

# STATE OF NORTH DAKOTA

***NORTH DAKOTA PUBLIC SERVICE COMMISSION  
PUBLIC UTILITIES DIVISION  
600 E Boulevard Avenue Dept. 408  
Bismarck, ND 58505-0480***

## Request for Proposal (RFP)

RFP Title: Otter Tail Power Company  
Advanced Determination of Prudence Case No. PU-17-140 and  
Advanced Determination of Prudence Case No. PU-17-141 and  
Certificate of Public Convenience and Necessity Case No. PU-17-143

RFP Number: ***408.17.05.009***

Date of Issue: May 1, 2017

Purpose of RFP: To analyze Advanced Determination of Prudence and Certificate of Public Convenience & Necessity applications and provide testimony on behalf of the ratepayers of Otter Tail Power Company.

Offerors are not required to return this form.

**Procurement Officer: *Geralyn Schmaltz***

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## SECTION ONE INTRODUCTION AND INSTRUCTIONS

### 1.01

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

The North Dakota Public Service Commission, hereafter known as “purchasing agency,” “State,” or “Commission” is soliciting proposals for conducting research and analysis of Otter Tail Power Company, hereafter known as “OTP” Advanced Determination of Prudence and Certificate of Public Convenience & Necessity applications and preparing and sponsoring testimony before the commission on behalf of OTP’s ratepayers.

### 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: **Geralyn Schmaltz**

PHONE: **701-328-4076**

FAX: **701-328-2410**

TTY Users call: 7-1-1

E-MAIL: [gschmaltz@nd.gov](mailto:gschmaltz@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: May 1, 2017
- Deadline for receipt of questions and objections related to the RFP: May 10, 2017
- Responses to questions / RFP amendments (if required): May 15, 2017
- Proposals due by: May 29, 2017
- State issues Notice of Intent to Award a Contract approximately: June 5, 2017
- State issues contract approximately: June 12, 2017

### 1.04

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

Offerors must submit ***an original and three 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:

**Geralyn Schmaltz, Procurement Officer**  
**North Dakota Public Service Commission**  
Request for Proposal (RFP): **Consulting Services for OTP Applications**  
RFP Number: **408.17.05.009**  
**600 E Blvd Ave, Dept 408**  
**Bismarck, ND 58505**

Proposals must be received by the purchasing agency at the location specified no later than **2:00 P.M., CENTRAL** Time on **May 29, 2017**. 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 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 RFP Schedule.

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 are commodity codes:

**91897 (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 RFP Schedule.

**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 [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**

North Dakota Public Service Commission regulates investor-owned utilities operating in the state of North Dakota. Otter Tail Power Company provides electric service to many North Dakota ratepayers and seeks to gain an advanced determination of prudence for its Merricourt wind project and Astoria simple cycle combustion turbine project, as well as a certificate of public convenience & necessity for the Merricourt project. The commission assigns certain staff members to represent ratepayer interests while other staff members are available to advise the commission throughout the process. The consultant hired through this RFP process will work with the ratepayer advocacy staff in presenting its case for the ratepayers of OTP.

### **2.02**

#### **Budget**

In accordance with state law, an application fee from the applicant in the amount of \$175,000 is required when an advanced determination of prudence or certificate of public convenience & necessity is filed. Upon request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the application process by the commission.

**The budget for this project is \$250,000.**

## **SECTION THREE**

### **SCOPE OF WORK AND SCHEDULE**

#### **3.01**

##### **Scope of Work**

###### ***Overview***

The North Dakota Public Service Commission, Public Utilities Division, is soliciting proposals for a thorough analysis of the advanced determination of prudence and certificate of public convenience & necessity for the Merricourt project and the advanced determination of prudence for the Astoria project. The selected offeror will be required to provide written testimony and present effective oral testimony at the commission's technical hearing and assist in the preparation of pre- and post-hearing documents or possibly documents for purposes of moving to dismiss the application. The cases are being consolidated for purposes of hearing as they are interrelated, which is why the NDPSC is looking for one contractor to handle all three cases together.

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

Commission ratepayer advocacy staff will work with the consultant to help identify critical issues and provide background information.

The Commission will not provide any property or equipment.

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

The selected offeror must provide a detailed analysis and recommendations related to the prudence of the Merricourt and Astoria projects.

The issues to be addressed by the analysis and testimony are:

1. Is OTP's proposed investment in the Astoria Project reasonable, prudent and in the best interests of customers?
2. Is OTP's proposed investment in the Merricourt Wind Project reasonable, prudent and in the best interests of customers?
3. Is there a need for the service?
4. Is OTP fit and technically, financially and managerially able to provide service?
5. What is the effect on other public utilities providing similar service?
6. Is the proposed service adequate?

