



# TRANSIT PROCUREMENT PLAN

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# Chapter 1: State Transit Procurement Program

## 1.1 INTRODUCTION

The North Dakota Department of Transportation (NDDOT) has developed this procurement plan in accordance with the U. S. Department of Transportation, Federal Transit Administration (FTA) and State of North Dakota requirements for all recipients using State and FTA funds.

When an entity applies for and accepts state and federal funds, they also are accepting the responsibility of maintaining oversight of the procurement process and assuring it is compliant. State and federal regulations regarding procurement of goods and services are complete, detailed and often change to reflect changes in legislation. Before procurements are initiated, recipients should review these resources and work with the Transit Section to ensure required steps are followed.

Procurement is the process of purchasing, renting, leasing, or otherwise acquiring any goods or services. This includes the process of acquisition, including description of requirements, solicitation of bids and proposals, evaluation and selection of sources, preparation and award of a contract, and all phases of contract administration (N.D.A.C. § [4-12-01-02](#)). The terms “procurement” and “purchasing” are used interchangeably.

It is a state policy that each state agency and institution obtain necessary goods and services at a competitive cost, consistent with quality, time, and performance requirements with fair and equal opportunity to all persons qualified to sell to the State, except as otherwise provided by law (N.D.C.C. § [54-44.4-01](#)). These procedures are not intended to restrict the effectiveness of individuals involved in the procurement, but to provide for legal, complete, and consistent consideration of all aspects of the procurement process.

The purpose of this plan is to establish guidelines for procurement that are in accordance with North Dakota Century Code (N.D.C.C.), North Dakota Administrative Code (N.D.A.C.) and written directives of the Office of Management and Budget (OMB). This plan is intended to be a desktop reference and training plan for state employees responsible for purchasing printing, goods, and services. Agencies and institutions may establish internal procedures that do not conflict with state procurement laws, rules, and these guidelines.

If questions arise, contact the OMB State Procurement Office at 701-328-2740.

## 1.2 STATE PROCUREMENT PROGRAM

OMB is the administrative agency for state procurement for the executive branch of government, excluding institutions under the jurisdiction of the State Board of Higher Education. OMB promulgates rules related to state procurement practices. The State Procurement Office (SPO) is the section within OMB responsible for state procurement. SPO will make purchases on behalf of agencies, and provide procurement assistance (N.D.C.C. §§ [54-44-04\(18\)](#), [54-44.4-02](#), [54-44.4-04](#)).

The State Board of Higher Education has the authority to determine policy for purchasing for the North Dakota University System in coordination with OMB (N.D.C.C. § [15-10-17](#), [S.B.H.E Policy 803.1](#), [NDUS Procedure 803.1](#))

The OMB has assigned a State Procurement Officer to each agency and institution. The Procurement Officer Assignments (State of ND Employees – ONLY) are posted on the OMB website. Don't hesitate to contact the OMB State Procurement Officer assigned to your agency or institution when you need assistance.

## 1.3 LEAD PROCUREMENT OFFICER – PROCUREMENT LIAISON

OMB and NDUS requires each agency and institution to designate a lead procurement officer who is responsible for the procurement functions of the organization. (NDUS Procedure [803.1](#))

OMB asks each agency head to complete a [Procurement Liaison Designation form](#), SFN 53112 to

designate the agency's lead procurement officer and liaison to OMB State Procurement.

#### 1.4 TRANSIT SUBRECIPIENT – ONLY

A procurement officer is “an individual duly authorized to enter and administer purchasing contracts and make written determinations with respect thereto and also includes an authorized representative acting within the limits of authority” (N.D.C.C. § [54-44.4-01](#)).

Each transit subrecipient must designate a procurement officer. They would be responsible for the state and federal purchases for the agency. Subrecipients must complete the Procurement Adoption-Procurement Officer Designation form (*Attachment 34*) located in the BlackCat System under Global Resources. The form must be completed, approved by the board, and uploaded into each agencies BlackCat System - Resources under the Procurement folder.

The designated procurement officer must follow all the requirements in the plan unless noted State of ND Employees – ONLY. Please note that your procurement may be deemed invalid by NDDOT if you do not allow the NDDOT Transit Section adequate time to review throughout the procurement process.

#### 1.5 PROCUREMENT ONLINE WORK REQUEST SYSTEM – State of ND Employees - ONLY

OMB State Procurement Office will purchase on behalf of agencies. Agencies are also required to submit certain purchase requests to OMB. Agency employees with a NDGOV user name and password can use the [Procurement Work Request System](#) to submit a purchase request to or ask for assistance from the OMB State Procurement Office. Use the Procurement Work Request System to submit forms, comments, and questions to SPO.

If you do not have a NDGOV login, submit requests and forms to [infospo@nd.gov](mailto:infospo@nd.gov). Contact the OMB State Procurement Office at 701-328-2740 for assistance.

#### 1. 6 ROLES AND RESPONSIBILITIES

NDDOT is the recipient authorized to receive funds directly from the State of ND and FTA. A “subrecipient” is an agency authorized to receive grant funds through NDDOT. The responsibility for the procurement process ultimately rests with NDDOT as the recipient of the State of ND and FTA grant funds. However, subrecipients are obligated to follow all applicable procurement requirements and provide information to NDDOT demonstrating what funding is being used and how requirements were met.

For ease of use of this plan, transit subrecipients and NDDOT Transit Section are both referred to as a recipient. Minor deviations in the process steps for subrecipients and State of ND Employees are noted throughout the plan.

When a recipient conducts a procurement of goods or services funded with an FTA grant, it is the responsibility of that recipient to manage the entire procurement process and contract administration to ensure its compliance with relevant FTA requirements.

If a recipient accepts capital or operating assistance, FTA requirements also apply to all transit-related third-party purchase orders and contracts. In addition to ensuring adequate and open competition for federally funded purchases of goods or services, recipients must ensure vendor compliance with applicable federal regulations including, developing all procurement documents, specifications, and contract administration.

If a recipient is using State Aid from the NDDOT, the state purchasing rules still apply.



**1.7 STATE PURCHASING THRESHOLDS**

Effective July 1, 2018, OMB and NDUS adopted very similar purchasing thresholds. NDUS employees must follow SBHE policies and NDUS procedures. State agencies, and Transit subrecipients, excluding Higher Education Institutions, must follow state laws, administrative rules, and OMB guidelines.

<b>Purchasing Thresholds Effective July 1, 2018</b>		
State agencies and transit subrecipients, excluding Higher Education institutions, must follow <a href="#">OMB guidelines</a> . NDUS institutions must follow <a href="#">SBHE policies</a> and <a href="#">NDUS procedures</a> .		
<b>Level</b>	<b>Competition Requirements</b>	<b>Documentation Maintenance Requirement</b>
<b>Level 1 “Micro” Purchase</b>  Less than \$10,000	Obtain at least one fair and reasonable quote.  Note: Equipment and software must be added to inventory in the BlackCat System if \$5,000 or greater. (N.D.C.C. § <a href="#">54-27- 21</a> Fixed Asset Minimum Reporting Value)  State agencies (excluding Higher Education institutions) must submit <a href="#">printing purchase requests</a> \$5,000 and over to OMB State Procurement.  State agencies must rotate vendors solicited on an equitable basis (N.D.A.C. § <a href="#">4-12-08-02</a> ).	NDUS: Documentation not required  Alternate Procurement form not required if multiple quotes not solicited.  State agencies & Transit subrecipients: Document vendors solicited, quotes received, and award determination.
<b>Level 2 Small Purchase</b>  At least \$10,000 but less than \$50,000	Solicit informal quotes/bids or proposals from at least three vendors, or post to SPO Online with appropriate state bidders list. May send to additional vendors.  State agencies: ITD must review IT purchases over \$25,000. Contact <a href="mailto:itdprocurement@nd.gov">itdprocurement@nd.gov</a>  <b>Transit subrecipients:</b>  SPO Online is not available for Transit Subrecipients.  If purchasing ADA vehicles off the State Bid, approval required from the Transit Section before ordering.  Assets (vehicle, equipment, software, facility, etc.) must be added to Inventory in the BlackCat System if \$5,000 or greater.	Documentation is required.  <a href="#">Alternate Procurement form</a> required if competition is not solicited from at least three vendors.  The form is not required if 3 vendors are solicited and fewer than three bids or proposals are received.
<b>Level 3 Informal Written Purchase</b>  At least \$50,000 but less than \$100,000	Solicit informal bids or proposals using SPO Online with appropriate state bidders list. May send to additional vendors.  State agencies: ITD must review IT purchases over \$25,000. Contact <a href="mailto:itdprocurement@nd.gov">itdprocurement@nd.gov</a>  <b>Transit subrecipients:</b>  SPO Online is not available for Transit	Documentation Required  <a href="#">Alternate Procurement form</a> required if: 1. Competition is limited or not solicited. 2. SPO Online is not used. SPO Online is not available for Transit Subrecipients.

	<p>Subrecipients.</p> <p>If purchasing ADA vehicles off the State Bid, approval required from the Transit Section before ordering.</p> <p>Assets (vehicle, equipment, software, facility, etc.) must be added to Inventory in the BlackCat System if \$5,000 or greater.</p>	<p>Transit: Approval required before purchase.</p>
<p><b>Level 4 Formal Purchase</b></p> <p>\$100,000 and over</p>	<p>Must be purchased using formal sealed bids or Request for Proposal (RFP). Solicitations must be posted using SPO Online with appropriate state bidders list. May send to additional bidders.</p> <p>State agencies: ITD must review IT purchases over \$25,000. Contact <a href="mailto:itdprocurement@nd.gov">itdprocurement@nd.gov</a></p> <p><b>Transit subrecipients:</b></p> <p>SPO Online is not available for Transit Subrecipients.</p> <p>If purchasing ADA vehicles off the State Bid, approval required from the Transit Section before ordering.</p> <p>Assets (vehicle, equipment, software, facility, etc.) must be added to Inventory in the BlackCat System if \$5,000 or greater.</p>	<p>Documentation is required.</p> <p><a href="#">Alternate Procurement form</a> required if:</p> <ol style="list-style-type: none"> <li>1. Competition is limited or not solicited, or competition is limited.</li> <li>2. SPO Online is not used. SPO Online is not available for Transit Subrecipients.</li> </ol> <p>Transit: Approval required before purchase.</p>
<p><b>Questions? Contact OMB State Procurement at <a href="mailto:infospo@nd.gov">infospo@nd.gov</a> or 701-328-2740</b></p> <p>Updated July 1, 2019</p>		

## 1.8 FEDERAL REQUIREMENTS

The following general requirements are established in FTA [Third Party Contracting Guidance \(Circular 4220.1F\) \(dot.gov\)](#) and [Best Practices Procurement & Procurement Manual \(dot.gov\)](#) .

Cost Plus Percentage of Cost Contracts - FTA does not allow Cost plus Percentage of Cost Contracts. Profit must be set at a fixed amount (the “fixed fee”) on contracts with third party vendors, based on the initial estimate of work.

Conformance with State and Local Law - Recipients shall use their own procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable federal law, including the requirements and standards identified in Circular 4220 (as amended) Third Party Contracting Requirements.

Special Notification Requirements for States – The FTA requires the following statement to be included in all solicitation documents: “Federal grant monies (insert federal grant agreement amount) fund this contract, in whole or in part (Section 53XX – CFDA 20.5XX).

Contract Administration System - Recipients shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. A sound contract administration system identifies what is needed in the procurement and documents all steps in the process (i.e. solicitation, negotiation, and contract). Recipients should refer to the contract during the life of the contract to ensure the contractor is complying with all requirements. Contract administration starts with the procurement. Recipients should ensure all pertinent information required in the contract is included in the solicitation. Failure to do so may cause cardinal changes which are prohibited by FTA. Anything negotiated during an RFP should also be included in the contract. Recipients should watch for any changes that may not have been in the original solicitation.

Written Standards of Conduct - Recipients shall maintain written standards of conduct governing the performance of their employees engaged in the award and administration of contracts and regarding potential conflicts of interest. No employee, officer, agent, immediate family member, partner, or board member of the grantee shall:

- 1) participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest exists, real or apparent or
- 2) solicit or accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts.

Liquidated Damages - FTA has determined that a recipient may use liquidated damages if the recipient reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rate and measurement standards must be calculated to reasonably reflect the recipient’s costs should the standards not be met and must be specified in the solicitation and contract. The assessment for damages is often established at a specific rate per day for each day beyond the contract’s delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The procurement file should include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account involved unless FTA permits otherwise.

Ensuring Most Efficient and Economic Purchase - Recipient procedures shall provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.

Written Record of Procurement History - Recipients shall maintain records detailing the history of procurement. Each procurement checklist allows recipients to document a Written Record of

## Procurement History.

Independent Cost Estimate -The recipient must establish a cost estimate in advance of bidding out work to ensure a clear basis for a cost or price analysis. The cost estimate is developed based on product knowledge, experience, and market status, and is used in performing price and cost analysis later on in the procurement process. To see a sample independent cost estimate, see *Attachment 23*.

Cost or Price Analysis - The recipient must perform a price or cost analysis before awarding a contract to determine if the bids provided are fair and reasonable. This analysis must be used in conjunction with the independent cost estimate created prior to the solicitation of price quotes for all types of procurements. The type (price or cost) and degree of analysis is dependent on the facts surrounding the particular procurement situation. In general, the rule behind whether to do a PRICE or COST analysis is the following:

- Price analysis (which is comparing quotes to catalog or market prices, via previous contracts or comparison with other competitive proposals) may be performed for most procurements.

Sources of information that are available to conduct a price analysis include:

- o Comparisons with other competitive proposals
- o Previous contracts
- o Catalog or market prices
- o Historical prices and trending
- o Independent cost estimates
- Cost analysis (which includes examining variances from the independent estimate as well as the differences between bids recorded, rather than assuming that open market pricing always equates to appropriate pricing) must be performed for procurements that:
  - o Require the contractor to submit estimates for labor hours, overhead, and materials
  - o Result in a situation where price competition is lacking
  - o Consist of a sole source procurement

Awards to Responsible and Responsive Contractors - Recipients shall make awards only to responsible and responsive contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as conforming to the requirements of the solicitation, contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. All procurements must include a printout from [www.sam.gov](http://www.sam.gov). The date of the printout must be showing on the page.

Advanced Payments – FTA does not allow advanced payments

Revenue Contract – Contracts whose primary purpose is either to generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. FTA requires these contracts to be awarded utilizing competitive selections procedures and principals. The extent of and type of competition required is within the discretionary judgment of the grantee.

Written Protest Procedures - Recipients shall have written protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to NDDOT. NDDOT is responsible for notifying FTA. All protest decisions must be in writing. A protester must exhaust all administrative remedies with the grantee before pursuing a protest with NDDOT or FTA.

Changes and Modifications - Recipients shall have written changes and modifications procedures to handle and resolve issues, clarifications, errors and corrections relating to their procurements and shall in all instances disclose such information to NDDOT. NDDOT is responsible for notifying FTA, as needed. All changes and modifications to a procurement must be documented.

Contract Period of Performance Limitation - Recipients shall not enter into any contract with period of performance exceeding five (5) years inclusive of options without prior written FTA approval. In addition, recipients must not enter into contracts for revenue rolling stock and replacement parts with a period of performance exceeding five years inclusive of options, extensions, or renewals.

Full and Open Competition - All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

- Unreasonable requirements placed on firms in order for them to qualify to do business;
- Unnecessary experience and excessive bonding requirements;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive awards to any person or firm on retainer contracts;
- Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- The specification of only a "brand name" product without listing its salient characteristics and not allowing "an equal" product to be offered; and
- Any arbitrary action in the procurement process.

Written Procurement Selection Procedures – Recipients shall have written selection procedures for procurement transactions. All solicitations shall:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.
- Use a "brand name or equal" description only when it cannot provide an adequate specification or more detailed description, without performing an inspection and analysis, in time for the acquisition under consideration. A recipient wishing to use "brand name or equal" must carefully identify its minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.
- Identify all requirements that vendors must fulfill and all other factors to be used in evaluating bids or proposals.

Pre-Qualification Criteria – Recipients shall ensure that all lists of prequalified persons, firms or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. Also, recipients shall not preclude potential bidders/proposers from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date.

Options – Recipients may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a recipient may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If a recipient chooses to use options, the requirements below apply:

- Evaluation of Options: The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.
- Exercise of Options:
  - The exercise of an option must be in accordance with the terms and conditions of the option stated in the initial contract awarded.

- An option may not be exercised unless the recipient has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.
- At the time options are signed, it is imperative to include the updated federal clauses. The contractor should have signed copies of the clauses for every year of the contract.

Intergovernmental Procurement Agreements - To foster greater economy and efficiency, recipients are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services. The requirements and standards of Circular 4220 Third Party Contracting Requirements apply to procurements entered into under such agreements using FTA funds.

Veterans Hiring Preference - Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed, or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

Use of General Services Administration (GSA) Schedules and Excess or Surplus Federal Property State and local grantees may use approved federal supply schedules of GSA for the procurement of certain goods and services, 40 U.S.C. § 481(b). Price lists will be available from GSA and may include an administrative fee for GSA in the price of items on the schedule. Recipients must contact GSA for guidance on using the GSA supply schedules.

Use of Value Engineering in Construction Contracts - Recipients are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost.

Use of Time and Materials Type Contracts – Recipients will use time and material type contracts only after a determination that no other type of contract is suitable and if the contract specifies a ceiling price that the contractor shall not exceed, except at its own risk.

Responsibility for Settlement of Contract Issues/Disputes - Recipients alone will be responsible for sound administrative and business practices and settlement of all contractual and administrative issues arising out of procurements.

Prohibition Against Geographic Preferences – Recipients shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt state licensing laws. However, geographic location may be a selection criterion in procurements for Architectural and Engineering (A & E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

Architectural and Engineering (A & E) Contracts – A & E contracts should follow the Brooks Act, which requires the selection of engineering and design related services on the basis of demonstrated competence and qualifications for the type of professional services required. It also includes serial negotiations for fair and reasonable compensation.

FTA Required Clauses - FTA required clauses must be included in the recipient procurement process. Master lists of all clauses are included as *Attachment 1*.

Construction Contracts Over \$100,000 - For construction contracts over \$100,000, FTA accepted local bonding requirements must be met.

Service Contracts - Any service contracts that exceed five years in total length including base and options require prior written approval from FTA. Competitive procurement requirements must be included in the recipient's third-party contract for services funded with federal dollars.

Progress Payments - Progress payments are not allowed unless the recipient has obtained title or possession of the property or taken alternative steps to protect the recipient's interest.

Procurement of Vehicles – When a recipient is awarded federal funds to purchase a vehicle the following must be met:

- Buy America Requirements.
- The vehicle must be tested as required prior to the expenditure of FTA funds (<http://altoonabustest.psu.edu/home>).
  - If the bus model does not require testing, the recipient must obtain a certification from the manufacturer (not the vehicle dealer) that the bus does not need to be tested.
  - The recipient must also complete the Pre-Award and Post Delivery reporting requirements as established in the FTA handbook  
<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/regulations-and-guidance/buy-america/58191/buyamerica-handbook-rpt0106.pdf>
- Pre-Award and Post-Delivery reporting requirements are complex. Please contact the NDDOT Transit Section for further assistance.

