (State), has determined the services identified in the Scope of Service paragraph below should be purchased.

{Vendor}(Vendor), {Address}, {City}, ND {Zip}, proposes to provide those services.

State and Vendor therefore enter into the following:

1. TERM OF THE AGREEMENT

This agreement runs from {Month} {Day}, {Year}, through {Month} {Day}, {Year}. This agreement may be terminated at any time by mutual consent of both parties, or upon 30-days' written notice by either party, with or without cause.

This contract will not automatically renew. State will provide written notice to Vendor of its intent to renew this contract at least 60 days before the scheduled termination date.

2. SCOPE OF SERVICE

Vendor shall provide the services outlined in RFP number PU- and Vendor's response to RFP number PU- .

3. COMPENSATION

State will not make any advance payments before performance by Vendor under this contract. State shall pay Vendor the hourly rates and charges as stated in Vendor's 2008 Fee Schedule included in Vendor's response to RFP number 08-115 for completing the scope of service. State will not make payment until an invoice is received and approved by the project manager. Each invoice must include the hours worked, the hourly rate charged, tasks completed, and total bill amount.

Total payment for services in a specific case will be defined by the contract in the specific case.

4. VENDOR'S UNDERSTANDING OF TERM OF FUNDING

Vendor understands that this agreement is a one-time agreement, and acknowledges that it has received no assurances that State may extend this agreement beyond its expiration date.

5. VENDOR ASSURANCES

This agreement will be construed according to the laws of the State of North Dakota. In connection with furnishing supplies or performing work under this agreement, persons who contract with or receive funds to provide services to State are obligated and agree to

comply with all local, state, and federal laws, regulations, and executive orders related to the performance of this agreement including the following: Fair Labor Standards Act, Equal Pay Act of 1963, Titles VI and VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the North Dakota Human Rights Act, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, the Drug Abuse Prevention Treatment and Rehabilitation Act of 1970, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Drug-Free Workplace Act of 1988, the Americans with Disability Act of 1990, Alcohol, Drug Abuse and Mental Health Administration Reorganization Act of 1992 and the Pro-Children Act of 1994.

By signing this agreement, Vendor certifies that Vendor, Subcontractor, nor their principals are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions with the State or Federal Government by any Department or Agency of the State or Federal Government.

Vendor must be an approved Vendor with the Office of Management and Budget within the State of North Dakota as required by North Dakota Century Code section 54-44.4-09.

6. AUTHORITY TO CONTRACT

Vendor may not contract for or on behalf of or incur obligations on behalf of State. Vendor may subcontract with qualified vendors of services, provided that any subcontract acknowledges the binding nature of this agreement, and incorporates this agreement, together with its attachments as appropriate. Vendor agrees to be solely responsible for the performance of any subcontractor. Vendor may not assign or otherwise transfer or delegate any right or duty without State's express written consent.

7. INDEPENDENT ENTITY

Vendor shall perform as an independent entity under this agreement. Vendor, its employees, agents, or representatives are not employees of State for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the Federal Unemployment Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workers' Compensation Act. No part of this agreement may be construed to represent the creation of an employer/employee relationship between State and Vendor. Vendor will retain sole and absolute discretion in the judgment of the manner and means of carrying out Vendor's activities and responsibilities under this agreement.

8. NONPERFORMANCE

Failure by Vendor to perform the terms of this agreement constitutes a breach of contract and will result in the immediate termination of the agreement. If there is a termination for breach by Vendor, State may retain, as liquidated damages, any payment to be made under this agreement which remains unpaid at the time of the breach and may also recover from Vendor those amounts already paid for individual items of work which are incomplete at the time of the breach.

If a breach by Vendor renders the agreement impossible of performance by Vendor and is caused by circumstances beyond the control of Vendor, and through no fault of Vendor,

the agreement will be terminated. In the event of a breach by Vendor in such circumstances, State may set off, against any liability or obligations owed to Vendor under this agreement or otherwise, any amounts paid for individual items of work which are incomplete at the time of the breach. State is not entitled to liquidated damages if the agreement is terminated because of a breach by Vendor, which is beyond the control of Vendor.

State shall give written notice of the termination to Vendor specifying the effective date of the termination.

9. TERMINATION FOR LACK OF FUNDING OR AUTHORITY

State may terminate this agreement effective upon delivery of written notice to Vendor or on any later date stated in the notice, if:

- 1) Funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or for the indicated term. The agreement may be modified by mutual consent of the parties in writing to accommodate a reduction in funds.
- 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 agreement or are no longer eligible for the funding proposed for payments authorized by this agreement.
- 3) Any license, permit, or certificate required by law or rule, or by this agreement, is for any reason denied, revoked, suspended, or not renewed.

Any termination of this agreement under this section is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

10. SPOILIATION – NOTICE OF POTENTIAL CLAIMS

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

11. FORCE MAJEURE

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

12. INDEMNITY

Vendor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The

legal defense provided by Vendor 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. Vendor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses, and attorneys' fees incurred if the State prevails in an action against Vendor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

### 13. INSURANCE

Vendor shall secure and keep in force during the term of this agreement and Vendor shall require all subcontractors, prior to commencement of an agreement between Vendor 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 Vendor.
- 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 duty to defend, indemnify, and hold harmless 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 Vendor'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 Vendor's insurance and shall not contribute with it;
  - e) cross liability/severability of interest for all policies and endorsements;
  - f) 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;
  - g) the insolvency or bankruptcy of the insured Vendor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Vendor from meeting the retention limit under the policy.
- 6) The Vendor 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.
- 7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

14. ACCESS TO BOOKS AND RECORDS

Vendor shall provide State, the federal government, and their duly authorized representatives, access to the books, documents, papers, and records of Vendor that are pertinent to the services provided under this agreement for the purpose of making an audit or examination, or for making excerpts and transcripts. This documentation must be available for a period of four years from the date of submission of the final expenditures report. Records shall be retained beyond four years if audit findings have not been resolved.