OTP has provided very detailed schedules, analysis and explanations of its cases and various adjustments. Additionally the wind and combustion turbine were discussed in OTPs 2015 Integrated Resource Plan filed with the Commission under Case. No. PU-16-308. Consequently, the selected offeror must review and use the already provided material before submitting data requests. Sending hundreds of "canned" data requests that the selected offeror has no intention of using the responses to evaluate the case will not be allowed. The data requests that are submitted must be clear, concise and likely to produce useful information for the case. The commission ratepayer advocacy staff has a right to review the data requests to ensure their value.

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

Payments will be made on a monthly basis based on number of hours worked times the contract rate.

#### **3.02**

##### **Location of Work**

The State ***WILL NOT*** provide workspace for the selected offeror.

#### **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.

### **3.05**

#### **Contract Schedule**

This schedule of events represents the State's best estimate of the contract schedule that will be followed.

The approximate contract schedule is as follows:

- Contract start: June 12, 2017
- Testimony of the selected offeror, ratepayer advocacy staff and any other intervenor : TBD
- Rebuttal Testimony of all parties: TBD
- Surrebuttal Testimony of all parties: TBD
- Technical Hearings: TBD
- responses to data requests are due 10 days after they are received.

## **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 **June 12, 2017** and ending when the post-hearing documents have been filed.

#### **Extension Option**

The State reserves the right to extend the contract period for an additional period of time beyond the normal expiration date of the contract, upon mutual written agreement by both parties.

### **4.02**

#### **Contract Type**

Responses to this RFP should be stated in terms of an hourly rate.

### **4.03**

#### **Standard Contract Provisions**

The successful offeror will be required to sign and submit a contract. A sample contract is attached as Attachment 1. The selected offeror 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 manager 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 selected offeror 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 listing hours worked at the contract rate, the staff person completing the work, and include a progress report. No payment will be made until the project manager has reviewed the progress report and approved the invoice.

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 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.

#### **4.18**

##### **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**

*Forty* 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**

*Forty* 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 the offeror can meet the schedule set out in the RFP?
- [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**

##### **Experience and Qualifications**

*Fifteen* 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?

**5.04**

**Quality of Written Proposal**

*Five* of the total possible 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?

## **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 necessary 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**

#### **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.



**6.06****Cost Proposal**

The budgeted cost for this project is capped at \$250,000. Even though the budget is set at \$250,000, cost proposals must include an itemized list of projected direct and indirect costs by task associated with the performance of the contract, including total number of hours at various hourly rates, direct expenses, overhead and so on.

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.

**6.07****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.

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 **60 DAYS** from the deadline specified for submission of proposals. In the event award is not made within **60 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 multiple proposals 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 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, 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 at:

***North Dakota Public Service Commission  
Commission Hearing Room, 12th Floor State Capital  
600 E Boulevard Ave  
Bismarck, ND 58505***

If contract negotiations are held, the offeror will be responsible for all costs to participate in the meeting.

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

## ATTACHMENT 1

CONTRACT #PU-XXX-XX

### PURCHASE OF SERVICE CONTRACT

The parties to this contract are the State of North Dakota, acting through its North Dakota Public Service Commission, Public Utilities Division (STATE) and Company Name, Street Address, City, State Zip Code (CONTRACTOR).

#### 1. SCOPE OF WORK

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, agrees to provide the services enumerated below. CONTRACTOR shall be registered with the North Dakota Secretary of State and the North Dakota State Procurement Office prior to Contract execution.

CONTRACTOR agrees to perform services outlined in Section 3.01 per the schedule outlined in Section 3.05 of RFP number 408.17.05.009 and CONTRACTOR's response to RFP number 408.17.05.009. The written proposal provided by CONTRACTOR is attached to and incorporated into this agreement.

#### 2. COMPENSATION

##### **Contractual Amount**

STATE shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed \$XXX,XXX.

The Contractual Amount is firm for the duration of the Contract and constitutes the entire compensation due CONTRACTOR for performance of its obligations under this Contract, unless amended, regardless of this difficulty, materials or equipment required, including fees, licenses, overhead, profit and all other direct and indirect costs incurred by CONTRACTOR, except as provided by an amendment to this Contract.

The STATE will make payments based on a monthly payment schedule. Each billing must consist of an invoice listing hours worked at the contract rate, the staff person completing the work, and include a progress report. No payment will be made until the Project Manager has reviewed the progress report and approved the invoice.

Victor Schock – Project Manager  
Public Utility Analyst – North Dakota Public Service Commission  
600 E Boulevard Ave, Dept 408  
Bismarck, ND 58505-0480  
vschock@nd.gov  
701-328-3397

The STATE will not make any advance payments before performance by the CONTRACTOR under this contract.