Piggybacking – Contact the NDDOT Transit Section prior to contracting. Piggybacking is the post-award use of a contractual/process that allows an entity who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process. Refer to the Piggybacking Worksheet for additional information:

<https://www.transit.dot.gov/funding/procurement/third-party-procurement/united-states-best-practicesprocurement-manual-%E2%80%93>

- Any procurement where “piggy-backing” is involved shall have an assignability clause that provides for the assignment of all or part of the specified deliverables (base and option included) as originally advertised, competed, evaluated, and awarded. The clause cannot be added to the contract after award if it was missing from the original solicitation. Bidders must be placed on notice that an assignment is likely and that they will thus be delivering all of the quantities called for by the contract.
- The procurement documents shall contain a minimum and maximum quantity of deliverables.
- Any contract clauses that unduly restrict competition are prohibited.
- If a recipient is procuring any equipment or materials using option clauses, these must be evaluated at the time of the initial bid with prices established at that time.
- The use of liquidated damage clauses in recipient procurements is mandatory

Disadvantaged Business Enterprise (DBE) Requirements – DBE means a for-profit small business that is:

1. At least 51 percent owned by one or more individuals who are socially or economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals and
2. Whose management and daily operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DBE provisions apply to USDOT assisted contracts for airports, highways, and transit. This includes the use of Federal Transit Administration (FTA) planning, capital, and/or operating funds spent on contracts. The FTA requires organizations receiving FTA funds to make efforts to purchase from, or use, DBE firms.

As an FTA funding recipient, the North Dakota Department of Transportation (NDDOT) Transit Section and its subrecipients must adhere to DBE provisions that must be addressed in the procurement process. These provisions include:

## **DBE Goal Setting**

### Three Year Goal

An overall goal for DBE participation in FTA assisted contracts is developed by NDDOT and submitted to FTA for review every three years. The goal incorporates the anticipated FTA funded contracting opportunities of both NDDOT and subrecipients for a three-year period defined by FTA.

Information on NDDOT's DBE goal is available on the NDDOT website:

<https://www.dot.nd.gov/divisions/localgov/docs/transit/FTA-2020-2022-Triennial-DBE-Goal-Setting-Methodology.pdf>

- Contract Specific Goals - Recipients should notify the NDDOT Transit Section of upcoming procurements. NDDOT will determine if a contract goal should be established based on the size and nature of a particular procurement as well as the type and location of work, availability of DBEs to perform the particular type of work, etc. Note: Vehicle procurements are not subject to NDDOT's DBE goal setting requirements.
- No DBE Goal - If NDDOT determines that no specific DBE goal should be assigned to the procurement, the NDDOT Transit Section will work with the recipient to assign the appropriate federal clause. This includes eliminating the language on any specific goal since the procurement falls under the NDDOT overall goal.
- DBE Goal Established - If NDDOT determines there should be an assigned DBE goal to the procurement, the NDDOT Transit Section will assist the recipient in completing the additional paperwork to be included in the solicitation along with the appropriate federal clause.

The DBE goal setting process on a procurement is technical and requires specific steps that must be followed throughout the procurement process and as part of contract administration. The NDDOT Transit Section will provide assistance for recipients whose procurement is a signed a DBE goal.

Good faith efforts are a consideration when a contract specific goal is established. Contact the NDDOT Procurement Manager for procedures and methodology for determining good faith efforts.

#### DBE Contract Clauses

All FTA-assisted contract solicitations by NDDOT or its subrecipients must be reviewed and approved by the NDDOT Transit Section to ensure they contain the appropriate FTA clauses. These clauses contain provisions related to DBE requirements.

The required contract clauses address non-discrimination, third-party contracting, prompt payment, Transit Vehicle Manufacturer (TVM) certification, termination, and remedies for prime contractors that do not comply.

#### Bidders List

Subrecipients with third-party contracts are required to submit a bidders list to NDDOT. A full description of the process used and documentation required for a bidders list can be found in the NDDOT DBE Race-Neutral Locally Bid Transit Project special provision.

#### Prompt Payment

Prompt payment by prime contractors to their subcontracts is also required, including the return of retainage. While contract-specific goals are not required on all contracts, if a contract-specific goal is established, additional information must be collected from bidders prior to contract award.



### TVM Certification

Recipients must ensure that transit vehicle procurements using FTA funds only occur with TVMs that adhere to FTA requirements. This is done through the inclusion of FTA required contract clauses and a certification, to be completed by the TVM, in the solicitation and pre-award documents.

### Transit Vehicle Award Report

Recipients are required to submit, within 30 days of making an award, the name of the successful transit vehicle manufacturer and the total dollar value of the contract (49 CFR 26.49) using the FTA Transit Vehicle Award Report form. The FTA report form and instructions can be found at:

<https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>

Subrecipients must contact the NDDOT Transit Manager for approval to purchase a transit vehicle. The NDDOT Transit Section will complete and submit the Transit Vehicle Award Report form on behalf of the subrecipient.

### Required Federal Contract Clauses

When a recipient receives federal funds directly or indirectly from FTA certain specific federal requirements must be met not only by the recipient but also by your third-party vendor or contractor. Recipients/vendors/contractor is expected to be familiar with and meet all stated or otherwise applicable federal clauses and standards. FTA third party contract clauses can be obtained through "Procurement Pro," an online procurement management system produced by National RTAP. Procurement Pro is available through the following webpage:

<http://www.nationalrtap.org/>

Recipients are responsible for evaluating these requirements for relevance and applicability to each procurement. A Master list of all the FTA clauses is included in this manual. Recipients should work with the NDDOT Transit Section to ensure completeness of contract clauses in procurements and agreements.

Listed below is the table of FTA required contract clauses and federal certifications.

### **Applicability of Third-Party Contract Provisions**

**(Excluding micro-purchases, except for construction contracts over \$2,000)**

<b>CLAUSE</b>	<b>TYPE OF PROCUREMENT</b>				
	<b>Professional Services/A&amp;E</b>	<b>Operations/ Management/ Recipients</b>	<b>Revenue Rolling Stock &amp; Refurbishments</b>	<b>Construct ion</b>	<b>Equipment, Materials &amp; Supplies</b>
<i>No Federal government obligations to third-parties by use of a disclaimer</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
<i>Program fraud and false or fraudulent statements and related acts</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
<i>Access to Records</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
<i>Federal changes</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>

<i>Civil Rights (EEO, Title VI &amp; ADA)</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
<i>Incorporation of FTA Terms</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
<i>Energy Conservation</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
<i>Termination Provisions (not required of states)</i>	<i>&gt;\$10,000</i>	<i>&gt;\$10,000</i>	<i>&gt;\$10,000</i>	<i>&gt;\$10,000</i>	<i>&gt;\$10,000</i>
<i>Debarment and Suspension</i>	<i>&gt;\$25,000</i>	<i>&gt;\$25,000</i>	<i>&gt;\$25,000</i>	<i>&gt;\$25,000</i>	<i>&gt;\$25,000</i>
<i>Buy America Requirements</i>			<i>&gt;\$150,000</i>	<i>&gt;\$150,000</i>	<i>&gt;\$150,000 (for steel, iron, manufactured products)</i>
<i>Provisions for resolution of disputes, breaches or other litigation</i>	<i>&gt;\$250,000</i>	<i>&gt;\$250,000</i>	<i>&gt;\$250,000</i>	<i>&gt;\$250,000</i>	<i>&gt;\$250,000</i>
<i>Lobbying</i>	<i>&gt;\$100,000</i>	<i>&gt;\$100,000</i>	<i>&gt;\$100,000</i>	<i>&gt;\$100,000</i>	<i>&gt;\$100,000</i>
<i>Clean Air</i>	<i>&gt;\$150,000</i>	<i>&gt;\$150,000</i>	<i>&gt;\$150,000</i>	<i>&gt;\$150,000</i>	<i>&gt;\$150,000</i>
<i>Clean Water</i>	<i>&gt;\$150,000</i>	<i>&gt;\$150,000</i>	<i>&gt;\$150,000</i>	<i>&gt;\$150,000</i>	<i>&gt;\$150,000</i>
<i>Cargo Preference</i>			<i>Involving property that may be transported by ocean vessel</i>	<i>Involving property that may be transported by ocean vessel</i>	<i>Involving property that may be transported by ocean vessel</i>
<i>Fly America</i>	<i>Involving foreign transport or travel by air</i>	<i>Involving foreign transport or travel by air</i>	<i>Involving foreign transport or travel by air</i>	<i>Involving foreign transport or travel by air</i>	<i>Involving foreign transport or travel by air</i>
<i>Davis Bacon Act</i>				<i>&gt;\$2,000 (including ferry vessels)</i>	
<i>Copeland Anti-Kickback Act</i>				<i>Section 1: All Section 2: &gt;\$2,000 (including ferry vessels)</i>	
<i>Contract Work Hours &amp; Safety Standards Act</i>		<i>&gt;\$100,000</i>	<i>&gt;\$100,000</i>	<i>&gt;\$100,000 (including ferry vessels)</i>	
<i>Bonding (not required of states)</i>				<i>&gt;\$250,000 (including ferry vessels)</i>	
<i>Seismic Safety</i>	<i>A&amp;E for new Buildings &amp; additions</i>			<i>New buildings &amp; additions</i>	
<i>Transit Employee Protective Arrangements</i>		<i>Transit operations funded with Section 5307, 5309, 5311 or 5316 funds</i>			

<i>Charter Service Operations</i>		<i>All</i>			
<i>School Bus Operations</i>		<i>All</i>			
<i>Drug and Alcohol Testing</i>		<i>Transit operations funded with Section 5307, 5309 or 5311 funds</i>			
<i>Patent Rights and Rights in Data and Copyrights requirements</i>	<i>Research &amp; development</i>				
<i>Program Fraud &amp; False or Fraudulent Statements &amp; Related Acts</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
<i>Coronavirus Relief and Cares Act Certification</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
<i>Disadvantaged Business Enterprises (DBEs)</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
<i>Prompt Payment</i>	<i>All non TVM purchases if threshold for DBE program met</i>	<i>All non TVM purchases if threshold for DBE program met</i>	<i>All non TVM purchases if threshold for DBE program met</i>	<i>All non TVM purchases if threshold for DBE program met</i>	<i>All non TVM purchases if threshold for DBE program met</i>
<i>Public Transportation Agency Safety Plans (PTASP)</i>		<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
<i>Recycled Products</i>		<i>Contracts for items designated by EPA, when procuring \$10,000 or more per year</i>		<i>Contracts for items designated by EPA, when procuring \$10,000 or more per year</i>	<i>Contracts for items designated by EPA, when procuring \$10,000 or more per year</i>
<i>ADA Access</i>	<i>A&amp;E</i>	<i>All</i>	<i>All</i>	<i>All</i>	
<i>Notification to FTA</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
<i>Simplified Acquisition Threshold</i>	<i>&gt;\$250,000</i>	<i>&gt;\$250,000</i>	<i>&gt;\$250,000</i>	<i>&gt;\$250,000</i>	<i>&gt;\$250,000</i>
<i>Equal Employment Opportunity</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
<i>Veterans Employment</i>				<i>All</i>	
<i>Special Notification Requirements for States</i>	<i>Limited to states</i>	<i>Limited to states</i>	<i>Limited to states</i>	<i>Limited to states</i>	<i>Limited to states</i>
<i>DHS Seal, Logo, &amp; Flags</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
<i>Conformance with ITS Architecture</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>

<i>Special DOL EEO Clause</i>				<i>All</i>	
<i>Safe Operation of Motor Vehicles</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
<i>Violation and Breach of Contract</i>	<i>&gt;\$250,000</i>	<i>&gt;\$250,000</i>	<i>\$250,000</i>	<i>All</i>	
<i>Privacy Act</i>	<i>Contracts with personal identifier files</i>	<i>Contracts with personal identifier files</i>	<i>Contracts with personal identifier files</i>	<i>Contracts with personal identifier files</i>	<i>Contracts with personal identifier files</i>
<i>Pre-Award and Post Delivery Audits of Rolling Stock Purchases</i>			<i>All</i>		
<i>Bus Testing</i>			<i>All</i>		

**REQUIRED CERTIFICATIONS, REPORTS, AND FORMS**  
(excluding micro-purchases, except for construction contracts over \$2,000)

<b>REQUIREMENT</b>	<b>COMMENTS</b>	<b>MASTER AGREEMENT REFERENCE***</b>
Bus Testing Certification and Report	Procurements of buses and modified mass produced vans	§16.d(m)
Transit Vehicle Manufacturer Certification	Procurements of buses and modified mass produced vans	§12.e(3)
Buy America Certification	Projects >\$150,000 that contain steel, iron or manufactured products (see note)	§15.a
Pre-Award Audit	Rolling stock procurements	§16.d(m)
Pre-Award Buy America Certification	Rolling stock procurements>\$150,000(see note)	§16.d(m)
Pre-Award Purchaser's Requirement Certification	Rolling stock procurements	§16.d(m)
Post-Delivery Audit	Rolling stock procurements	§16.d(m)
Post-Delivery Buy America Certification	Rolling stock procurements >\$150,000(see note)	§16.d(m)
Post-Delivery Purchaser's Requirement Certification	Rolling stock procurements	§16.d(m)
On-Site Inspector's Report	Rolling stock procurements for more than 10 vehicles for areas >200,000 in population and 20 for areas <200,000 in population	§16.d(m)
Federal Motor Vehicles Safety Standards Pre-Award and Post-Delivery Certification	Non-rail rolling stock procurements	§16.d(m)
Excluded Parties Listing System search	Procurements > \$25,000	§4.h
Lobbying Certification	Procurements > \$250,000	§4.c
Standard Form LLL and Quarterly Updates (when required)	Procurements > \$250,000 where contractor engages in lobbying	§4.c

1.9 PROCUREMENT OFFICER CERTIFICATION TRAINING PROGRAM – State of ND Employees - ONLY

A procurement officer is “an individual duly authorized to enter and administer purchasing contracts and make written determinations with respect thereto and also includes an authorized representative acting within the limits of authority” (N.D.C.C. § [54-44.4-01](#)).

The ND Procurement Officer Certification Program was created in 2002 to provide state employees responsible for purchasing with training based on the type of procurement they conduct (N.D.A.C. §[4-12-03](#)). The Procurement Officer Certification program has four levels matching the competition thresholds. It is recommended that the certification courses be completed in order, but this is not required. Visit the OMB internal website for [Procurement Officer Certification training](#) registration information.

<b>Procurement Officer Certification Training Level</b>
Level 1: Micro Purchases less than \$10,000
Level 2: Small Purchases at least \$10,000 but less than \$50,000
Level 3: Informal Purchases at least \$50,000 but less than \$100,000
Level 4: Formal Purchases \$100,000 and over

State employees who have been assigned a state purchasing card (P-card) must complete a minimum of Level 1 training, excluding state employees who use a purchasing card exclusively for travel expenses. A purchasing card is a method of payment, so a Level 1 certified P-card user may make payments greater than \$10,000 using the P-card.

A Level 1 certified employee may make purchases from government sources of supply greater than \$10,000.

An individual who performs the following tasks must be certified:

- The agency’s lead procurement officer and Procurement Liaison (Minimum of Level 1)
- Purchases from state contracts
- Solicits bids and proposals
- Serves as the point of contact for questions related to a solicitation
- Makes an award determination and issues a notice of intent to award
- Makes determinations required by state procurement laws and rules
- Responds to protests

Individuals do not need certification for the following tasks:

- Purchase from government entities
- Submit a Procurement Work Request
- Develop specifications
- Receive and opens bids or proposals
- Participate in an evaluation process
- Approve purchase orders or purchasing card purchases
- Receive and accept goods and services
- Authorize payments
- Agency heads or their designees who sign purchase orders, contracts, and Alternate Procurement forms

1.10 DELEGATED PURCHASE AUTHORITY

OMB has statutory authority to delegate purchase authority to state agencies (N.D.C.C. § [54-44.4-03](#), N.D.A.C. § [4-12-03](#) ). OMB delegates purchase authority to the head of the agency and institution. Agency heads may delegate purchase authority to employees based upon the procurement certification training completed using the [Delegation of Purchase Authority form](#), SFN 2566. Completing training does not guarantee that an employee will receive delegated purchase authority.

(N.D.A.C. § [4-12-03](#))

Each NDUS institution shall designate one or more persons to act as the institution's lead procurement officer. Lead procurement officers may delegate purchase authority to employees as needs of the institution dictate (NDUS Procedure [803.1](#)).

The delegation will specify any limits (e.g. dollar limits, specific goods or services). Employees may only make purchases within the scope of their delegated authority. Individuals who have been delegated purchase authority must comply with all applicable laws, rules, guideline policies and procedures related to procurement.

#### 1.11 OMB BLANKET DELEGATED PURCHASE AUTHORITY

Effective July 1, 2018, OMB has delegated the following blanket authority to the heads of agencies and institutions subject to procurement laws, rules, and OMB guidelines:

- Goods and Services. Agencies may purchase goods and services, regardless of the dollar amount.
- Printing. Agencies may purchase printing less than \$5,000 subject to the Guidelines for State Procurement Printing. Submit a Purchase Request for printing \$5,000 and over using the Procurement Work Request System. State of ND Employees - ONLY
- Information Technology (IT). Agencies may purchase Information Technology, subject to the Guidelines for Information Technology Procurement. IT purchase \$25,000 and over must be reviewed by the Information Technology Department. Procurement Officers for major IT projects \$500,000 and over must receive a special purchasing delegation from OMB. (N.D.C.C. § [54-35-15.2](#)) State of ND Employees – ONLY
- Alternate Procurements. Alternate Procurement documentation is not required for limited and noncompetitive purchases less than \$10,000. Alternate Procurement approval is required for purchases \$10,000 and over that deviate from the purchasing threshold competition requirements based on the estimated dollar value. Agencies must submit a [SFN 51403 Alternate Procurement form](#) to the State Procurement Office using the Procurement Work Request System. The Alternate Procurement must be approved by the State Procurement Office prior to the purchase. State of ND Employees – ONLY.

#### 1.12 OMB SPECIAL DELEGATED PURCHASE AUTHORITY – State of ND Employees - ONLY

Some types of delegated purchase authority must be approved by OMB.

- Major IT – OMB must delegate special authority to procurement officers for a major information technology project (N.D.C.C. § [54-59-32](#)). The procurement officer for a major IT project must meet minimum qualifications subject to the Guidelines for Information Technology Procurement. State of ND Employees - ONLY.
- Provisional - Employees who have limited training or experience may be granted provisional procurement certification from the OMB State Procurement Office that will be valid for a limited period during which the employee must attend the required certification courses. Until the employee completes the training, a certified procurement officer must oversee the employee's work to ensure compliance with state procurement laws, rules, policies, and procedures.
- Non-State Employee – Under special circumstances, an agency may desire to have a non-state employee as their procurement officer. Use the delegation of purchase authority form to request OMB state procurement approval.

## Chapter 2: Compliance, Ethics and Violations

### 2.1 COMPLIANCE

The state procurement program is the vehicle through which a significant amount of the state's taxpayer dollars are spent; therefore, the integrity of the state procurement program is paramount. Any improper actions or the appearance of improper actions by state personnel or vendors can compromise that integrity.