15. NOTICE

Any notice or other communication required under this agreement must be given by registered or certified mail and is complete on the date mailed when addressed to the parties at the following addresses:

{Vendor}	North Dakota Public Service Commission
	OR 600 East Boulevard Ave, Dept. 408
	Bismarck, ND 58505-0480

Notice provided under this provision does not meet the notice requirements in North Dakota Century Code section 32-12.2-04(1).

16. INTEGRATION, MODIFICATION, AND SEVERABILITY

This agreement constitutes the entire agreement between Vendor and State. No alteration, amendment, or modification of this agreement is effective unless it is reduced to writing, signed by the parties, and attached to the agreement. If any term of this

agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms will not be affected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the agreement does not contain the illegal or unenforceable term.

17. COLLATERAL CONTRACTS

If any inconsistency exists between this agreement and other provisions of collateral contractual agreements that are made a part of this agreement by reference or otherwise, the provisions of this agreement control.

18. APPLICABLE LAW

This agreement is governed by and construed according to the laws of the State of North Dakota. Any action to enforce this agreement must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota.

19. ASSIGNMENT

Neither party may assign this agreement or the party's rights under this agreement without the written approval of the other party. Approval to assign may not be unreasonably withheld. This agreement is equally binding on the respective parties, and their successors and assigns.

20. CONFIDENTIAL INFORMATION

Vendor agrees not to use or disclose any information that is confidential or exempt from mandatory public disclosure which it receives from State under this agreement except as necessary to carry out the purposes of this agreement or as authorized in advance by State. State agrees not to disclose any information it receives from Vendor, which Vendor has previously identified as confidential, and which State determines, in its sole discretion, is protected from mandatory public disclosure under a specific exception to the North Dakota open records law found in North Dakota Century Code chapter 44-04. The duty of State and Vendor to maintain confidentiality of information under this section continues beyond the term of this agreement, including any extensions or renewals.

Vendor understands that, except for disclosures prohibited in North Dakota Century Code chapter 47-25.1, the State must disclose to the public upon request any records it receives from Vendor. Vendor further understands that any records that are obtained or generated by the Vendor under this contract, except for records that are confidential under North Dakota Century Code chapter 47-25.1, may, under certain circumstances, be open to the public upon request under North Dakota open records law. Vendor 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.

21. WORK PRODUCT, EQUIPMENT, AND MATERIALS

All work product, equipment, and materials created or purchased under this agreement belong to State and must be delivered to State at State's request upon expiration or termination of this agreement. Vendor agrees that all materials prepared under this agreement are "works for hire" within the meaning of copyright laws of the United States

and assigns to State all rights and interests Vendor may have in the materials it prepares under this agreement, including any right to derivative use of the material. Vendor shall execute all necessary documents to enable State to protect its rights under this section. State must provide written approval of Vendor's use of work product or materials for purposes outside the scope of this agreement.

22. ATTORNEY FEES

If a lawsuit is filed by State to obtain performance due under this agreement, and State is the prevailing party, Vendor shall pay State's reasonable attorney fees and costs in connection with the lawsuit except when prohibited by North Dakota Century Code section 28-26-04.

23. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

Vendor agrees to attempt to resolve disputes arising from this contract by informal administrative process and negotiations in lieu of litigation. Continued performance by Vendor during disputes is assured. State does not agree to binding arbitration, mediation, or any other form of mandatory alternative dispute resolution. The parties may enforce their rights and remedies in judicial proceedings. State does not waive any right to a jury trial.

24. EFFECTIVENESS OF CONTRACT

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

{VENDOR}

By \_\_\_\_\_ DATE

Its \_\_\_\_\_  
{TITLE}

\_\_\_\_\_  
Federal Taxpayer Identification Number Vendor's

STATE OF NORTH DAKOTA  
NORTH DAKOTA PUBLIC SERVICE COMMISSION

By \_\_\_\_\_ DATE  
SUSAN E. WEFALD  
PRESIDENT

By \_\_\_\_\_ DATE  
KEVIN CRAMER  
COMMISSIONER

By \_\_\_\_\_ DATE  
TONY CLARK  
COMMISSIONER

## **ATTACHMENT 3 RISK MANAGEMENT APPENDIX**

### **INDEMNITY**

Vendor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by Vendor 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. Vendor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses, and attorneys' fees incurred if the State prevails in an action against Vendor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

### **INSURANCE**

Vendor shall secure and keep in force during the term of this agreement and Vendor shall require all subcontractors, prior to commencement of an agreement between Vendor 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 Vendor.
- 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 duty to defend, indemnify, and hold harmless 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 Vendor'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 Vendor's insurance and shall not contribute with it;
  - e) cross liability/severability of interest for all policies and endorsements;
  - f) 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;
  - g) the insolvency or bankruptcy of the insured Vendor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Vendor from meeting the retention limit under the policy.
- 6) The Vendor 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.
- 7) 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

List any applicable Prompt Payment Discount Terms.

## ATTACHMENT 5

STATE OF NORTH DAKOTA  
*Public Service Commission, Public Utilities Division*  
600 E Boulevard AVE, Dept 408  
Bismarck, ND 58505  
(701) 328-2400  
(701) 328-2410

**DATE**

### NOTICE OF INTENT TO AWARD

Request for Proposal (RFP) **NUMBER AND TITLE** was issued by the **North Dakota Public Service Commission, Public Utilities Division** on **DATE PROPOSAL WAS ISSUED**.

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 **NAME OF THE AGENCY**, 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) **328-2400**.

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.
- Make 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 the sections of the proposal you feel contain confidential information.