## **Payment**

1. Payment made in accordance with this Compensation section shall constitute payment in full for the services and work performed and the deliverables and work(s) provided under this Contract and CONTRACTOR shall not receive any additional compensation hereunder.
2. STATE will make every attempt to make payment under this Contract within thirty (30) calendar days after receipt of an approved invoice.
3. Payment of an invoice by STATE will not prejudice STATE's right to object to or question that or any other invoice or matter in relation thereto. CONTRACTOR's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by STATE, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute allowable costs. At STATE's sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to CONTRACTOR.
4. For any amounts that are or will become due and payable to STATE by CONTRACTOR, STATE reserves the right to deduct the amount owed from the payments that are or will become due and payable to CONTRACTOR under this Contract.

## **Travel**

CONTRACTOR acknowledges travel costs are covered by the Contractual Amount and shall include travel costs in the monthly invoices submitted to STATE.

## **Prepayment**

STATE will not make any advance payments before performance by CONTRACTOR under this Contract.

## **Payment of Taxes by STATE**

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

## **Taxpayer ID**

CONTRACTOR'S federal employer ID number is: \_\_\_\_\_

## **3. TERM OF CONTRACT**

This Contract begins on the date the last party has fully executed the Contract, and compensation ends on May 1, 2018.

## **No Automatic Renewal**

This Contract will not automatically renew.

### **Extension Option**

STATE reserves the right to extend the Contract up to three times for an additional period of time not to exceed 12 months per extension.

### **Renewal Option**

STATE may renew this Contract upon satisfactory completion of the initial Contract term. STATE reserves the right to execute up to three options to renew this Contract under the same terms and conditions for a period of twelve months each.

## **4. TIME IS OF THE ESSENCE**

CONTRACTOR hereby acknowledges that time is of the essence for performance under this Contract unless otherwise agreed to in writing by the parties.

## **5. TERMINATION OF CONTRACT**

### **Termination by Mutual Agreement**

This Contract may be terminated by mutual consent of both parties, executed in writing.

### **Termination without Cause**

STATE may terminate this Contract in whole or in part when it has determined that continuing the Contract is no longer necessary or would not produce beneficial results commensurate with the further expenditure of public funds.

### **Termination for Lack of Funding or Authority**

STATE by written notice to CONTRACTOR, may terminate the whole or any part of this Contract under any of the following conditions:

- 1) If 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 term.
- 2) If 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.
- 3) If 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.

Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

### **Termination for Cause**

STATE may terminate this Contract effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice:

- 1) If CONTRACTOR fails to provide services required by this Contract within the time specified or any extension agreed to by STATE; or

- 2) If CONTRACTOR fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms.

The rights and remedies of STATE provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

## **6. FORCE MAJEURE**

Neither party shall be held responsible for delay or default caused by fire, flood, riot, acts of God or war if the event is beyond the party's reasonable control and the affected party gives notice to the other party immediately upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

## **7. INDEMNITY**

CONTRACTOR 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. The legal defense provided by CONTRACTOR to the STATE under this provision shall be free of any conflicts of interest, even if retention of separate legal counsel for the STATE is necessary. An attorney appointed to represent the STATE shall 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. CONTRACTOR 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 CONTRACTOR in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

## **8. INSURANCE**

CONTRACTOR shall secure and keep in force during the term of this agreement and CONTRACTOR shall require from 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.

The insurance coverages listed above shall 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 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 shall 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 shall 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 that shall not be limited to the minimum limits of insurance required by this agreement or by the Contractual indemnity obligations of CONTRACTOR.
- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
  - a) "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the STATE;
  - b) 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;
  - c) cross liability/severability of interest for all policies and endorsements;
  - d) The legal defense provided to the STATE under the policy and any endorsements shall be free of any conflicts of interest, even if retention of separate legal counsel for the STATE is necessary;
  - e) The insolvency or bankruptcy of the insured CONTRACTOR shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy.

- 6) 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.
- 7) Failure to provide insurance as required in this agreement is a material breach of Contract entitling the STATE to terminate this agreement immediately.
- 8) CONTRACTOR shall provide at least 30 day notice of any cancellation or material change to these policies or endorsements.

## **9. WORKS FOR HIRE**

CONTRACTOR acknowledges that all work(s) under this Contract is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to STATE all rights and interests CONTRACTOR may have in the work(s) it prepares under this Contract, including any right to derivative use of the work(s). All software and related materials developed by CONTRACTOR in performance of this Contract for STATE shall be the sole property of STATE, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to STATE. CONTRACTOR shall execute all necessary documents to enable STATE to protect STATE's intellectual property rights under this section.