Each person with authority to obligate funds through the state procurement process must know and abide by the laws, rules, policies and procedures that govern purchasing practices for their state agency or higher education institution (N.D.A.C. § [4-12-03-04](#)). The integrity of the state procurement program is dependent upon sound procurement practices and procedures that are consistently applied by all employees purchasing on behalf of the state.

### 2.2 ETHICS

Procurement officers represent the State of North Dakota and must maintain courteous and professional relationships with all vendors. It is imperative to avoid any activities, relationships, and communications that in any way diminish, or appear to diminish, fair and impartial treatment of vendors. Do not hesitate to advise the requestor if some aspect of the purchase request is inconsistent with state procurement practices. All public employees and vendors involved in the state procurement process must comply with N.D.A.C. Chapter [4-12-04](#) related to ethics in public procurement related to:

- Good faith actions. (N.D.A.C. § [4-12-04-01](#)) All parties involved in the solicitation, negotiation, performance, and administration of contracts for the state shall act in good faith. Good faith means that all parties to a contract will deal with each other honestly and fairly.
- Emphasis on competition. (N.D.A.C. § [4-12-04-02](#)) Solicitations for bids or proposals will be issued in sufficient time and in a form that will permit the highest practicable degree of full and free competition.
- Handling of information. (N.D.A.C. § [4-12-04-03](#)) Avoid giving information to a prospective bidder that might give them an unfair advantage. Handle public and confidential information according to the state's [open records laws](#). Consult your legal counsel for assistance.
- Conflict of interest. (N.D.A.C. § [4-12-04-04](#)) Avoid even the appearance of a conflict of interest. A conflict of interest occurs when an individual has a personal interest and a job responsibility, and a clear possibility exists that there may be a conflict between the two (e.g. a family member sells the needed equipment). Have another employee make the purchase to avoid an actual or potential conflict of interest. If contracting with someone within one year after they have left public service, consult legal counsel to consider N.D.C.C. §§ [12.1-13-02](#), [12.1-13-03](#). Consult your legal counsel for assistance with potential conflicts of interest.
- Attempt to influence. (N.D.A.C. § [4-12-04-05](#)) Items of nominal value offered by a vendor as a gesture of goodwill or for public relations purposes (e.g. cups, pens, samples) may be accepted. Refuse anything that exceeds a nominal value or will lead to subsequent noncompetitive purchases (e.g. offer of free equipment contingent upon future purchases). Report to the OMB state procurement manager anyone who tries to influence a procurement decision or offers anything of value that might influence or appear to influence the procurement process.
- Collusion of bidders or offerors. (N.D.A.C. § [4-12-04-06](#)) Collusion is a secret agreement between two or more vendors to circumvent laws and rules regarding competitive bidding, commonly called "price fixing." For example, two vendors may agree to take turns submitting the lowest priced bid for a good or service. Report suspected collusion to the OMB state procurement manager.
- Nondiscrimination in source selection. (N.D.A.C. § [4-12-04-07](#)) Source selection may not be based upon discrimination because of race, religion, color, national origin, sex, age,

pregnancy, parenthood, disability, or political affiliation.

- Artificial fragmentation prohibited. (N.D.A.C. § [4-12-04-08](#)) Procurement requirements may not be artificially divided as to constitute a small purchase [N.D.C.C. § [54-44.4-11\(3\)](#)]. Artificial fragmentation means splitting purchase requirements or splitting an invoice to stay below a certain dollar level to avoid competition or stay within delegated authority limits.

Consider the following:

- Similar Products. Consolidate similar products that can be purchased from one type of vendor whenever possible.
- Urgency. Urgent purchases may be separated from routine purchases.
- Predictability. When goods and services are needed on a frequent or reoccurring basis, consider consolidating requirements for a periodic purchase or term contract (i.e. items purchased weekly or monthly, or stored for later use.)

### 2.3 VIOLATIONS

Report any violations of procurement laws, rules, policies or procedures to the agency or institution's procurement section, regardless of the cause. Procurement violations discovered by the OMB State Procurement Office will be reported to the employing agency or institution for appropriate disciplinary action. Violation of state laws, rules, policies and procedures may constitute action outside the employee's scope of employment and the employee could incur personal liability and may not be indemnified by the state if they are sued (N.D.A.C. § [4-12-01-06](#)).

"Maverick Spend" is described as buying from vendors without following procurement policy. For example, purchases from a vendor instead of purchasing from an established mandatory government source of supply or state contract.

## **Chapter 3: State Sources of Supply – Save Time and Money**

### 3.1 STATE SOURCES OF SUPPLY

Save time and money by using state sources of supply. When a need is identified, check first to see if the good or service is available from a state source of supply. Agencies and institutions can purchase from state sources of supply and government entities without obtaining competition, regardless of the dollar amount. Some sources of supply may be mandatory for State of ND Employees only.

Transit subrecipients are not required to use the mandatory sources and in some cases may not be allowed to use them. You are encouraged to use the state sources because they may be the most economical option.

### 3.2 AGENCY AND INSTITUTION INVENTORY

It is important to understand how things work at your agency. Some agencies and institutions maintain supply rooms or inventory. Contact your agency's procurement section to learn about existing inventory or supply rooms.

### 3.3 STATE CONTRACTS

State law requires OMB and Higher Education institutions to establish contracts for goods and services of high common use. (N.D.C.C. §§ [54-44.4-06](#), [54-44.4-13](#))

- State contracts – Visit the OMB website for state contract information.
  - "EPB" designates Environmentally Preferable/Biobased contracts.
  - "CP" designates Cooperative Purchase contracts that are available to other government entities and public schools.
  - "M" designates contracts that are Mandatory for use by executive branch agencies, excluding Higher Education institutions.
- State Contract Exemption Request form – State agencies, excluding NDUS institutions, must use the State Contract Exemption Request form, SFN 54202, if there is a mandatory state



contract that does not meet the needs of their agency. Submit the form to the state contract administrator using the SPO Procurement Work Request System. If the contract exemption is approved, the agency must follow normal procurement procedures.

- Complaint. Please let the State Procurement Office know about problems with state contracts, vendors, defective products, or anything else purchasing related. Submit a complaint using the SPO Work Request System or email to [infospo@nd.gov](mailto:infospo@nd.gov).

### 3.4 COOPERATIVE PURCHASING

“Cooperative Purchasing” is a procurement conducted on behalf of multiple government entities. Purchasing from another entity’s contract is a type of cooperative purchase commonly called “piggy-backing.” Cooperative purchasing is another great way to save time and money.

- OMB may establish or participate in cooperative purchasing contracts that are made available to government, tribal agencies, and other eligible entities. (N.D.C.C. §§ [54-44.4-06](#), [54-44.4-13](#), N.D.A.C. § [4-12-02-02](#)). Law requires OMB to make determinations and provide notice to vendors. Submit an [Alternate Procurement Request form](#), SFN 51403, to request using another government entity’s contract in lieu of a competitive procurement process.
- Institutions under the jurisdiction of the State Board of Higher Education may enter into cooperative purchasing agreements pursuant to N.D.C.C. § [15-10-28](#)
- [1122 “Counterdrug” Program](#). This is a federal cooperative purchasing program. North Dakota government entities with counterdrug responsibilities can use this federal program to make purchases for new supplies and equipment from General Services Administration (GSA) contracts. The State Procurement Office has designated State Point of Contact (SP C) to administer the program in North Dakota. Contact 701-328-1721.
- Transit subrecipients must contact the NDDOT Transit Section for approval prior to entering into a cooperative purchasing agreement. In some cases, both NDDOT and FTA will need to approve this agreement. FTA Master Agreement (as amended).

### 3.5 STATE AGENCIES AND GOVERNMENT ENTITIES – State of ND Employees ONLY

You can purchase directly from other government entities (N.D.C.C. § [54-44.4-05 \(2\)\(e\)](#) and N.D.A.C. § [4-12-15](#)). See the Attorney General’s Contract [Drafting and Review Manual](#) for an interagency agreement template.

- [Federal Government](#). State agencies and institutions can contract with the federal government to purchase or lease any equipment, supplies, materials, or other property without competition. (N.D.C.C. § [21-06-08](#).)
- [Central Supply](#). Central Supply offers general office supplies and paper products. Central Supply provides free delivery to customers within the Capitol complex and will ship (freight collect) to agencies and institutions anywhere in the state. Contact Central Supply at 701- 328-3346. See the Central Supply Catalog for product information. State of ND Agencies – ONLY.
- [Central Duplicating Services](#). Central Duplicating provides printing, mailing, bindery services, technical advice, layout assistance, graphics design services, and finishing. Central Duplicating is located at the Capitol in Bismarck. Central Duplicating Services and other agencies (excluding some NDUS institutions) cannot print on coated stock, continuous forms, snap-out forms, envelopes over twenty thousand, and process color except for jobs generated on computer printers which do not exceed eleven inches/27.94 centimeters by seventeen inches/43.19 centimeters and five hundred total image pages (N.D.C.C. § [46-02- 20](#)). Contact Central Duplicating at 701-328-2772 or visit its website.
- [State and Federal Surplus Property](#). State law requires all agencies and institutions to report their surplus property to OMB. OMB also obtains Federal Surplus Property. OMB State Surplus Property makes surplus state and federal property available to government entities and eligible donees. They also have an electronic recycling program. Call 701-328-9665 or visit the State Surplus website to see a surplus property inventory listing.
- [LESO \(Law Enforcement Support Office\) 1033 Program](#). This federal program makes excess military property available to North Dakota government entities whose primary function is enforcement of federal, state and local laws, and whose compensated law enforcement officers have the powers of arrest and apprehension. Section 1033 of the National Defense

Authorization Act of 1997 authorizes the Department of Defense to transfer excess military property to state and local law enforcement agencies. Preference is given to counter-drug and counter-terrorism activities. State Surplus Property operates this program.

- [Rough Rider Industries](#). Rough Rider Industries (RRI) is the vocational training arm of the ND Department of Corrections and Rehabilitation. RRI's motto of "Building quality products while preparing quality people" keeps in line with their mission of teaching and providing the necessary job skills to adults in incarceration which will help these individuals successfully transition back into society. All governmental entities can purchase directly from Rough Rider Industries forgoing the normal procurement process (N.D.C.C. § [12-48-03.1](#)). RRI is located in Bismarck and features statewide sales and delivery of quality furniture and office systems furniture, a full line of seating and upholstery services, dumpsters and metal products, painting, powder coating, and sandblasting services, plastic bag and garbage can liners, indoor/outdoor signs, mattresses, and a full line of custom garment production and sewing services. Call 701-328-6161 or 800-732-0557 or visit [www.roughriderindustries.com](http://www.roughriderindustries.com).
- [Core Technology Services](#). Institutions and entities under the State Board of Higher Education (SBHE) can receive a variety of IT applications and services from Core Technology Services (CTS) including hosting services. Some IT services are mandated or require CTS review prior to purchasing. See SBHE Policy [1200.1](#) and [1901.3](#) for the details. Contact CTS at 701-777-7287 or visit <http://cts.ndus.edu/> for more information.
- [Information Technology Department - Telecommunications](#). The Information Technology Department (ITD) provides a variety of information technology services, including programming, software development, and website development to state agencies. Contact ITD at 701-328-3190 or visit its website at [www.nd.gov/itd](http://www.nd.gov/itd). In certain instances, your agency may be required to use IT services. See Guidelines to IT Procurement (State of ND Employees – ONLY) Agencies are required to obtain all telecommunication equipment and services through ITD Telecommunications Division, including telephones and telephone systems (other than cellular phones), automated attendant systems, call sequencers, lines, circuits, all data communication equipment and services, routers, switches, data circuits (ref. N.D.C.C. § [54-59-05](#)). Submit telecommunication requests on-line on the [ITD website](#) or call ITD Telecommunications at 701-328-1002.
- [Other Government Entities](#). State agencies and institutions can purchase from other government entities within North Dakota and government entities located in other states [N.D.C.C. § [54-44.4-05 \(2\)\(e\)](#)]. Contact your legal counsel for assistance.

### 3.6 WORK ACTIVITY CENTERS – State of ND Employees - ONLY

It is in the public's best interest to advance employment opportunities to individuals with disabilities so that those individuals may acquire job skills and training and gain greater independence and quality of life.

Work Activity Centers are nonprofit corporations, licensed by the Department of Human Services, organized for the primary purpose of employing and providing rehabilitative activities for individuals with physical disabilities, developmental disabilities, or chronic mental illnesses. State law allows any state entity or political subdivision to contract directly with work activity centers. See the online [Work Activity Center](#) listing (*Attachment 53*) of available goods and services. (N.D.C.C. § [25-16-2](#)).

## **Chapter 4: Specifications**

### 4.1 PURPOSE OF SPECIFICATIONS

If the goods or services you need are not available from a state source of supply, you'll need to conduct a procurement process.

The first step in the procurement process is defining what is needed. A specification is a description of all required physical, design, performance, functional and other characteristics of a good or service the purchasing agency requires and consequently what a bidder must offer [N.D.C.C. § [54-44.4-06\(1\)](#)]. Well-written specifications ensure the state obtains goods and services that meet quality, performance, and delivery requirements at an economical price.

- [Value to the Taxpayer](#). Ensure goods and services are specified at the proper level of utility and

quality for the purpose intended in order to promote overall economy for the purpose intended (N.D.A.C. § [4-12-06-01](#)).

- Quality. Specifications establish the minimum requirements upon which the award will be based; therefore, the desired quality of the good or service must be written into the specifications. Quality is measurable. Consider only the goods or service providers that meet the minimum specifications.
- Specifications Prepared by Non-State Personnel. When someone other than a state employee or official prepares specifications for the state, that person or business entity must be excluded from submitting bids or proposals (N.D.A.C. § [4-12-06-06](#)).

#### 4.2 BRAND-NAME SPECIFICATIONS – RESTRICTIVE SPECIFICATIONS

Specifications should encourage competition and may not be restrictive (N.D.A.C. § [4-12-06-02](#)). A specification is restrictive when the specifications, requirements, or conditions have the effect of limiting responses to only one brand, make, source, or service provider and have no reasonable relation to the actual needs of the purchasing agency.

Specification that includes a brand name must invite bidders to offer comparable products. If you use a brand name, say “Or equal” or “Equivalent to.” If a brand offered as an equivalent is rejected, notify the bidder of the reason (ref. N.D.C.C. § [44-08-01](#), N.D.A.C. § [4-12-06-03](#)).

Sometimes you do need a particular brand. For a Level 1 purchase, no Alternate Procurement (*Attachment 2*) is required if a certain brand is required. See Guidelines to Alternate Procurements or NDUS Procedure [803.1](#).

#### 4.3 GREEN PURCHASING

State law has requirements related to the specification of environmentally preferable products (EPP). These are products that have reduced negative effect or increased positive effect on human health and the environment, when compared with competing products that serve the same purpose. See the Guidelines to Environmentally Preferable Procurements for more information. (State of ND Employees – ONLY)

- Environmentally Preferable Products. (N.D.C.C. § [54-44.4-07](#)). Procurement of environmentally preferable products, such as soybean-based ink for newsprint, recycled paper products, and bio-based products.
- Recycled Paper and Paper Products. (N.D.C.C. § [54-44.4-08](#)). Requires OMB and any state agency or institution to purchases at least 20% of the total volume of paper and paper products to be at least 25% recycled material. OMB is required to track compliance with this requirement.

#### 4.4 WRITING SPECIFICATIONS

As a Procurement Officer, you are tasked with obtaining goods and services for your agency or institution at the needed quality, quantity, place, time, and price. Communicate with the end-user to make sure you fully understand the requirements, so you can write effective specifications.

- Avoid “mushy” language – If something is required, use “must, shall, or will.” Use “should or may” to express something that is not mandatory.
- What – Provide a detailed description of “what” you need to purchase.
  - If you are purchasing supplies or equipment, describe the purpose, physical attributes, features, and functionality. Be sure to include any required installation, training, or maintenance.
  - A specification for services is commonly called a “Scope of Work” or “Statement of Work.” If you are purchasing services, provide a detailed description of the work. Describe the tasks that need to be accomplished and any end products or “deliverables” that the contractor must provide to you. Describe any goods or services being supplied by the state.
- Who – Who must perform the work? Describe any requirements that apply to the contractor. Does the contractor need to have any special education, qualifications, experience requirements, or

licenses? Will the contractor need to obtain any licenses or permits? Will the contractor's employees need to complete background checks?

- Where – Where do the goods need to be delivered? or services performed? Provide the physical address and zip code for delivery. Provide any special instructions, such as availability of a loading dock or off-loading equipment.
- When – When do the goods or services need to be received by your agency? Provide a required delivery date. What times of the day can delivery be made?

#### 4.5 EQUIPMENT

When buying equipment, you have many options that can be incorporated into your specifications.

- Trade-In Equipment. When replacing equipment, you may trade in your existing equipment. The specifications need to include detailed information about the equipment being offered. If possible, allow vendors an opportunity to inspect the equipment. Request prices with and without a trade-in and provide that award may be made either way. Compare the trade-in offers with the estimated outright sale price to determine which is most advantageous. You do not need approval from the OMB State Surplus Property to trade-in your equipment. However, OMB State Surplus Property can help you determine if the trade-in allowance is reasonable. Contact your agency's asset manager if the equipment is capitalized.
- Used Equipment. If you are purchasing used equipment, you may indicate a desirable age range, condition, and acceptable amount of hours or mileage. Be sure to require that the used equipment must pass your inspection or testing.
- Consumables. Are you purchasing something that will need parts or supplies on a recurring basis? Your specification and solicitation can include consumables if you want to establish a source for on-going consumable supplies.
- Service and Maintenance. Your specifications should include everything that is needed, including any installation, training, and minimum warranty. If you are buying equipment that will need occasional service or a maintenance agreement, those can be included in the specifications. If you will need the contractor to provide service after the sale, your specifications can include a maintenance agreement.

#### 4.6 LEASE VS. PURCHASE ANALYSIS

If your agency is planning to get quotes on a lease or lease-purchase of equipment or software, you will need to do a lease versus purchase analysis. State law requires that any state agency or institution that acquires the use of an asset as a result of a lease arrangement shall prepare a written analysis documenting the decision to acquire the asset. This analysis may be reviewed during audits for the fiscal period during which the decision was made. Visit the OMB website for a [lease vs. purchase cost/benefit analysis](#) form (*Attachment 19*). See [OMB Fiscal Policy 312](#), N.D.C.C. § [54-27-21.1](#) and N.D.A.C. § [4-12-06-05](#).

#### 4.7 SPECIFICATION FOR SERVICES

Sometimes you may need to purchase services. "Services" means the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance [ref. N.D.C.C § [54-44.4-01\(5\)](#)].

Professional services require the individual rendering the service to exercise professional judgment. That individual's special knowledge, education, skills, qualifications, and experience are of primary importance, such as accountants, physicians, and consultants [ref. N.D.C.C. § [54-44.4-01\(3\)](#)]. Competitive proposals or multi-step solicitations are normally used.

A specification for services is commonly called the "scope of work" or "statement of work." Writing the scope of work is one of the most important and difficult steps in preparing a solicitation for services. Prospective service providers will use the scope of work to prepare a technical proposal and cost proposal. The agency or institution will use the scope of work to evaluate those bids or proposals, select a service provider, and ensure the service provider completes all the required work in a satisfactory manner.

- The scope of work can describe what the contractor must do, such as specific tasks and deliverables and describe any directives the contractor must follow.
- The scope of work can also describe what the contractor must be, such as qualifications, experience, and licenses.

#### 4.8 SERVICES - INDEPENDENT CONTRACTOR VS. EMPLOYEE DETERMINATION

If you are purchasing services, remember that state agencies and institutions cannot hire employees through the procurement process. The procurement process is used to acquire the services of an independent contractor.

As a Procurement Officer for your agency or institution, you should consult legal counsel to help you if questions arise. Specifically, contact legal counsel if your agency is planning to contract with a current state employee or former state employee within one year after they left state employment.

If the services required result in an employer/employee relationship, hire the person through the personnel system, not the procurement system. For more information visit the [North Dakota Department of Labor and Human Rights](#) website.

Here are some of the indicators that an employer/employee relationship may exist:

- The person is subject to the control of the state, not only as to what will be done but when, where, and how it will be done as opposed to allowing the individual to set their own work schedule.
- The state has the right to discharge the person or the person has the right to terminate services without incurring liability.
- The state furnishes the individual with tools, equipment, and a place to work.
- The individual currently works for the state as an employee in the same field as the contract services.
- The state currently pays employees to perform essentially the same duties to be performed by the contractor.

The following conditions are indicators that people are independent contractors:

- They are subject to control or direction of the state only as to the result to be accomplished and the work to be done, not as to the means and methods for accomplishing the result.
- They are in business providing a service to the public from which they may derive a profit or suffer a loss.
- They are in business to provide the same or similar services to the general public.

#### 4.9 TEMPORARY EMPLOYMENT AGENCIES

Temporary employment agencies are independent contractors that provide staffing services to public and private employers. The occasional use of temporary employment contracts does not create an employer/employee relationship, since the workers are employed by the temporary employment agency, not by the state. Examples include: coverage for an employee on medical leave; working on a short-term project. Contracts with temporary staffing agencies are subject to bidding requirements.

#### 4.10 CONTRACT TERMS AND CONDITIONS

Planning the contract before issuing a solicitation is very important. The solicitation will result in the selection of a vendor with whom the state will enter into a formal, written contract. Procurement rules require that the solicitation contain all the terms and conditions that will be incorporated into the contract. Consider the scope, value and risk of the planned purchase to select the appropriate contract terms and conditions, such as:

- Contract term (duration) and any provisions for renewals and extensions
- Non-appropriation clause if the contract extends beyond current biennium
- Provisions for price adjustments
- Termination provisions

Visit the OMB State Procurement Office website for [solicitation templates \(Attachment 49\)](#). Contact your agency's legal counsel if you make any changes to any standard terms and conditions.

#### 4.11 INDEMNIFICATION AND INSURANCE REQUIREMENTS

Contractual risk is based upon circumstances, not the dollar value of the purchase. For example, a



contract to clean the windows in the Capitol might have a nominal cost but involve substantial potential risk.

Service contracts will normally include indemnification and insurance requirements. “Indemnification” is a term that addresses who is responsible for risks under the contract. Requiring “Insurance” ensures the contractor has the financial resources to cover potential risks. Contact your agency or institution lead procurement officer or the OMB Risk Management Office at 701-328-7580 for assistance. Visit the OMB website for the “[Guidelines to Managing Contractual Risk](#).” (Attachment 15)

**4.12 QUALIFIED PRODUCTS LIST (N.D.A.C. § 4-12-06-04)**

1. If testing or examination of the commodities or services is desirable or necessary to best satisfy state requirements, a qualified products list may be developed with approval of the state procurement office.
2. When developing a qualified products list, a representative group of vendors must be solicited, in writing, to submit products for testing and examination to determine acceptability for inclusion on the qualified products list.
3. Inclusion on a qualified products list must be based on results of tests or examinations conducted in accordance with state requirements and the product specification.
4. The existence of prequalified products on a qualified products list does not constitute prequalification of any prospective vendor.

**4.13 REQUEST FOR INFORMATION (N.D.A.C. § 4-12-06-07)**

A noncompetitive solicitation may be issued to obtain information, data, comments, or reactions from possible vendors preceding a solicitation for bids or proposals or a multistep bidding procedure. Information obtained as a result of a request for information is subject to the state open records law.

**4.14 SPECIFICATION MEETING (N.D.A.C. § 4-12-06-08)**

Prior to issuing a solicitation, the procurement officer may hold a specification meeting to seek information necessary to prepare a suitable specification and competitive solicitation. The procurement officer will provide adequate notice to potential bidders. The meeting is open to the public. Attendance may not be made mandatory as a condition for submitting a bid or proposal.

**4.15 MARKET RESEARCH AND DEMONSTRATIONS**

Market research is simply research to learn before you make a purchase. Market research includes, but is not limited to:

- Discussions with vendors who sell what you need
- Demonstrations of potential solutions, equipment or services
- Research through subject matter experts who have knowledge of the industry

Market research is a best practice as you prepare for a procurement. You should contact a representative number of potential bidders. Market research does not replace the procurement process. Use market research to help you determine your requirements. Use the procurement process to evaluate competing products and service providers to make an award decision. Be careful not to give vendors advance information that would give them an unfair advantage in the procurement process.

## Chapter 5: Level 1 Micro Purchase Procedures

Level 1	Competition Requirements
Micro Purchase  Less than \$10,000	At least one fair and reasonable quote.  Note: Equipment and software must be added to inventory in the BlackCat System if \$5,000 or greater. (N.D.C.C. § <a href="#">54-27-21</a> Fixed Asset Minimum Reporting Value)  State agencies (excluding Higher Education institutions) must submit <a href="#">printing purchase requests</a> \$5,000 and over to OMB State Procurement.

	<p>State agencies must rotate vendors solicited on an equitable basis (N.D.A.C. § <a href="#">4-12-08-02</a>).</p> <p>Rotate vendors solicited on an equitable basis (N.D.A.C. § <a href="#">4-12-08-02</a>)</p> <p>Alternate Procurement form not required if multiple quotes not solicited.</p> <p>State agencies &amp; Transit subrecipients: Document vendor solicited, quotes received, and award determination.</p>
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5.1 LEVEL 1 MICRO PURCHASES

If the good or service you need is not available from a state source of supply and you know the estimated price is under \$10,000, then you are ready to make a Level 1 purchase. Under state law, “Small purchases must be made with competition practicable under the circumstances”. Purchases under \$10,000 have been determined to be extremely low-value purchases. Micro purchases are too small to justify the time and expense of soliciting competition. Procurement rules allow for these purchases to be made using adequate procedures to ensure goods and services are obtained at a fair and reasonable price, which may include soliciting only one bid or proposal. The terms “bids” or “quotes” are used interchangeably (N.D.C.C. § [54-44.4-11](#), N.D.A.C. § [4-12-08-02](#)).

Transit subrecipients are required to complete the Procurement File Checklist – Micro and maintain a file containing all documentation relating to the micro purchase. The checklist must be submitted to the NDDOT Transit Section for each micro purchase with the request for reimbursement. (*Attachments 30-33*)

5.2 ESTIMATED PURCHASE PRICE

The estimated price is needed to verify that adequate funds are available, determine what level of competition is required, and ensure the procurement officer has delegated purchase authority to make the purchase. Estimated price may be based upon previous purchases, market research, a published price list, or asking a vendor for a budgetary estimate. Consider the following:

- Goods. The entire amount of the purchase price including all shipping and handling, and all other related charges, such as installation or maintenance agreements. Generally, shipping costs can be estimated at 15%.
- Leases. The entire amount of an equipment lease is based upon all payments over the lease term, including any options for extension or renewals. For example, the value of a 24-month equipment lease with monthly payments of \$400 is \$9,600.
- Services. The entire amount of a service contract includes the initial term and all possible extension or renewal options. For example, the value of a one-year contract estimated at \$5,000 per year with three renewal options is \$20,000.
- Artificial Fragmentation Prohibited (N.D.A.C. § [4-12-04-08](#)). Procurement requirements may not be artificially divided as to constitute a small purchase [N.D.C.C. § [54-44.4-11\(3\)](#)].  
Artificial fragmentation means splitting purchase requirements or splitting an invoice to stay below a certain dollar level to avoid competition or stay within delegated authority limits.

5.3 RECURRING PURCHASES – ROTATING VENDORS

If you need to purchase goods or services on a recurring basis, you should consider whether or not establishing a contract would be advantageous. Recurring purchases with cumulative significant dollar spend are appropriate for term contracts.

It is appropriate to handle infrequent, small dollar purchases as independent transactions, even if the annual total is \$10,000 or more. For example, you purchase “Widgets” in January for \$5,000 and purchase “Widgets” again in September for \$5,000. It is appropriate to treat both purchases as a Level 1 procurement.

Under Level 1 procedures, procurement officers must rotate vendors solicited on an equitable basis (N.D.A.C. § [4-12-08-02](#)). If there are multiple vendors selling what you need to purchase, simply rotate the vendors you contact to obtain one fair and reasonable quote. For example, if there are three lumber yards in your community, try to spread your one fair and reasonable quote Level 1 purchases between the three

vendors.

The requirement to rotate vendors applies when you only obtain one fair and reasonable quote. If you get quotes from multiple vendors for a Level 1 purchase, simply award to the lowest bidder. It is acceptable if one vendor repeatedly is the low bidder receiving the award in a competitive procurement. If there is only one known supplier, you should consider the frequency and dollar volume of your purchases to determine if you should find other suppliers or establish a contract.

#### 5.4 SELECTING A BIDDER

After you have developed the specifications, you need to select bidders from whom you can solicit a quote from for your Level 1 purchase. You have many options, including:

- State Bidders List. OMB is required to maintain a Bidders List. You can find the bidders list on the [State Procurement Online \(SPO\) system](#). You are not required to use the Bidders List for purchases under \$10,000, but it is a good source for finding potential bidders.
- Printing Preference. If you are purchasing printing, you must comply with the North Dakota state law that requires all public printing, binding, and blank book manufacturing must be awarded to a resident North Dakota bidder (N.D.C.C. § [44-08-02](#)). Get quotes for printing from North Dakota bidders, unless it is determined to be not practicable (N.D.A.C. § [4-12-16-01](#)). See the Guideline for State Procurement of Printing (State of ND Employees – ONLY).
- ND Secretary of State Registration. North Dakota Secretary of State business registration requirements are based upon the circumstances of the procurement, not the dollar value. It is always preferable to have a bidder register with the Secretary of State, as it provides much greater legal protection for the state. See the Guidelines to Vendor Registration (State of ND Employees – ONLY) to determine if registration is required. Check the ND Secretary of State [Business Records Search](#) to see if a vendor is registered.
- Contractors, Professional and Occupational Licenses. Certain types of businesses and individuals in certain professions or occupations are subject to licensing or registration with a state regulatory board or agency. If you are purchasing something that requires the contractor to have a North Dakota license, permit, or registration, be sure to obtain proof that they have complied with this requirement before award. Visit the [NDSU Extension Service website](#) for a list of licenses required by the state.
- List of Debarred and Suspended Vendors. OMB State Procurement maintains a list of vendors who have been debarred or suspended from doing business with the State. Do not get quotes from suspended or debarred vendors (N.D.A.C. § [4-12-05](#)). Some agencies and institutions also have requirements to check the Federal Debarred vendor list, so check your internal procurement policies.

#### 5.5 GETTING ONE QUOTE

After you identify a potential bidder, you are ready to get a quote. You can get a quote using a variety of methods:

- Stores. You can physically go to a store and get a quote. “Time is money,” so consider how much time it will take you to go to the store to make the purchase.
- Telephone quote. You can contact the bidder by phone and describe what you need. Be sure to tell them that the price needs to include all shipping and handling. You can use the [Informal Bid-Telephone Quote](#) form (*Attachment 16*), SFN 2706 to document the telephone bid. Bidders will normally respond by telephone unless you ask for a written quote.
- Email or Fax Quote. You can contact vendors by email or fax. You can put the requirements into the body of the fax or email. The OMB website also has a [Request for Quote template](#) (*Attachment 16*) you can use to solicit a vendor.
- Internet Quote. You can obtain a quote from an online website. Most websites have “click through” agreements. Visit with your legal counsel to ensure you are not agreeing to terms and conditions. Be sure to visit with your legal counsel before agreeing to any terms and conditions.
- Micro Purchase Checklist. This is a resource to help you make Level 1 Micro purchases.



## 5.6 QUESTIONS AND SOLICITATION AMENDMENTS

After you ask a vendor for a quote, they may have questions. You should respond to vendor questions in a timely manner. Sometimes vendor questions may make you realize a mistake has been made. If you need to change your requirements, you need to amend your solicitation.

If you contacted vendors by phone or in person, you can call them to make the change. If you requested a written quote in an email, you can make the change in a subsequent email.

If you used a Request for Quote template, you can either send a revised Request for Quote or send a Solicitation Amendment. State of ND Agencies and Employees visit the OMB internal website for templates. Transit subrecipients use the attached templates.

## 5.7 RECEIVING QUOTES

The method you used to contact vendors will determine how you receive quotes. You can review a quote as soon as you receive it. If you contacted multiple vendors, you can evaluate and award when you receive responses from all vendors. If you set a deadline and a vendor doesn't respond in time, the quote is late. Vendors cannot change their responses after the deadline.

Sometimes you contact vendors, and they respond with a "no bid." Document all the vendors you contacted, including the vendors that declined to bid.

## 5.8 EVALUATING QUOTES

You'll need to evaluate the quotes received to make sure the product or service offered meets your requirements.

- "Responsive Bidder" means a firm or person whose response fully meets all the requirements of the solicitation. Responses that are submitted late or don't meet specifications must be rejected. Visit the OMB website for a [Rejection Letter template](#). (Attachment 3) Use this template to tell bidders why their response was rejected.
- "Responsible Bidder" means a firm or person who is capable of performing the work. If you suspect a bidder is not responsible, see N.D.A.C. § [4-12-11-04](#).

## 5.9 FAIR AND REASONABLE PRICE

Use adequate procedures to ensure goods and services are obtained at a fair and reasonable price. The fair and reasonable price can be based on previous purchases, market research, a published price list, or by simply soliciting more than one vendor.

If the quote is fair and reasonable, you can award to the bidder. Keep documentation of the quote in your procurement file.

## 5.10 BIDS \$10,000 OR OVER

If you receive bids or proposals priced at \$10,000, you'll have to determine whether or not this is a Level 1 purchase.

- You can defer the purchase to a Level 2 Procurement Officer to get three quotes. They can use the first quote as one of the three needed quotes, or they can start over.
- You can get multiple quotes. If you received at least one bid meeting specifications under \$10,000, and other bids over \$10,000, this is still a Level 1 purchase. You can make an award to the "low bidder meeting specs" under \$10,000.
- If you were soliciting multiple proposals and the proposal with the highest evaluation score is priced \$10,000 or more, you must obtain the level of competition required for the dollar value. If the proposal with the highest evaluation score is under \$10,000, it is a Level 1 purchase and you can make the award.

If all bids or proposals received are \$10,000 or over, this is not a Level 1 procurement. State of ND Employees must obtain the level of competition required for the dollar value. If it is a Level 2 purchase, the procurement must be done by a Procurement Officer with Level 2 certification training. At least two more vendors should be contacted to submit bids or proposals. Transit subrecipients refer to your designated Procurement Officer.

## 5.11 GETTING MULTIPLE QUOTES/BIDS

You can get competition for a Level 1 purchase. Some agencies may have internal policies that require competition at lower levels.

A request for quote is a procurement strategy for purchasing goods and services that are suitable for award to the lowest priced bidder whose bid meets the specification or the scope of work. Bidding is appropriate for goods, equipment, and non-professional services. If you get one quote and the price seems too high, you can get another quote. It is also appropriate to solicit more than one quote if you have multiple bidders in the area. "When in doubt, bid it out." The OMB website has templates (*Attachments 17 & 44*) you can customize to request competitive bids or proposals. Provide the same information to all bidders. Give bidders a deadline for responding. Do not share the price information with other bidders until after you have made the award. If you are getting quotes, you must award to the bidder that meets your specifications and has the lowest price ("Low bidder meeting spec"). If a bidder offers you something that doesn't meet your specification, you must reject their bid.

#### 5.12 GETTING MULTIPLE PROPOSALS

Sometimes you are purchasing equipment, software or services for which it is difficult to write detailed specifications, or you would like to have an evaluation process.

Competitive proposals are a procurement strategy in which award is made to the responsible vendor whose proposal is determined to be most advantageous based upon cost and other evaluation criteria. The related weight of cost and the other evaluation criteria must be stated in the solicitation. Provide the same information to all bidders. Give bidders a deadline for responding. Do not share the price information with other bidders until after you have made the award.

The request for proposal process allows you to have discussions with vendors. You can also have vendors make changes to their proposals by requesting best and final offers. The request for proposal process is appropriate for equipment, information technology, and professional services. Visit the OMB State Procurement website for checklists and templates to help you conduct a competitive request for proposal process.

#### 5.13 NORTH DAKOTA PREFERENCE LAWS – RECIPROCAL PREFERENCE

If you are receiving multiple quotes, you need to be aware of "preference" laws that apply if you receive bids or proposals from out of state or nonresident vendors. The term "preference" as it relates to government purchasing is an advantage in consideration for award of a contract given to particular types of vendors. If you receive bids or proposals from nonresident bidders, contact your lead procurement officer for assistance in determining whether or not preference laws apply.

- The reciprocal preference law (N.D.C.C. § [44-08-01](#)) requires the preference given to a resident North Dakota bidder be equal to the preference given or required by the state of the nonresident bidder. This is commonly called "reciprocal preference." A bidder is "resident" if it maintains a bona fide place of business within North Dakota for at least one year prior to the date the contract was awarded (N.D.C.C. § [44-08-02](#)).
- You do not need to apply a preference if you receive quotes from only North Dakota vendors or only nonresident bidders. Apply preference when there is a mix of North Dakota and nonresident bidders. You also do not need to apply a preference if no vendors are from states with preference laws.

If the nonresident bidder's state has a preference law, increase the nonresident bidder price by the same percentage. For example:

*A nonresident bidder submits a bid price of \$8,000. Laws in that bidder's state of residence require a 5% preference for vendors who are resident in that state. Increase the nonresident bidder's price by 5% before evaluation (\$400). So, you must evaluate the nonresident's bid as \$8,400.*

North Dakota also has preference laws for certain commodities and services.

- Coal. N.D.C.C. § [48-05-02.1](#)
- Food. 2003 Senate Concurrent Resolution No. 4018
- Environmentally Preferable Products – Bio-based Products. N.D.C.C. § [54-44.4-07](#)
- Paper, Recycled. N.D.C.C. § [54-44.4-08](#)
- Printing. N.D.C.C. § [46-02-15](#) and [Guidelines for State Procurement of Printing](#).
- Soybean-based Ink. N.D.C.C. § [54-44.4-07](#)

- [American Flags](#). N.D.C.C. § [44-08-22](#)
- [Direct Manufacturer Motor Vehicle Sales Prohibited](#). N.D.C.C. § [39-22-25](#)
- [Work Activity Centers](#). N.D.C.C. § [25-16.02](#)
- [Work Activity Centers - Construction Stakes](#). N.D.C.C. § [25-16.2-02](#)

See the OMB Guidelines to North Dakota Purchasing Preference Laws (State of ND Employees – ONLY) for more information

Transit subrecipients should contact the NDDOT Transit Section for questions on purchases using federal and state funds.