## **10. WORK PRODUCT**

All work product, equipment or materials created or purchased under this Contract belong to STATE and shall be delivered to STATE at STATE'S request upon termination of this Contract.

## **11. 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:

[name]	Executive Secretary
xxx, Inc.	North Dakota Public Service Commission
[address 1]	600 E Boulevard Ave., Dept. 408
xxx, XX xxxxx	Bismarck, ND 58505-0480

Notice provided under this provision does not meet the notice requirements for monetary claims against the STATE found at North Dakota Century Code section 32-12.2-04.

## **12. CONFIDENTIALITY**

CONTRACTOR shall not use or disclose any information it receives from STATE under this Contract that 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 STATE. STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from

mandatory public disclosure under a specific exception to the North Dakota open records law, North Dakota Century Code chapter 44-04. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Contract.

### **13.COMPLIANCE WITH PUBLIC RECORDS LAW**

CONTRACTOR understands that, except for disclosures prohibited in this Contract, STATE shall disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this Contract, except for records that are confidential under this Contract, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the open records law and to comply with STATE'S instructions on how to respond to the request.

### **14.INDEPENDENT ENTITY**

CONTRACTOR is an independent entity under this Contract and is not a STATE employee for any purpose, including 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 Workforce Safety and Insurance Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR'S activities and responsibilities under this Contract, except to the extent specified in this Contract.

### **15.ASSIGNMENT AND SUBCONTRACTS**

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE'S express written consent. However, CONTRACTOR 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 does not have authority to Contract for or incur obligations on behalf of STATE.

### **16.SPOLIATION – 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 STATE the opportunity to review and inspect the evidence, including the scene of an accident.

### **17.MERGER AND MODIFICATION**

This Contract, including the following documents, 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.

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Contract, the documents shall control in this order of precedence:

- a. The terms of this Contract as may be amended;
- b. CONTRACTOR's written negotiated proposal dated Month XX, 2017.
- c. All terms and conditions contained in any end user agreements (e.g. automated click-throughs, shrink wrap, or bonus wrap) are specifically excluded and null and void, and shall not alter the terms of this Contract.

## **18. 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 is unaffected, 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.

## **19. APPLICABLE LAW AND VENUE**

This Contract is governed by and construed in accordance with the laws of the STATE. Any action to enforce this Contract shall be adjudicated exclusively in the State District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

## **20. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

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

## **21. ATTORNEY FEES**

In the event a lawsuit is instituted by STATE to obtain performance due under this Contract, and STATE is the prevailing party, CONTRACTOR shall, except when prohibited by North Dakota Century Code section 28-26-04, pay STATE'S reasonable attorney fees and costs in connection with the lawsuit.

## **22. NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

CONTRACTOR agrees to comply with all laws, rules, and policies, including 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 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.

## 23. STATE AUDIT

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors. CONTRACTOR shall maintain all such records for at least three years following completion of this Contract and be able to provide them at any reasonable time. STATE, State Auditor, or Auditor's designee shall provide reasonable notice.

## 24. EFFECTIVENESS OF CONTRACT

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

CONTRACTOR

*Name*

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

STATE OF NORTH DAKOTA

Acting through its North Dakota Public  
Service Commission

By: \_\_\_\_\_

Title: Randy Christmann, Chairman

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

By: \_\_\_\_\_

Title:, Julie Fedorchak, Commissioner

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

By: \_\_\_\_\_

Title:, Brian Kroshus, Commissioner

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



## ATTACHMENT 2

### RISK MANAGEMENT APPENDIX

#### Indemnification

Contractor 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 Contractor or its agent, 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 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 attorney fees incurred if the State prevails in an action against Contractor 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 coverage 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 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 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;
  - 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 Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy.
- 6) 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.
- 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 3**  
**COST PROPOSAL FORMAT**

Labor Cost:

Total number of hours at various hourly rates

Other Cost

Supplies

Overhead

Travel

Other Pertinent Expenditures

Total Cost

List any applicable Prompt Payment Discount Terms.

## ATTACHMENT 4

STATE OF NORTH DAKOTA  
*North Dakota Public Service Commission*  
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) **408.17.05.009** was issued by the *North Dakota Public Service Commission* on **May 1, 2017**.

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) **328-4076**.

Sincerely,

***Geralyn Schmaltz***

Procurement Officer

## **ATTACHMENT 5**

### **CHECKLIST FOR OFFERORS**

- ☐ Submit any questions, comments, or requests for clarification to the procurement officer by the deadline for submission of questions.
- ☐ Review Attachments 1 and 2. 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 all documents or materials that must be submitted with the RFP.
- ☐ Identify and label and sections of the proposal you feel contain confidential information.