#### 5.14 PROTESTS

A vendor may protest a solicitation or award decision in accordance with N.D.C.C. § [54-44.4-12](#) and N.D.A.C. Chapter [4-12-14](#).

If you are making a Level 1 purchase by obtaining one fair and reasonable quote, a protest is unlikely. If you obtain multiple quotes and make a competitive award, vendors may disagree with your solicitation or award decision and submit a protest.

If you receive a protest, you must follow the laws and rules related to responding to protests. Contact your agency’s lead procurement officer and legal counsel for assistance. See the OMB State Procurement Office website for a [protest response](#) template (*Attachment 36*).

## Chapter 6: Level 2 Small Purchase Procedures

<p><b>Level 2 Small Purchase</b></p> <p>At least \$10,000 but less than \$50,000</p>	<p>Solicit informal quotes/bids or proposals from at least three vendors, or post to SPO Online with appropriate state bidders list. May send to additional vendors.</p> <p>State agencies: ITD must review IT purchases over \$25,000. Contact <a href="mailto:itdprocurement@nd.gov">itdprocurement@nd.gov</a></p> <p><b>Transit subrecipients:</b></p> <p>SPO Online is not available for Transit Subrecipients.</p> <p>If purchasing ADA vehicles off the State Bid, approval required from the Transit Section before ordering. Contact <a href="mailto:transitnd@nd.gov">transitnd@nd.gov</a></p> <p>Assets (vehicle, equipment, software, facility, etc.) must be added to Inventory in the BlackCat System if \$5,000 or greater.</p> <p><b><u>Documentation is required.</u></b></p> <p><a href="#">Alternate Procurement form</a> required if competition is not solicited from at least three vendors.</p> <p>The form is not required if 3 vendors are solicited and fewer than three bids or proposals are received.</p>
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### 6.1 LEVEL 2 SMALL PURCHASES

If the good or service you need is not available from a state source of supply and you know the estimated price is at least 10,000 but less than \$50,000, then you are ready to make a Level 2 purchase. Under state law, “Small purchases must be made with competition practicable under the circumstances”. Purchases at least \$10,000 but less than \$50,000 have been determined to be extremely low-value purchases.

Procurement rules allow for these purchases to be made using adequate procedures to ensure goods and services are obtained at a fair and reasonable price, which includes soliciting quotes/bids or proposals at least three vendors or post to the SPO Online. The terms “bids”, “quotes” or proposals are used interchangeably (N.D.C.C. § [54-44.4-11](#), N.D.A.C. § [4-12-08-02](#)).

Transit Subrecipients – SPO Online can only be used by State Agencies. Transit subrecipients must advertise or solicit informal bids or proposals on their own.

Transit subrecipients are required to complete the Procurement File Checklist (*Attachments 30-33*) – Small and maintain a file containing all documentation relating to the small purchase. The checklist must be submitted to the NDDOT Transit Section for each small purchase with the request for reimbursement.

## 6.2 ESTIMATED PURCHASE PRICE

The estimated price is needed to verify that adequate funds are available, determine what level of competition is required, and ensure the procurement officer has delegated purchase authority to make the purchase. Estimated price may be based upon previous purchases, market research, a published price list, or asking a vendor for a budgetary estimate. Consider the following:

- Goods. The entire amount of the purchase price including all shipping and handling, and all other related charges, such as installation or maintenance agreements. Generally, shipping costs can be estimated at 15%.
- Leases. The entire amount of an equipment lease is based upon all payments over the lease term, including any options for extension or renewals. For example, the value of a 24-month equipment lease with monthly payments of \$400 is \$9,600.
- Services. The entire amount of a service contract includes the initial term and all possible extension or renewal options. For example, the value of a one-year contract estimated at \$5,000 per year with three renewal options is \$20,000.
- Artificial Fragmentation Prohibited (N.D.A.C. § [4-12-04-08](#)). Procurement requirements may not be artificially divided as to constitute a small purchase [N.D.C.C. § [54-44.4-11\(3\)](#)].

Artificial fragmentation means splitting purchase requirements or splitting an invoice to stay below a certain dollar level to avoid competition or stay within delegated authority limits.

Transit subrecipients should perform an independent cost estimate (ICE) to establish the anticipated cost or price to be paid for an item, service, or project that is developed by an entity or entities not associated with the item, service or project to be procured. To be considered “independent,” the estimate cannot be developed by any potential source, supplier, or provider of the item, service, or project. However, it is acceptable to have an “independent” third party develop the estimate for the purchasing activity as long as that party has no interest in bidding or offering on the procurement.

For more complex procurements, the ICE represents the documented result of a practical and unbiased analysis, assessment, and quantification of all costs and risks associated with a particular procurement. The ICE serves as an essential tool for conducting the subsequent required cost or price analysis. The NDDOT Transit Independent Cost Estimate (ICE) form (*Attachment 23*) should be completed and maintained as part of the procurement file.

## 6.3 SELECTING A BIDDER

After you have developed the specifications, you need to select bidders from whom you can solicit a quote from for your Level 2 purchase. You have many options, including:

- State Bidders List. OMB is required to maintain a Bidders List. You can find the bidders list on the [State Procurement Online \(SPO\) system](#). You are not required to use the Bidders List for purchases under \$10,000, but it is a good source for finding potential bidders.
- Printing Preference. If you are purchasing printing, you must comply with the North Dakota state law that requires all public printing, binding, and blank book manufacturing must be awarded to a resident North Dakota bidder (N.D.C.C. § [44-08-02](#)). Get quotes for printing from North Dakota bidders, unless it is determined to be not practicable (N.D.A.C. § [4-12-16-01](#)). See the [Guidelines](#)

[for State Procurement of Printing](#). State of ND Employees -ONLY.

- [ND Secretary of State Registration](#). North Dakota Secretary of State business registration requirements are based upon the circumstances of the procurement, not the dollar value. It is always preferable to have a bidder register with the Secretary of State, as it provides much greater legal protection for the state. See the Guidelines to Vendor Registration (State of ND Employees – ONLY) to determine if registration is required. Check the ND Secretary of State [Business Records Search](#) to see if a vendor is registered.
- [Contractors, Professional and Occupational Licenses](#). Certain types of businesses and individuals in certain professions or occupations are subject to licensing or registration with a state regulatory board or agency. If you are purchasing something that requires the contractor to have a North Dakota license, permit, or registration, be sure to obtain proof that they have complied with this requirement before award. Visit the [NDSU Extension Service website](#) for a list of licenses required by the state.
- [List of Debarred and Suspended Vendors](#). OMB State Procurement maintains a list of vendors who have been debarred or suspended from doing business with the State. Do not get quotes from suspended or debarred vendors (N.D.A.C. § [4-12-05](#)). Some agencies and institutions also have requirements to check the Federal Debarred vendor list, so check your internal procurement policies.
- Federal Vendor List of Debarred and Suspended – [SAM.gov | Home](#)
  - a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs for a contract in the amount of at least \$25,000

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency and subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

#### 6.4 INFORMAL SOLICITATIONS

Informal solicitations may be in writing or verbal. Whether verbal or written, be sure to provide the same information to all potential bidders at the same time to ensure fairness.

- Verbal solicitations should only be used for simple purchases that can be awarded based upon “lowest responsible bidder meeting specifications.”
- Written solicitations must be used for informal proposals because state law requires the evaluation criteria to be stated in the solicitation (ref. N.D.C.C. § [54-44.4-10](#)). A written solicitation should also be used for complex or lengthy requirements.

#### Written Solicitations:

The solicitation document must describe the needed commodity or service, describe the type of response expected, and explain how the responses will be evaluated. Customize the solicitation document for the commodity or services being procured. The written solicitation should include:

- Contact Person: Provide the name and contact information for the person who bidders contact if they have any questions.
- Response Instructions: Describe how, when, and where vendors must respond. Give bidders adequate time to respond (ref. N.D.A.C. § [4-12-04-02](#)).
- Delivery Instructions and Terms of Sale: Indicate the delivery location and state that price offered by the bidder is to include all shipping, delivery, and handling charges in the pricing quoted. Terms of sale address when title passes from the seller to the buyer, which party is responsible for freight, and which party files claims if commodities are damaged in transit. The OMB State Procurement Office recommends specifying F.O.B. Destination, Freight Prepaid, which requires the seller to own the commodities in transit, pay freight charges and file any claims. Title passes to the state at the delivery destination. See the OMB Freight Matrix on the internal web only.
- Specifications of the needed commodity or service: Provide all the information a bidder will require to prepare an accurate quotation or proposal. If a brand name is specified, vendors must be invited to offer competitive brands unless you have received approval to limit competition (see Section 4 of this plan).
- Required Delivery Date: The date commodities must be delivered, or service must be performed. Indicate a specific date or time (days/week/months) after receipt of order (ARO). Expect higher prices if expedited delivery is required.
- Evaluation Criteria: Informal bids must be awarded to the low bidder meeting specifications. Informal proposals must state the relative weight of cost and any other evaluation criteria that will be considered in making the award.

#### Verbal Solicitations:

When soliciting oral bids, follow the same process described in a written quotation, by contact the bidder and recite the requirements instead of issuing a written document. Bidders will normally respond by telephone, unless you ask for a written response. When making an oral solicitation, document quotes received, including any bidders that declines to bid, using the [Informal Bid-Telephone Quote form](#), SFN 2706.

#### 6.5 CLARIFICATIONS OR AMENDMENTS TO THE SOLICITATION

After the solicitation is issued, carefully consider any questions or criticisms raised by potential bidders about the solicitation. If you need to make a correction or modification, notify each bidder you solicited in the same manner as the original solicitation (verbal or written). State of ND Employees see the OMB State Procurement internal website for a sample Solicitation Amendment. Transit subrecipients see attached sample Solicitation Amendment (*Attachment 49*).

#### 6.6 RECEIVING RESPONSES

The method you used to contact vendors will determine how you receive responses. Informal bids and proposals may be viewed immediately. If responses are received from all bidders solicited, response may be evaluated, and an award made. Document all bidders solicited and their responses, including those that responded with a “no bid”. Send a [Rejection Letter template](#). (*Attachment 3*) if any responses are received late. Bidders may not change their responses after the deadline.

#### 6.7 EVALUATING RESPONSES

When evaluating bids or proposals, you can only consider those requirements or evaluation criteria specifically stated in the solicitation.

- “Responsive Bidder” means a firm or person who submits an offer that conforms to the requirements of the solicitation. Failure to meet specifications and submission of a late bid are common reasons for declaring a bid “not responsive”. Compare the offered products or service to the specifications and requirements stated in the solicitation. A bid or response that did not meet a stated minimum requirement must be rejected (ref N.D.A.C § [4-12-11-03](#)).
- “Responsible Bidder” means a firm or person who is capable of performing the work. If you suspect a bidder is not responsible, see N.D.A.C. § [4-12-11-04](#).
- Price Evaluation: If bids or proposals are received from nonresident bidders, apply any reciprocal preference (see Chapter 6.10 of this plan). Determine the lowest priced, responsive bid or proposal. Be sure each bidder’s total price includes all shipping, handling, and installation costs, if any. Discounts for prompt payment or cash discounts can only be considered if so stated in the solicitation.



When evaluating proposals, the lowest priced proposal receives the maximum points for cost. Points for higher-priced proposals can be calculated:

- Price of Lowest Cost Proposal  
Price of Proposal Being Rated X Number of Points = Awarded Points
- Discussions, negotiations, and best and final offers: No discussions or negotiations are permitted with competitive bidding. See N.D.A.C. §[4-12-08-04](#) and chapter §[4-12-12](#) for guidance about discussions, negotiations, and best and final offers within an RFP process.
- Compare all-or-none, group, or split award: the solicitation should indicate whether the buyer intends to award all items to the one contractor (all or none award), award by category items (group award), or award each item separately (split award). If the solicitation or bidder's response did not specify whether the award would be an all-or-none or split award, the procurement officer has discretion to make that determination. The administrative costs of issuing multiple purchase orders may be considered to determine whether a split award will be advantageous. As a general rule of thumb, the administrative cost to issue a purchase order is \$50.
- Multiple Awards: A multiple award means that two or more bidders will be awarded contracts for similar products or services. The intent to make a multiple award must be stated in the solicitation, and the procurement officer must make a determination that a multiple award is in the best interest of the state. See N.D.C.C. § 54-44.4-051(1) and N.D.A.C. § [4-12-11-07](#).

#### 6.8 FAIR AND REASONABLE PRICE

Use adequate procedures to ensure goods and services are obtained at a fair and reasonable price. The fair and reasonable price can be based on previous purchases, market research, a published price list, or by simply soliciting more than one vendor.

If the quote is fair and reasonable, you can award to the bidder. Keep documentation of the quote in your procurement file.

#### 6.9 GETTING MULTIPLE PROPOSALS

Sometimes you are purchasing equipment, software or services for which it is difficult to write detailed specifications, or you would like to have an evaluation process.

Competitive proposals are a procurement strategy in which award is made to the responsible vendor whose proposal is determined to be most advantageous based upon cost and other evaluation criteria. The related weight of cost and the other evaluation criteria must be stated in the solicitation. Provide the same information to all bidders. Give bidders a deadline for responding. Do not share the price information with other bidders until after you have made the award.

The request for proposal process allows you to have discussions with vendors. You can also have vendors make changes to their proposals by requesting best and final offers. The request for proposal process is appropriate for equipment, information technology, and professional services. State of ND Employees visit the OMB State Procurement internal website for checklists and templates to help you conduct a competitive request for proposal process. Transit subrecipients see the attached checklists (*Attachments 30-33*).

#### 6.10 NORTH DAKOTA PREFERENCE LAWS – RECIPROCAL PREFERENCE

If you are receiving multiple quotes, you need to be aware of "preference" laws that apply if you receive bids or proposals from out of state or nonresident vendors. The term "preference" as it relates to government purchasing is an advantage in consideration for award of a contract given to particular types of vendors. If you receive bids or proposals from nonresident bidders, contact your lead procurement officer for assistance in determining whether or not preference laws apply.

- The reciprocal preference law (N.D.C.C. § [44-08-01](#)) requires the preference given to a resident North Dakota bidder be equal to the preference given or required by the state of the nonresident

bidder. This is commonly called “reciprocal preference.” A bidder is “resident” if it maintains a bona fide place of business within North Dakota for at least one year prior to the date the contract was awarded (N.D.C.C. § [44-08-02](#)).

- You do not need to apply a preference if you receive quotes from only North Dakota vendors or only nonresident bidders. Apply preference when there is a mix of North Dakota and nonresident bidders. You also do not need to apply a preference if no vendors are from states with preference laws.

If the nonresident bidder’s state has a preference law, increase the nonresident bidder price by the same percentage. For example:

*A nonresident bidder submits a bid price of \$8,000. Laws in that bidder’s state of residence require a 5% preference for vendors who are resident in that state. Increase the nonresident bidder’s price by 5% before evaluation (\$400). So, you must evaluate the nonresident’s bid as \$8,400.*

North Dakota also has preference laws for certain commodities and services.

- Coal. N.D.C.C. § [48-05-02.1](#)
- Food. 2003 Senate Concurrent Resolution No. 4018
- Environmentally Preferable Products – Bio-based Products. N.D.C.C. § [54-44.4-07](#)
- Paper, Recycled. N.D.C.C. § [54-44.4-08](#)
- Printing. N.D.C.C. § [46-02-15](#) and [Guidelines for State Procurement of Printing](#).
- Soybean-based Ink. N.D.C.C. § [54-44.4-07](#)
- American Flags. N.D.C.C. § [44-08-22](#)
- Direct Manufacturer Motor Vehicle Sales Prohibited. N.D.C.C. § [39-22-25](#)
- Work Activity Centers. N.D.C.C. § [25-16.02](#)
- Work Activity Centers - Construction Stakes. N.D.C.C. § [25-16.2-02](#)

See the OMB Guidelines to North Dakota Purchasing Preference Laws (State of ND Employees – ONLY) for more information

Transit subrecipients must contact the NDDOT Transit Section for questions on purchases using federal and state funds.

#### 6.11 TIE BIDS OR PROPOSALS – STATE OF ND EMPLOYEES - ONLY

If two or more bidders offer equal prices or receive equal evaluation scores after any reciprocal preference is applied.

Preference must first be given to bids submitted by North Dakota vendors (N.D.C.C. § [44-08-01.1](#)).

If a tie remains, preference must be given to approved vendors on the State Bidders List (N.D.C.C. § [54-44.4-09\(4\)](#)).

If a tie still remains, award shall be made accordance with N.D.A.C § [4-12-11-05](#).

[If recipient is part of a political subdivision, local rules may also apply.](#)

#### 6.12 ONLY ONE BID OR PROPOSAL RECEIVED

When only one bid or proposal is received, attempt to find out why the competitive process failed. The specifications and other requirements of the solicitation must be reviewed to ensure competition was not restricted. The situation must be handled in accordance with N.D.A.C. § [4-12-11-08](#).

#### 6.13 PROTESTS

A vendor may protest a solicitation or award decision in accordance with N.D.C.C. § [54-44.4-12](#) and N.D.A.C. Chapter [4-12-14](#).



If you receive a protest, you must follow the laws and rules related to responding to protests. Contact your agency's lead procurement officer and legal counsel for assistance. See the [protest response](#) template (*Attachment 36*).

## Chapter 7: Level 3 Informal Written Purchase Procedures

<p><b>Level 3 Informal Written Purchase</b></p> <p>At least \$50,000 but less than \$100,000</p>	<p>Solicit informal bids or proposals using SPO Online with appropriate state bidders list. May send to additional vendors.</p> <p>State agencies: ITD must review IT purchases over \$25,000. Contact <a href="mailto:itdprocurement@nd.gov">itdprocurement@nd.gov</a></p> <p><b>Transit subrecipients:</b></p> <p>SPO Online is not available for Transit Subrecipients.</p> <p>If purchasing ADA vehicles off the State Bid, approval required from the Transit Section before ordering. Contact <a href="mailto:transitnd@nd.gov">transitnd@nd.gov</a></p> <p>Assets (vehicle, equipment, software, facility, etc.) must be added to Inventory in the BlackCat System if \$5,000 or greater.</p> <p><b><u>Documentation Required</u></b></p> <p><a href="#">Alternate Procurement form</a> required if:</p> <ul style="list-style-type: none"> <li>• Competition is limited or not solicited.</li> <li>• SPO Online is not used. SPO Online is not available for Transit Subrecipients.</li> </ul> <p>Transit: Approval required before purchase. Contact <a href="mailto:transitnd@nd.gov">transitnd@nd.gov</a></p>
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### 7.1 LEVEL 3 INFORMAL WRITTEN PURCHASE PROCEDURES

Solicit informal bids or proposals for purchases at least \$50,000 but less than \$100,000. Procurement rules allow for these purchases to be made using adequate procedures to ensure goods and services are obtained at a fair and reasonable price, which includes soliciting informal quotes/bids or proposals post to the SPO Online. The terms "bids", "quotes" or proposals are used interchangeably (N.D.C.C. § [54-44.4-11](#), N.D.A.C. § [4-12-08-02](#)).

Transit Subrecipients – Level 3 purchases require NDDOT Transit Section prior approval. SPO Online can only be used by State Agencies. Transit subrecipients must advertise or solicit informal written bids or proposals on their own.

Transit subrecipients are required to complete the Procurement File Checklist – Informal Written Purchase (*Attachment 16*) and maintain a file containing all documentation relating to the informal written purchase. The checklist must be submitted to the NDDOT Transit Section for each informal written purchase with reimbursement request.

### 7.2 ESTIMATED PURCHASE PRICE

The estimated price is needed to verify that adequate funds are available, determine what level of competition is required, and ensure the procurement officer has delegated purchase authority to make the purchase. Estimated price may be based upon previous purchases, market research, a published price list, or asking a vendor for a budgetary estimate. Consider the following:

- Goods. The entire amount of the purchase price including all shipping and handling, and all other related charges, such as installation or maintenance agreements. Generally, shipping costs can be estimated at 15%.
- Leases. The entire amount of an equipment lease is based upon all payments over the lease term, including any options for extension or renewals. For example, the value of a 24-month equipment

lease with monthly payments of \$400 is \$9,600.

- Services. The entire amount of a service contract includes the initial term and all possible extension or renewal options. For example, the value of a one-year contract estimated at \$5,000 per year with three renewal options is \$20,000.
- Artificial Fragmentation Prohibited (N.D.A.C. § [4-12-04-08](#)). Procurement requirements may not be artificially divided as to constitute a small purchase [N.D.C.C. § [54-44.4-11\(3\)](#)].

Artificial fragmentation means splitting purchase requirements or splitting an invoice to stay below a certain dollar level to avoid competition or stay within delegated authority limits.

Transit subrecipients should perform an independent cost estimate (ICE) to establish the anticipated cost or price to be paid for an item, service, or project that is developed by an entity or entities not associated with the item, service or project to be procured. To be considered “independent,” the estimate cannot be developed by any potential source, supplier, or provider of the item, service, or project. However, it is acceptable to have an “independent” third party develop the estimate for the purchasing activity as long as that party has no interest in bidding or offering on the procurement.

For more complex procurements, the ICE represents the documented result of a practical and unbiased analysis, assessment, and quantification of all costs and risks associated with a particular procurement. The ICE serves as an essential tool for conducting the subsequent required cost or price analysis. The NDDOT Transit Independent Cost Estimate (ICE) form (*Attachment 23*) should be completed and maintained as part of the procurement file.

### 7.3 SELECTING A BIDDER

After you have developed the specifications, you need to select bidders from whom you can solicit an informal quote from for your Level 3 purchase. You have many options, including:

- State Bidders List. OMB is required to maintain a Bidders List. You can find the bidders list on the [State Procurement Online \(SPO\) system](#). You are not required to use the Bidders List for purchases under \$10,000, but it is a good source for finding potential bidders.
- Printing Preference. If you are purchasing printing, you must comply with the North Dakota state law that requires all public printing, binding, and blank book manufacturing must be awarded to a resident North Dakota bidder (N.D.C.C. § [44-08-02](#)). Get quotes for printing from North Dakota bidders, unless it is determined to be not practicable (N.D.A.C. § [4-12-16-01](#)). See the Guidelines for State Procurement of Printing. State of ND Employees - ONLY.
- ND Secretary of State Registration. North Dakota Secretary of State business registration requirements are based upon the circumstances of the procurement, not the dollar value. It is always preferable to have a bidder register with the Secretary of State, as it provides much greater legal protection for the state. See the Guidelines to Vendor Registration (State of ND Employees – ONLY) to determine if registration is required. Check the ND Secretary of State [Business Records Search](#) to see if a vendor is registered.
- Contractors, Professional and Occupational Licenses. Certain types of businesses and individuals in certain professions or occupations are subject to licensing or registration with a state regulatory board or agency. If you are purchasing something that requires the contractor to have a North Dakota license, permit, or registration, be sure to obtain proof that they have complied with this requirement before award. Visit the [NDSU Extension Service website](#) for a list of licenses required by the state.
- List of Debarred and Suspended Vendors. OMB State Procurement maintains a list of vendors who have been debarred or suspended from doing business with the State. Do not get quotes from suspended or debarred vendors (N.D.A.C. § [4-12-05](#)). Some agencies and institutions also have requirements to check the Federal Debarred vendor list, so check your internal procurement policies.
- Federal Vendor List of Debarred and Suspended – [SAM.gov | Home](#)

a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs for a contract in the amount of at least \$25,000

(4) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(5) C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(6) The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency and subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

#### 7.4 INFORMAL SOLICITATIONS

Informal solicitations may be in writing or verbal. Whether verbal or written, be sure to provide the same information to all potential bidders at the same time to ensure fairness.

- Verbal solicitations should only be used for simple purchases that can be awarded based upon “lowest responsible bidder meeting specifications.”
- Written solicitations must be used for informal proposals because state law requires the evaluation criteria to be stated in the solicitation (ref. N.D.C.C. § 54-44.4-10). A written solicitation should also be used for complex or lengthy requirements.

#### Written Solicitations:

The solicitation document must describe the needed commodity or service, describe the type of response expected, and explain how the responses will be evaluated. Customize the solicitation document for the commodity or services being procured. The written solicitation should include:

- Contact Person: Provide the name and contact information for the person who bidders contact if they have any questions.
- Response Instructions: Describe how, when, and where vendors must respond. Give bidders adequate time to respond (ref. N.D.A.C. § [4-12-04-02](#)).
- Delivery Instructions and Terms of Sale: Indicate the delivery location and state that price offered by the bidder is to include all shipping, delivery, and handling charges in the pricing quoted. Terms of sale address when title passes from the seller to the buyer, which party is responsible for freight, and which party files claims if commodities are damaged in transit. The OMB State Procurement Office recommends specifying F.O.B. Destination, Freight Prepaid, which requires the seller to own the commodities in transit, pay freight charges and file any claims. Title passes to the state at the delivery destination. See the OMB Freight Matrix.
- Specifications of the needed commodity or service: Provide all the information a bidder will require to prepare an accurate quotation or proposal. If a brand name is specified, vendors must be invited to offer competitive brands unless you have received approval to limit competition (see Section 4 of this plan).
- Required Delivery Date: The date commodities must be delivered, or service must be performed. Indicate a specific date or time (days/week/months) after receipt of order (ARO). Expect higher prices if expedited delivery is required.
- Evaluation Criteria: Informal bids must be awarded to the low bidder meeting specifications. Informal proposals must state the relative weight of cost and any other evaluation criteria that will be considered in making the award.

#### Verbal Solicitations:

When soliciting oral bids, follow the same process described in a written quotation, by contact the bidder and recite the requirements instead of issuing a written document. Bidders will normally respond by telephone, unless you ask for a written response. When making an oral solicitation, document quotes received, including any bidders that declines to bid, using the [Informal Bid-Telephone Quote form](#), SFN 2706 (*Attachment 51*).

#### 7.5 CLARIFICATIONS OR AMENDMENTS TO THE SOLICITATION

After the solicitation is issued, carefully consider any questions or criticisms raised by potential bidders about the solicitation. If you need to make a correction or modification, notify each bidder you solicited in the same manner as the original solicitation (verbal or written). State of ND Employees see the OMB State Procurement internal website for a sample Solicitation Amendment. Transit subrecipients see attached sample Solicitation Amendment (*Attachment 49*).

#### 7.6 RECEIVING RESPONSES

The method you used to contact vendors will determine how you receive responses. Informal bids and proposals may be viewed immediately. If responses are received from all bidders solicited, response may be evaluated, and an award made. Document all bidders solicited and their responses, including those that responded with a “no bid”. Send a [Rejection Letter template](#). (*Attachment 3*) If any responses are received late. Bidders may not change their responses after the deadline.

#### 7.7 EVALUATING RESPONSES

When evaluating bids or proposals, you can only consider those requirements or evaluation criteria specifically stated in the solicitation.

- “Responsive Bidder” means a firm or person who submits an offer that conforms to the requirements of the solicitation. Failure to meet specifications and submission of a late bid are common reasons for declaring a bid “not responsive”. Compare the offered products or service to the specifications and requirements stated in the solicitation. A bid or response that did not meet a stated minimum requirement must be rejected (ref N.D.A.C § [4-12-11-03](#)).
- “Responsible Bidder” means a firm or person who is capable of performing the work. If you suspect a bidder is not responsible, see N.D.A.C. § [4-12-11-04](#).
- Price Evaluation: If bids or proposals are received from nonresident bidders, apply any reciprocal preference (see Chapter 7.10 of this plan). Determine the lowest priced, responsive bid or proposal. Be sure each bidder’s total price includes all shipping, handling, and installation costs, if any. Discounts for prompt payment or cash discounts can only be considered if so stated in the solicitation.

When evaluating proposals, the lowest priced proposal receives the maximum points for cost. Points for higher-prices proposals can be calculated:

- $$\frac{\text{Price of Lowest Cost Proposal}}{\text{Price of Proposal Being Rated}} \times \text{Number of Points} = \text{Awarded Points}$$
- Discussions, negotiations, and best and final offers: No discussions or negotiations are permitted with competitive bidding. See N.D.A.C. §[4-12-08-04](#) and chapter §[4-12-12](#) for guidance about discussions, negotiations and best and final offers within an RFP process.
- Compare all-or-none, group, or split award: the solicitation should indicate whether the buyer intends to award all items to the one contractor (all or none award), award by category items (group award), or award each item separately (split award). If the solicitation or bidder’s response did not specify whether the award would be an all-or-none or split award, the procurement officer has discretion to make that determination. The administrative costs of issuing multiple purchase orders may be considered to determine whether a split award will be advantageous. As a general rule of thumb, the administrative cost to issue a purchase order is \$50.
- Multiple Awards: A multiple award means that two or more bidders will be awarded contracts for similar products or services. The intent to make a multiple award must be stated in the solicitation, and the procurement officer must make a determination that a multiple award is in the best interest of the state.

See N.D.C.C. § 54-44.4-051(1) and N.D.A.C. § [4-12-11-07](#).

### 7.8 FAIR AND REASONABLE PRICE

The procurement officer must perform a cost analysis before awarding a contract to determine if the bids provided are fair and reasonable. See NDDOT Transit Cost/Price Analysis and Price Reasonableness form (*Attachment 22*). This analysis must be used in conjunction with the independent cost estimate created prior to the solicitation of price quotes for all types of procurements. The type (price or cost) and degree of analysis is dependent of the facts surrounding the particular procurement situation. In general, the rule behind whether to do a PRICE or COST analysis is the following:

- Price analysis (which is comparing quotes to catalog or market prices, via previous contracts or comparison with other competitive proposals) may be performed for most procurements.

Sources of information that are available to conduct a price analysis include:

- Comparisons with other competitive proposals
  - Previous contracts
  - Catalog or market prices
  - Historical prices and trending
  - Independent cost estimates
- Cost analysis (which includes examining variance from the independent estimate as well as the differences between bids recorded, rather than assuming that open market pricing always equates to appropriate pricing) must be performed for procurements that:
    - Require the contactor to submit estimates for labor hours, overhead, and materials
    - Result in a situation where price competition is lacking
    - Consist of a sole source procurement.

If the quote is fair and reasonable, you can award to the bidder. Keep documentation of the quote in your procurement file.

### 7.9 GETTING MULTIPLE PROPOSALS

Sometimes you are purchasing equipment, software or services for which it is difficult to write detailed specifications, or you would like to have an evaluation process.

Competitive proposals are a procurement strategy in which award is made to the responsible vendor whose proposal is determined to be most advantageous based upon cost and other evaluation criteria. The related weight of cost and the other evaluation criteria must be stated in the solicitation. Provide the same information to all bidders. Give bidders a deadline for responding. Do not share the price information with other bidders until after you have made the award.

The request for proposal process allows you to have discussions with vendors. You can also have vendors make changes to their proposals by requesting best and final offers. The request for proposal process is appropriate for equipment, information technology, and professional services. State of ND agencies visit the OMB State Procurement internal website for checklists and templates to help you conduct a competitive request for proposal process. Transit subrecipients see the attached checklists (*Attachments 30-33*).

### 7.10 NORTH DAKOTA PREFERENCE LAWS – RECIPROCAL PREFERENCE

If you are receiving multiple quotes, you need to be aware of "preference" laws that apply if you receive bids or proposals from out of state or nonresident vendors. The term "preference" as it relates to government purchasing is an advantage in consideration for award of a contract given to particular types of vendors. If you receive bids or proposals from nonresident bidders, contact your lead procurement officer for assistance in determining whether or not preference laws apply.

- The reciprocal preference law (N.D.C.C. § [44-08-01](#)) requires the preference given to a resident

North Dakota bidder be equal to the preference given or required by the state of the nonresident bidder. This is commonly called “reciprocal preference.” A bidder is “resident” if it maintains a bona fide place of business within North Dakota for at least one year prior to the date the contract was awarded (N.D.C.C. § [44-08-02](#)).

- You do not need to apply a preference if you receive quotes from only North Dakota vendors or only nonresident bidders. Apply preference when there is a mix of North Dakota and nonresident bidders. You also do not need to apply a preference if no vendors are from states with preference laws.

If the nonresident bidder’s state has a preference law, increase the nonresident bidder price by the same percentage. For example:

*A nonresident bidder submits a bid price of \$8,000. Laws in that bidder’s state of residence require a 5% preference for vendors who are resident in that state. Increase the nonresident bidder’s price by 5% before evaluation (\$400). So, you must evaluate the nonresident’s bid as \$8,400.*

North Dakota also has preference laws for certain commodities and services.

- Coal. N.D.C.C. § [48-05-02.1](#)
- Food. 2003 Senate Concurrent Resolution No. 4018
- Environmentally Preferable Products – Bio-based Products. N.D.C.C. § [54-44.4-07](#)
- Paper, Recycled. N.D.C.C. § [54-44.4-08](#)
- Printing. N.D.C.C. § [46-02-15](#) and [Guidelines for State Procurement of Printing](#).
- Soybean-based Ink. N.D.C.C. § [54-44.4-07](#)
- American Flags. N.D.C.C. § [44-08-22](#)
- Direct Manufacturer Motor Vehicle Sales Prohibited. N.D.C.C. § [39-22-25](#)
- Work Activity Centers. N.D.C.C. § [25-16.02](#)
- Work Activity Centers - Construction Stakes. N.D.C.C. § [25-16.2-02](#)

See the OMB [Guidelines to North Dakota Purchasing Preference Laws](#) for more information

Transit subrecipients must contact the NDDOT Transit Section for questions on purchases using federal and state funds.

If a subrecipient is part of a political subdivision, local rules may also apply.

#### 7.11 TIE BIDS OR PROPOSALS – STATE OF ND EMPLOYEES - ONLY

If two or more bidders offer equal prices or receive equal evaluation scores after any reciprocal preference is applied.

Preference must first be given to bids submitted by North Dakota vendors (N.D.C.C. § [44-08-01.1](#)).

If a tie remains, preference must be given to approved vendors on the State Bidders List (N.D.C.C. § [54-44.4-09\(4\)](#)).

If a tie still remains, award shall be made accordance with N.D.A.C § [4-12-11-05](#).

#### 7.12 ONLY ONE BID OR PROPOSAL RECEIVED

When only one bid or proposal is received, attempt to find out why the competitive process failed. The specifications and other requirements of the solicitation must be reviewed to ensure competition was not restricted. The situation must be handled in accordance with N.D.A.C. § [4-12-11-08](#).

#### 7.13 PROTESTS

A vendor may protest a solicitation or award decision in accordance with N.D.C.C. § [54-44.4-12](#) and N.D.A.C. Chapter [4-12-14](#).

If you receive a protest, you must follow the laws and rules related to responding to protests. Contact your agency’s lead procurement officer and legal counsel for assistance. See the [protest response \(Attachment](#)



36) template.

## Chapter 8: Level 4 Formal Purchase Procedures

<b>Level 4 Formal Purchase</b>  \$100,000 and over	<p>Must be purchased using formal sealed bids or Request for Proposal (RFP). Solicitations must be posted using SPO Online with appropriate state bidders list. May send to additional bidders.</p> <p>State agencies: ITD must review IT purchases over \$25,000. Contact <a href="mailto:itdprocurement@nd.gov">itdprocurement@nd.gov</a></p> <p><b>Transit subrecipients:</b></p> <p>SPO Online is not available for Transit Subrecipients.</p> <p>If purchasing ADA vehicles off the State Bid, approval required from the Transit Section before ordering. Contact <a href="mailto:transitnd@nd.gov">transitnd@nd.gov</a></p> <p>Assets (vehicle, equipment, software, facility, etc.) must be added to Inventory in the BlackCat System if \$5,000 or greater.</p> <p><b><u>Documentation is required.</u></b></p> <p><u>Alternate Procurement form</u> required if:</p> <ul style="list-style-type: none"><li>• Competition is limited or not solicited, or competition is limited.</li><li>• SPO Online is not used. SPO Online is not available for Transit Subrecipients.</li></ul> <p><b>Transit subrecipients:</b> Approval required before purchase. Contact <a href="mailto:transitnd@nd.gov">transitnd@nd.gov</a></p>
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### 8.1 LEVEL 4 FORMAL PURCHASE PROCEDURES

Solicit using formal sealed Invitation for Bid (IFB) or Request for Proposals (RFP) for purchases of \$100,000 and over. Procurement rules allow for these purchases to be made using adequate procedures to ensure goods and services are obtained at a fair and reasonable price, which includes using the Invitation for Bid template or Request for Proposal Template (*Attachments 17 & 44*) and post to the SPO Online. The terms "bids", "quotes" or proposals are used interchangeably (N.D.C.C. § [54-44.4-11](#), N.D.A.C. § [4-12-08-02](#)).

Transit Subrecipients – Level 4 purchases require NDDOT Transit Section prior approval. SPO Online can only be used by State Agencies. Transit subrecipients must use the IFB or RFP templates, advertise, and solicit informal bids or proposals on their own.

Transit subrecipients are required to complete the Procurement File Checklist (*Attachments 30-33*) – Formal Purchase and maintain a file containing all documentation relating to the formal purchase. The checklist must be submitted to the NDDOT Transit Section for each formal purchase with the request for reimbursement.

### 8.2 ESTIMATED PURCHASE PRICE

The estimated price is needed to verify that adequate funds are available, determine what level of competition is required, and ensure the procurement officer has delegated purchase authority to make the purchase. Estimated price may be based upon previous purchases, market research, a published price list, or asking a vendor for a budgetary estimate. Consider the following:

- Goods. The entire amount of the purchase price including all shipping and handling, and all other related charges, such as installation or maintenance agreements. Generally, shipping costs can be estimated at 15%.
- Leases. The entire amount of an equipment lease is based upon all payments over the lease term, including any options for extension or renewals. For example, the value of a 24-month equipment lease with monthly payments of \$400 is \$9,600.
- Services. The entire amount of a service contract includes the initial term and all possible extension or renewal options. For example, the value of a one-year contract estimated at \$5,000 per year with three renewal options is \$20,000.
- Artificial Fragmentation Prohibited (N.D.A.C. § [4-12-04-08](#)). Procurement requirements may not be artificially divided as to constitute a small purchase [N.D.C.C. § [54-44.4-11\(3\)](#)].  
Artificial fragmentation means splitting purchase requirements or splitting an invoice to stay below a certain dollar level to avoid competition or stay within delegated authority limits.

Transit subrecipients should perform an independent cost estimate (ICE) to establish the anticipated cost or price to be paid for an item, service, or project that is developed by an entity or entities not associated with the item, service or project to be procured. To be considered “independent,” the estimate cannot be developed by any potential source, supplier, or provider of the item, service, or project. However, it is acceptable to have an “independent” third party develop the estimate for the purchasing activity as long as that party has no interest in bidding or offering on the procurement.

An ICE is required for all procurement that meet the simplified threshold.

For more complex procurements, the ICE represents the documented result of a practical and unbiased analysis, assessment, and quantification of all costs and risks associated with a particular procurement. The ICE serves as an essential tool for conducting the subsequent required cost or price analysis. The NDDOT Transit Independent Cost Estimate (ICE) form (*Attachment 23*) should be completed and maintained as part of the procurement file.

### 8.3 SELECTING A BIDDER

After you have developed the specifications, you need to select bidders from whom you can solicit a quote from for your Level 4 purchase. You have many options, including:

- State Bidders List. OMB is required to maintain a Bidders List. You can find the bidders list on the [State Procurement Online \(SPO\) system](#). You are not required to use the Bidders List for purchases under \$10,000, but it is a good source for finding potential bidders.
- Printing Preference. If you are purchasing printing, you must comply with the North Dakota state law that requires all public printing, binding, and blank book manufacturing must be awarded to a resident North Dakota bidder (N.D.C.C. § [44-08-02](#)). Get quotes for printing from North Dakota bidders, unless it is determined to be not practicable (N.D.A.C. § [4-12-16-01](#)). See the [Guidelines for State Procurement of Printing](#). State of ND Employees - ONLY.
- ND Secretary of State Registration. North Dakota Secretary of State business registration requirements are based upon the circumstances of the procurement, not the dollar value. It is always preferable to have a bidder register with the Secretary of State, as it provides much greater legal protection for the state. See the Guidelines to Vendor Registration (State of ND Employees – ONLY) to determine if registration is required. Check the ND Secretary of State [Business Records Search](#) to see if a vendor is registered.
- Contractors, Professional and Occupational Licenses. Certain types of businesses and individuals in certain professions or occupations are subject to licensing or registration with a state regulatory board or agency. If you are purchasing something that requires the contractor to have a North Dakota license, permit, or registration, be sure to obtain proof that they have complied with this requirement before award. Visit the [NDSU Extension Service website](#) for a list of licenses



required by the state.

- [List of Debarred and Suspended Vendors](#). OMB State Procurement maintains a list of vendors who have been debarred or suspended from doing business with the State. Do not get quotes from suspended or debarred vendors (N.D.A.C. § [4-12-05](#)). Some agencies and institutions also have requirements to check the Federal Debarred vendor list, so check your internal procurement policies.
- [Federal Vendor List of Debarred and Suspended](#) – [SAM.gov | Home](#)
  - a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs for a contract in the amount of at least \$25,000
    - (7) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
    - (8) C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
    - (9) The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency and subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

#### 8.4 FORMAL SOLICITATIONS

Formal solicitations require sealed proposals. Proposals can be received by mail, delivery service, or SPO Online secure electronic receipt. Proposals cannot be submitted by email or fax, unless a third party to place in a sealed envelope and deliver to the receiving address.

Transit Subrecipients – Level 4 purchases require NDDOT Transit Section prior approval. SPO Online can only be used by State Agencies. Transit subrecipients must use the IFB or RFP templates (*Attachments 17 & 44*), advertise, and solicit formal bids or proposals on their own.

#### 8.5 CLARIFICATIONS OR AMENDMENTS TO THE SOLICITATION

After the solicitation is issued, carefully consider any questions or criticisms raised by potential bidders about the solicitation. If you need to make a correction or modification, notify each bidder you solicited in the same manner as the original solicitation (verbal or written). State of ND Employees see the OMB State Procurement internal website for a sample Solicitation Amendment. Transit subrecipients see attached sample Solicitation Amendment (*Attachment 49*).

#### 8.6 RECEIVING RESPONSES

The method you used to contact vendors will determine how you receive responses. Informal bids and proposals may be viewed immediately. If responses are received from all bidders solicited, response may be evaluated, and an award made. Document all bidders solicited and their responses, including those that responded with a “no bid”. Send a [Rejection Letter template](#). (*Attachment 3*) If any responses are received late. Bidders may not change their responses after the deadline.

#### 8.7 EVALUATING RESPONSES

When evaluating bids or proposals, you can only consider those requirements or evaluation criteria specifically stated in the solicitation.

- “Responsive Bidder” means a firm or person who submits an offer that conforms to the requirements of the solicitation. Failure to meet specifications and submission of a late bid are common reasons for declaring a bid “not responsive”. Compare the offered products or service to

the specifications and requirements stated in the solicitation. A bid or response that did not meet a stated minimum requirement must be rejected (ref N.D.A.C § [4-12-11-03](#)).

- “Responsible Bidder” means a firm or person who is capable of performing the work. If you suspect a bidder is not responsible, see N.D.A.C. § [4-12-11-04](#).
- Price Evaluation: If bids or proposals are received from nonresident bidders, apply any reciprocal preference (see Chapter 8.10 of this plan). Determine the lowest priced, responsive bid or proposal. Be sure each bidder’s total price includes all shipping, handling, and installation costs, if any. Discounts for prompt payment or cash discounts can only be considered if so stated in the solicitation.

When evaluating proposals, the lowest priced proposal receives the maximum points for cost. Points for higher-priced proposals can be calculated:

- Price of Lowest Cost Proposal  
Price of Proposal Being Rated X Number of Points = Awarded Points
- Discussions, negotiations, and best and final offers: No discussions or negotiations are permitted with competitive bidding. See N.D.A.C. §[4-12-08-04](#) and chapter §[4-12-12](#) for guidance about discussions, negotiations and best and final offers within an RFP process.
- Compare all-or-none, group, or split award: the solicitation should indicate whether the buyer intends to award all items to the one contractor (all or none award), award by category items (group award), or award each item separately (split award). If the solicitation or bidder’s response did not specify whether the award would be an all-or-none or split award, the procurement officer has discretion to make that determination. The administrative costs of issuing multiple purchase orders may be considered to determine whether a split award will be advantageous. As a general rule of thumb, the administrative cost to issue a purchase order is \$50.
- Multiple Awards: A multiple award means that two or more bidders will be awarded contracts for similar products or services. The intent to make a multiple award must be stated in the solicitation, and the procurement officer must make a determination that a multiple award is in the best interest of the state. See N.D.C.C. § [54-44.4-051](#)(1) and N.D.A.C. § [4-12-11-07](#).

### 8.8 FAIR AND REASONABLE PRICE

The procurement officer must perform a cost analysis before awarding a contract to determine if the bids provided are fair and reasonable. See NDDOT Transit Cost/Price Analysis and Price Reasonableness form (*Attachment 22*). This analysis must be used in conjunction with the independent cost estimate created prior to the solicitation of price quotes for all types of procurements. The type (price or cost) and degree of analysis is dependent of the facts surrounding the particular procurement situation. In general, the rule behind whether to do a PRICE or COST analysis is the following:

- Price analysis (which is comparing quotes to catalog or market prices, via previous contracts or comparison with other competitive proposals) may be performed for most procurements.

Sources of information that are available to conduct a price analysis include:

- Comparisons with other competitive proposals
  - Previous contracts
  - Catalog or market prices
  - Historical prices and trending
  - Independent cost estimates
- Cost analysis (which includes examining variance from the independent estimate as well as the differences between bids recorded, rather than assuming that open market pricing always equates to appropriate pricing) must be performed for procurements that:
    - Require the contractor to submit estimates for labor hours, overhead, and materials

- Result in a situation where price competition is lacking
- Consist of a sole source procurement.

If the quote is fair and reasonable, you can award to the bidder. Keep documentation of the quote in your procurement file.

#### 8.9 GETTING MULTIPLE PROPOSALS

Sometimes you are purchasing equipment, software or services for which it is difficult to write detailed specifications, or you would like to have an evaluation process.

Competitive proposals are a procurement strategy in which award is made to the responsible vendor whose proposal is determined to be most advantageous based upon cost and other evaluation criteria. The related weight of cost and the other evaluation criteria must be stated in the solicitation. Provide the same information to all bidders. Give bidders a deadline for responding. Do not share the price information with other bidders until after you have made the award.

The request for proposal process allows you to have discussions with vendors. You can also have vendors make changes to their proposals by requesting best and final offers. The request for proposal process is appropriate for equipment, information technology, and professional services. State of ND agencies visit the OMB State Procurement internal website for checklists and templates to help you conduct a competitive request for proposal process. Transit subrecipients see the attached checklists (*Attachments 30-33*).

#### 8.10 NORTH DAKOTA PREFERENCE LAWS – RECIPROCAL PREFERENCE

If you are receiving multiple quotes, you need to be aware of “preference” laws that apply if you receive bids or proposals from out of state or nonresident vendors. The term “preference” as it relates to government purchasing is an advantage in consideration for award of a contract given to particular types of vendors. If you receive bids or proposals from nonresident bidders, contact your lead procurement officer for assistance in determining whether or not preference laws apply.

- The reciprocal preference law (N.D.C.C. § [44-08-01](#)) requires the preference given to a resident North Dakota bidder be equal to the preference given or required by the state of the nonresident bidder. This is commonly called “reciprocal preference.” A bidder is “resident” if it maintains a bona fide place of business within North Dakota for at least one year prior to the date the contract was awarded (N.D.C.C. § [44-08-02](#)).
- You do not need to apply a preference if you receive quotes from only North Dakota vendors or only nonresident bidders. Apply preference when there is a mix of North Dakota and nonresident bidders. You also do not need to apply a preference if no vendors are from states with preference laws.

If the nonresident bidder’s state has a preference law, increase the nonresident bidder price by the same percentage. For example:

*A nonresident bidder submits a bid price of \$8,000. Laws in that bidder’s state of residence require a 5% preference for vendors who are resident in that state. Increase the nonresident bidder’s price by 5% before evaluation (\$400). So, you must evaluate the nonresident’s bid as \$8,400.*

North Dakota also has preference laws for certain commodities and services.

- Coal. N.D.C.C. § [48-05-02.1](#)
- Food. 2003 Senate Concurrent Resolution No. 4018
- Environmentally Preferable Products – Bio-based Products. N.D.C.C. § [54-44.4-07](#)
- Paper, Recycled. N.D.C.C. § [54-44.4-08](#)
- Printing. N.D.C.C. § [46-02-15](#) and [Guidelines for State Procurement of Printing](#).
- Soybean-based Ink. N.D.C.C. § [54-44.4-07](#)
- American Flags. N.D.C.C. § [44-08-22](#)
- Direct Manufacturer Motor Vehicle Sales Prohibited. N.D.C.C. § [39-22-25](#)

- [Work Activity Centers. N.D.C.C. § 25-16.02](#)
- [Work Activity Centers - Construction Stakes. N.D.C.C. § 25-16.2-02](#)

See the OMB [Guidelines to North Dakota Purchasing Preference Laws](#) for more information

Transit subrecipients must contact the NDDOT Transit Section for questions on purchases using federal and state funds.

#### 8.11 TIE BIDS OR PROPOSALS – STATE OF ND EMPLOYEES - ONLY

If two or more bidders offer equal prices or receive equal evaluation scores after any reciprocal preference is applied.

Preference must first be given to bids submitted by North Dakota vendors (N.D.C.C. § [44-08-01.1](#)).

If a tie remains, preference must be given to approved vendors on the State Bidders List (N.D.C.C. § [54-44.4-09\(4\)](#)).

If a tie still remains, award shall be made accordance with N.D.A.C § [4-12-11-05](#).

If a subrecipient is part of a political subdivision, local rules may also apply.

#### 8.12 ONLY ONE BID OR PROPOSAL RECEIVED

When only one bid or proposal is received, attempt to find out why the competitive process failed. The specifications and other requirements of the solicitation must be reviewed to ensure competition was not restricted. The situation must be handled in accordance with N.D.A.C. § [4-12-11-08](#).

#### 8.13 PROTESTS

A vendor may protest a solicitation or award decision in accordance with N.D.C.C. § [54-44.4-12](#) and N.D.A.C. Chapter [4-12-14](#).

If you receive a protest, you must follow the laws and rules related to responding to protests. Contact your agency's lead procurement officer and legal counsel for assistance. See the [protest response](#) template (*Attachment 36*).

## **Chapter 9: Making the Award**

### 9.1 MAKING THE AWARD

You are ready to make the purchase or "award" a contract after you confirm the goods or services the bidder is offering meet your specification and the price is fair and reasonable. You have several options for making the purchase and paying the vendor. Check with your agency or institution Lead Procurement Officer for internal procedures related to methods of making the award.

### 9.2 PURCHASE ORDERS

A purchase order is a written document to a vendor that formalizes all the details of a purchasetransaction, such as a description of the requested item, price, and delivery date.

- [PeopleSoft/Oracle Purchase Order \(PO\) system](#). OMB and NDUS have a PeopleSoft/Oracle Purchase Order system. This system is integrated with the PeopleSoft/Oracle Receiving and Accounts Payable applications, so receiving and payment can be done on-line. Contact your procurement or finance department. Visit the [OMB website](#) for more information.
- [Field Purchase Order, SFN 53329](#). Field purchase orders are padded into books and can be handwritten. Purchase the field purchase order books from OMB Central Supply.
- [Terms and Conditions](#). Terms and conditions are usually contained in the bid document and incorporated into the Purchase Order by reference. Simply type on the purchase order, "The

attached terms and conditions of (Solicitation Type, Number, and Date) are incorporated and made part of this purchase order by reference.”

### 9.3 CONTRACTS USING ATTORNEY GENERAL SAMPLE CONTRACT

The Office of the Attorney General [Contract Drafting and Review Manual](#) includes contract templates. Visit the OMB website to obtain [templates](#) (*Attachment 10*) that you can customize for your purchase.

A contract will be issued for most service contracts and term contracts. Use the Office of the Attorney General Contract and Review Manual and Sample Service Contract to create a contract appropriate for the good or service being procured. Ensure the final contract contains the statement of work agreed upon between the state and the successful vendor and incorporate all the terms and conditions from the solicitation. Be sure to have the agency’s legal counsel review any changes to the standard clauses.

### 9.4 VENDOR-PROVIDED CONTRACTS

If a vendor gives you a contract or agreement, be sure to have legal counsel review the document before you sign it. Contracts are usually written to protect the party that drafted the contract. The vendor contract or agreement may contain “terms and conditions” that the state cannot legally agree to accept. It is imperative to make modifications to these contracts to ensure the state is properly protected.

## **Chapter 10: Receiving, Contracting, and Closeout**

### 10.1 RECEIVING, INSPECTION, AND ACCEPTANCE

The procurement officer’s role in the procurement process should continue until the goods are delivered or the services have been performed. Purchase order or contract administration, which includes receiving, inspecting, acceptance, problem resolution, and payment is very important. The best specifications and broadest competition are wasted efforts if the state pays for goods received or services rendered that do not meet the requirements of the purchase order or contract.

- Follow-up. Ensure outstanding purchase orders and contracts are monitored to prevent missed deadlines, especially if the good or service is urgently needed. Document all communications with a vendor about outstanding orders. If your request needs an earlier delivery than originally agreed, you may need to authorize special shipping (usually at an additional cost).
- Deliveries. Delivery is expected at the time agreed upon when the order was placed. Although early deliveries are usually welcomed, an early delivery may be rejected if the delivery imposes a hardship for the agency. If a delivery is late, send a written notice to the contractor and require a written response explaining why delivery is late and when delivery can be expected. If the vendor’s explanation and alternate delivery time are acceptable, document the file and communicate the new delivery date to the end-user. Contact your agency’s procurement section for assistance.
- Receiving, Inspection, and Acceptance. When goods are delivered or services rendered, your agency must ensure that there is an inspection process. The goods or services need to be compared to your agency’s requirements. Ensure that your agency received what was expected before you make payment. Inspect goods and services as soon as possible after delivery to ensure compliance with the specifications. Promptly notify the vendor if the good or service fails to meet specifications or damaged goods are received.

### 10.2 INVENTORY – FIXED ASSET REPORTING

Equipment and software valued at \$5,000 and over must be reported as fixed assets (N.D.C.C. § [54-27-21](#)). Contact your agency or institution’s asset manager.

### 10.3 AMENDMENTS AND CANCELLATIONS

Sometimes changes or mistakes are discovered after you have made an award. On occasion, administrative errors, omissions, or changing circumstances may create a need to cancel or amend a purchase order or contract after it has been issued.

- You cannot allow a change that would change the award decision (N.D.A.C. § [4-12-10-06](#))
- You cannot amend a contract to avoid competition requirements. (N.D.A.C. § [4-12-13](#))

See the OMB website for a [Sample Contract Amendment](#) template (*Attachment 8*). [Administrative Rules](#) address mistakes after award. Contact your Lead Procurement Officer for assistance.

#### 10.4 CONTRACT AMENDMENT EXCEPTION APPROVAL

The alternate procurement form has a provision for contract amendment exceptions. A contract amendment exception may be appropriate:

- If you conducted the level of competition required and there is an unavoidable change that causes the purchase price to exceed the threshold. For example, you conducted a Level 1 procurement and had to amend the contract resulting in the contract exceeding \$10,000.
- If a contract has no remaining extensions or renewals, but unanticipated circumstances make extension of the contract period necessary.

You must obtain an Alternate Procurement approval. State of ND Agencies contact your lead procurement officer or the State Procurement Office. Transit subrecipients must contact the NDDOT Transit Section for approval.

#### 10.5 CONTRACT PROBLEMS

If the goods do not meet specifications or the services were not rendered satisfactorily, notify the contractor immediately. Demand corrective action in writing. Be sure to document all your communication with the vendor. See the OMB website for a [Default Letter](#) template (*Attachment 9*).

Please let the State Procurement Office know about problems with state contracts, vendors, defective products, or anything else purchasing related. Submit a complaint using the SPO Work Request System or email to [infospo@nd.gov](mailto:infospo@nd.gov). OMB can suspend or debar vendors from the State Bidders List (N.D.A.C. § [4-12-05](#)).

**Transit Subrecipients** – After the procurement is complete, the recipient is responsible for ensuring that the product or services procured are actually received.

The recipient should identify a person within their agency to oversee the contract and to be responsible for the following activities:

- Understand the nature of the solicitation, what was agreed to as part of the negotiations, and the structure and substance of the contract.
- Monitor the contract to ensure there is no scope creep, cardinal changes, or add-ons.
  - Scope creep is when small changes in service levels or commodity purchases are made to multi-year agreements over a period of time, resulting in a large change from the original procurement.
  - Cardinal changes are major deviations from the original purpose of the work or the intended method of achievement, or a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract.
  - Add-ons are adding quantities on to the contracted quantities (base and option) as originally advertised, competed, and awarded, whether for the use of the buyer or for others and then treating the add-on portion as though it met the requirement of the original competition.
  - If modifications are required, complete the necessary paperwork listed in the appendices of the respective toolkit. Work with the person who conducted the procurement to complete the required paperwork.
  - For additional information: FTA Circular 4220 Third-Party Contracting Guidance
- Track the progress of the project.
  - Document the progress, deliverables reached, and decisions made.
    - If the contract requirements are not being met, document the areas of non-compliance. Discuss areas of non-compliance with the contractor, document the conversations and timeframe and deliverables of corrective actions. Discuss and document issues such as if the project is on time and on budget? If not, discuss and document what needs to happen to get it back on track?
  - Ensure that contract invoicing is consistent and compliant with contract provisions

- Key documents in the contract administration file:
  - Statement of Work
  - Required Reports
  - Documentation necessary to review, approve and pay invoices
- Manage the project throughout the life of the contract.
  - If there are multiple years to the contract, know when the contract was executed, the original term of the contract (1 year or 2 years), were the options included in the contract, is a new solicitation needed. If it's in an option year, there is documentation needed to be completed a couple of months before the contract expires. If a new solicitation is needed, it should be started 6-12 months before the current contract expires.
  - If the contract has an option year(s), verify and document the following:
    - The price for the current year is fair and reasonable. Check the contract to see if there is an escalator/de-escalator based on Consumer Price Index (CPI) or Producer Price Index (PPI). If CPI or PPI is the only factor, and the contractor is willing to sign an *Exercise of Options* to extend the contract for another year at the existing price, submit written documentation supporting that decision.
    - If recipient does not execute an exercise of option year, then procurement must be resolicited.
    - Whether the contractor has performed as required in the contract. If not, consider resoliciting for a contractor that can perform satisfactorily.
    - The statement/scope of work for the next year. Check with all personnel that may be affected by the contract to verify completeness of the statement of work. Keep in mind, the scope of work must be consistent with the contract and should not include scope creep or cardinal changes.
    - Obtain signed federal clauses for each option year.
  - *For Commodities*

Verify the item received was the item on the purchase order. Complete any necessary paperwork and/or reporting. The recipient must ensure that the commodity met the specifications and document in writing any changes that may have been made in the procurement process. If the item does not meet the contract requirements, notify the contractor immediately. Payment must be held from the contractor until all contract requirements are met.
  - *For Services:*
    - Verify the service procured is thoroughly completed. A detailed statement of work must be included as part of the contract so both the recipient and the contractor understand the contract terms. Complete any necessary paperwork and/or reporting. If the service does not meet the contract requirements, notify the contractor in writing as soon as there is deviation from the contract. Develop a plan to allow the contractor to achieve compliance with the contract. A payment made for a service indicates acceptance that the service met all contractual requirements. Payment must be held from the contractor until all contract requirements are met.

Remember, don't tolerate poor performance – do something about it!

## 10.6 PAYMENT

After you have received and inspected the goods or services, you will need to make payment to the vendor. Be sure vendors receive payment in a timely manner.

- State Purchasing Card. Use the state purchasing card whenever possible. The state purchasing card saves time and money because the vendor is paid by the credit card company. Agencies and institutions avoid the work of processing payments by ACH or check.



The State also receives rebates from the purchasing card provider. Visit the OMB Financial website for more information about the [Purchasing Card Program](#). State of ND Employees - ONLY.

- [Supplier Registration/IRS Form W-9](#). If you are paying by check or Automated Clearing House (ACH) vendors may need to be set up as Suppliers in PeopleSoft. OMB [Fiscal Policy 110](#) requires all suppliers to complete an IRS Form W-9. Higher Education institutions should check with their Finance office. For state agencies, vendors can complete an online registration: See the OMB website [Vendor Payments](#). NDUS Institutions check with your Finance Office for Supplier Registration requirements and procedures.
- [IRS 1099 Reporting](#). Most services over \$600 require IRS 1099 reporting. Check with your agency finance department. See the OMB [Fiscal Policy 110](#) and the website [1099 Reporting](#).
- [Advanced Payments](#). Generally, the state does not make advanced payments for goods and services. Advanced payment is appropriate in some circumstances, such as a subscriptions, postage, and equipment rental.
- [Vouchers](#). On occasion, purchases are made without using a purchasing card, purchase order, or contract. For example, maintenance is required on office equipment, and the service provider leaves an invoice. Agencies should develop internal procedures for these situations. These expenses can be paid on a voucher. Contact your Finance Department or OMB Fiscal Division for assistance.

#### 10.7 OPEN RECORD REQUESTS

Vendors commonly ask for information about contract awards, evaluations, and request copies of other vendor's bids and proposals.

- Bids become open records after the deadline for receipt. (N.D.C.C. § [44-04-18.4](#), [54-44.4-05](#))
- Proposals become open records upon notice of award. (N.D.C.C. § [44-04-18.4](#), [54-44.4-10](#))

You also must be careful not to release information that is confidential. Contact your legal counsel if you receive an open records request for a bid or proposals that a vendor claims to be confidential.

#### 10.8 DOCUMENTATION

Each procurement transaction must be adequately documented for audit and public record purposes. All required procurement documentation must be maintained in accordance with governing records retention requirements. (NDUS – see [SBHE 803.1](#) Purchasing)

Under the state Records Retention requirements, you must maintain documentation of the transaction. The records retention requirements vary depending upon the award and payment method selected.

Examples of current NDDOT Transit Section record retentions are:

- Purchase orders/Requisitions funded by Rural Transit Funds (5311) have a record retention of 3 years after the grant is closed
- Vehicle purchases have a record retention of life of the asset plus 3 years
- Buildings have a record retention of life of the asset plus 3 years

## **Chapter 11: Emergency Purchases**

### 11.1 EMERGENCY PURCHASES

Emergency purchases are defined in N.D.C.C. § [54-44.4-02 \(7\)](#) as purchases that OMB cannot make within the required time that involve public health or public safety, or where immediate expenditures are necessary for repairs of state property to protect it against further loss or damage, or to prevent or minimize serious disruption in state services.

Emergency purchases must be made with the level of competition practicable under the circumstances. A



written determination of the basis for the emergency and selection of the particular contractor must be included in the contract file. An [Emergency Purchase Explanation form](#), SFN 51627 must be completed and promptly forward to the OMB State Procurement Office after the purchase has been made. See N.D.A.C. § [4-12-09-04](#).

#### 11.2 URGENT – NON-EMERGENCY PURCHASES

Sometimes an unexpected requirement or poor planning creates an immediate need for goods or services, but the circumstance is not an “emergency” as defined in law. A noncompetitive procurement cannot be justified on the basis of a lack of advanced planning, administrative delays, or pending expiration of budget authority. [N.D.A.C. § [4-12-09-03\(2\)](#).]

If the purchasing is \$10,000 and over, an Alternate Procurement form must be approved by the State Procurement Office prior to deviating from the purchasing threshold competition requirements based upon the estimated purchase price. Complete an [Alternate Procurement Request form](#), SFN 51403 to request approval to make a limited or competitive procurement. See N.D.A.C. § [4-12-09-04\(1\)](#). NDUS institutions contact your purchasing department.

## **Chapter 12: Special Procedures**

Certain goods and services require special procedures.

#### 12.1 REFRESHMENTS

Any purchases of refreshments must comply with OMB [Fiscal Policy 515](#) – Coffee and Soft Drink Expense. Coffee and soft drinks may be purchased by state agencies for meetings to inform and train the general public, interested parties, consultants, etc. Coffee and soft drinks for state employees’ during staff meetings are not allowed.

#### 12.2 MICROFILM EQUIPMENT AND SERVICES. – State of ND Employees - ONLY

All state agencies and institutions, except institutions under the State Board of Higher Education, must obtain approval from Information Technology Department, Records Management Division, before purchasing or leasing any microfilm equipment or services (N.D.C.C. § [54-46.1-05](#)). Contact ITD Records Management Division at 701-328-3585 regarding approval requests.

#### 12.3 POSTAGE METERS. – State of ND Employees - ONLY

OMB Facility Management Division must approve the lease or rental of all postage meters by all state agencies. Agencies must submit an annual report of total postage used (N.D.C.C. § [54-06-18](#) and OMB [Fiscal Policy 111](#)). Contact OMB Facility Management at 701-328-2481 to request approval.

#### 12.4 DESKTOP SUPPORT SERVICES – State of ND Employees - ONLY

N.D.C.C. § [54-59-22.1](#) requires specific state agencies to obtain centralized desktop support services from the Information Technology Department. Desktop support means, “technical assistance and device management related to the use of personal computers and peripheral devices. Agencies subject to this requirement must coordinate with ITD Help Desk at 701-328-4470. See ITD [Desktop Support Service Level Agreement](#).

#### 12.5 FLAGS – State of ND Employees - ONLY

Use the [state contract](#) for Flags to ensure your agency complies with these laws.

- [North Dakota Flags](#). Reproductions of the North Dakota flag are required by law to adhere to the official design and industry color chart codes provided by the state historical society. Flags purchased by a state entity or a political subdivision must substantially meet the requirements of N.D.C.C. § [54-02-02](#).
- [American Flags](#). Under N.D.C.C. § [44-08-22](#), American flags purchased by a state entity or any political subdivision must be manufactured in the United States; this requirement does not apply to the purchase of items that portray the likeness of a flag.

#### 12.6 INFORMATION TECHNOLOGY – State of ND Employees - ONLY

If you are planning to purchase information technology hardware, software, software maintenance, or services over \$25,000 that are not on a state term contract, submit the request to ITD for prior approval in accordance with North Dakota Enterprise Architecture Standard [STD-ITD-001](#). Major Information Technology contracts estimated to cost over \$500,000 are subject to NDCC § [54-59-32](#). Contact ITD

Planning Division at 701-328-1992 for assistance.

#### 12.7 MOTOR VEHICLES – State of ND Employees - ONLY

North Dakota Department of Transportation, State Fleet Services, must purchase or lease motor vehicles for state agencies (N.D.C.C. § [24-02-03.3](#)). Contact State Fleet Services at 701-328-2543 or visit [www.dot.nd.gov/](http://www.dot.nd.gov/). When purchasing new motor vehicles, the state must comply with N.D.C.C. § [39-22-25](#) related to a prohibition of direct manufacturer sales of new motor vehicles.

#### 12.8 INSURANCE

Insurance is subject to special requirements:

- Fire and Tornado Insurance. State property must be insured with the North Dakota Insurance Department, State Fire and Tornado Fund. The State Fire and Tornado Fund provides affordable building and business personal property insurance coverage to state entities and political subdivisions (N.D.C.C. § [26.1-22](#)). Learn about coverage, rates, and filing claims by calling the North Dakota Insurance Reserve Fund (NDRF) at 701-224-1988 or visit its website at [www.ndirf.com](http://www.ndirf.com).
- Flood Insurance: All flood insurance policies, regardless of the company, are underwritten through the National Flood Insurance Program (NFIP). The Office of the State Engineer is the State NFIP Coordinator. Flood insurance may be purchased directly from any licensed property insurance agent. Flood insurance purchased over and above the NFIP coverage limits must use state procurement procedures. Contact the Office of the State Engineer at 701-328-4898 or [swc@nd.gov](mailto:swc@nd.gov) for assistance in evaluating whether your agency should obtain flood insurance and NFIP flood hazard mapping. Additional information is available on the State Water Commission Special Projects website at [www.swc.state.nd.us/](http://www.swc.state.nd.us/)
- Liability Insurance (Reinsurance): The Risk Management Fund provides tort liability coverage for the state and state employees acting within the scope of their employment up to \$250,000 per person and \$1 million per occurrence. OMB, through the Risk Management Fund, is given the authority to decide which state agencies may purchase liability insurance. All liability insurance purchased on behalf of the state must be authorized in writing by the OMB Director (ref. N.D.C.C. Chapter [32-12.2](#)). Reinsurance is insurance coverage purchased to address liability exposure that could exceed the statutory caps of the Risk Management Fund. Reinsurance is insurance coverage purchase to address liability exposure that could exceed the statutory caps of the Risk Management Fund. An agency wishing to purchase this coverage should contact Risk Management at 701-328-7584.
- All Risk Insurance: State of ND Employees - ONLY. Special coverage is available for mobile equipment, portable radios, computers, artwork, and similar property. An agency wishing to purchase this coverage should contact the Risk Management Division at 701-328-7584 or visit the OMB Risk Management Services website State of ND Agencies - ONLY. Transit subrecipients should refer to Guidelines to Managing Contractual Risk (*Attachment 15*).

## Chapter 13: Purchasing Exemptions

### 13.1 EXEMPTIONS BY STATUTE – State of ND Employees - ONLY

Certain goods and services are not subject to state procurement laws. N.D.C.C. § [54-44.4-02](#) states, “The following goods and services, however, are not subject to the procurement requirements of this chapter (N.D.C.C. Chapter [54.44.4](#) State Purchasing Practices):

- Land, buildings, space, or the rental thereof. [Note: Leases for office space off the Capitol grounds must be reviewed by the Office of the Attorney General and approved by OMB Facility Management, N.D.C.C. § [54-21-24.1](#) and OMB Facility Procedures to Complete a State Office Lease and [OMB Leasing State Office Space](#) and [OMB Fiscal Policy 109](#)].
- Telephone and telegraph service and electrical light and power services.
- Public books, maps, periodicals, and technical pamphlets.

- Department of transportation materials, equipment, and supplies in accordance with section [24-02-16](#).
- Procurements by the industrial commission for energy-related programs under chapters [17-05](#), [54-17.5](#), [54-17.6](#), [54-17.7](#), and [54-63](#) and under those statutes in [title 38](#) authorizing the industrial commission to perform well and hole plugging, reclamation work, equipment removal, leak prevention, and similar work.
- Services for the maintenance or servicing of equipment by the manufacturer or authorized servicing agent of that equipment when the maintenance or servicing can best be performed by the manufacturer or authorized service agent, or when such a contract would otherwise be advantageous to the state.
- Emergency purchases. See Chapter 11 of this plan.
- Goods and services costing less than a specified amount as determined by written directive by the director of the office of management and budget.
- Specified goods and services as determined by written directive by the director of the office of management and budget.
- Employee benefit services, trust-related services, and investment management services obtained by an agency with a fiduciary responsibility regarding those services.

### 13.2 EXEMPTIONS BY RULE – State of ND Employees - ONLY

These OMB exemptions are stated in North Dakota Administrative Code (N.D.A.C. [4-12-01-04](#)) certain goods and services have been exempted from state procurement laws and rules:

- Those agencies or institutions governed by the state board of higher education, which are exempt under subsection 5 of North Dakota Century Code section [15-10-17](#) and North Dakota Century Code section [54-44.4-02](#);
- Contracts for services of legal counsel with attorneys who are not employed by the state, pursuant to N.D.C.C. § [54-12-08](#).
- Contracts for public buildings and public improvement contract bids, pursuant to North Dakota Century Code [Title 48](#);
- Contracts for architect, engineer, and land surveying services, pursuant to North Dakota Century Code [Chapter 54-44.7](#);
- Contracts for concessions, pursuant to North Dakota Century Code [Chapter 48-09](#);
- Grant programs, not including procurements using grant dollars [N.D.A.C. § [4-12-01-04 \(1\)\(h\)](#)]
- Professional memberships. [N.D.A.C. § [4-12-01-04 \(1\)\(i\)](#)][10.3](#)

### 13.3 EXEMPTIONS BY OMB WRITTEN DIRECTIVE – State of Employees ONLY

N.D.C.C. § [54-44.4-02](#) gives OMB the authority to exempt specified goods and services and purchases under specified dollar amounts by written directive.

## **Chapter 14: Other Purchasing Laws**

### 14.1 OTHER PURCHASING LAWS

As a Procurement Officer, you need to know the laws that apply to the type of purchase you are making. The Procurement Plan applies to the purchase of goods and services that fall under N.D.C.C. Chapter [54-44.4](#) State Purchasing Practices.

Your agency may need to make purchases that are covered by other purchasing laws. It is important that you recognize these other types of purchases. Consult your legal counsel for assistance to determine which laws apply to the purchase.

If a subrecipient is part of a political subdivision, local rules may also apply.

#### 14.2 CONCESSIONS – State of ND Employees - ONLY

Purchase of Concessions is subject to N.D.C.C. Chapter [48-09](#). Agencies must comply when granting concessions for cafes, restaurants, and confectioneries on public buildings and grounds.

#### 14.3 ARCHITECTS, ENGINEER AND LAND SURVEYING SERVICES

Purchase of Architects, Engineering, and Surveying Services is subject to N.D.C.C. Chapter [54-44.7](#). NDDOT is also required to follow the internal Contract Administration Services Procedure Manual when hiring for A & E services.

#### 14.4 PUBLIC IMPROVEMENT

The OMB State Procurement guidelines are not intended for public improvement and construction contracts covered by N.D.C.C. Title [48](#). Agencies should consult their legal counsel for assistance in determining whether the intended purchase falls under N.D.C.C. § [48-01.2](#) Public Improvement Bids and Contracts or N.D.C.C. § [54-44.4](#) State Purchasing Practices.

“Construction” is defined in N.D.C.C. § [48-01.2-01](#) as “the process of building, altering, repairing, improving, or demolishing any public structure or building or other improvement to any public property. The term does not include the routine operation or maintenance of existing facilities, structures, buildings, or real property or demolition projects costing less than the threshold established under N.D.C.C. § [48-01.2-02.1](#).”

N.D.C.C. § [48-01.2-02](#) specifies the public improvement construction threshold for bidding construction of a public improvement and procuring plans, drawings, and specifications by an architect or engineer. Public improvements over the threshold must be advertised prior to the bid opening, except as otherwise provided when an emergency situation is declared (N.D.C.C. § [48-01.2-04](#)).

Contractor’s License. North Dakota law requires any person engaged in the business of acting in the capacity of a contractor in this state to have a contractor’s license when the cost, value, or price per job exceeds four thousand dollars (N.D.C.C. § [43-07-02](#)).

## MISCELLANEOUS INFORMATION AND TEMPLATES

This section includes additional information and templates to be used in procurements to communicate information between the recipient and prospective bidders or proposers.

Note: *Not all templates pertain to all procurements.*

The attachments are presented in the order shown below:

1. All Federal Clauses
2. Alternate Procurement (AP) Request SFN 51403
3. Bid Proposal Rejection Letter Template
4. Bidders List Application Invitation Template
5. Bond Clauses
6. Confidential Information Determination
7. Conflict of Interest – Confidentiality Evaluator
8. Contract Amendment Template
9. Contract Default Letter Template
10. Contract Template
11. Draft Solicitation Cover Letter
12. Emergency Purchase Explanation SFN 51627
13. FTA Circular 4420.1F Third Party Contracting Guidance
14. FTA Master Agreement (28) 2021-02-09
15. Guidelines to Managing Contractual Risk
16. Informal Request for Quote Template
17. Invitation for Bid Template
18. Lease vs Purchase Cost Benefit Analysis Instructions
19. Lease vs Purchase Cost Benefit Analysis Template
20. Letter of Instruction for Successful Bidder
21. Minor Informality Template
22. ND Transit – Cost, Price and Reasonableness Template
23. ND Transit – Independent Cost Estimate Template
24. Non-disclosure Agreement Contractor Template
25. Notice of Intent – Limited Competition
26. Notice of Intent to Award Template
27. Notice of Intent to Award – Recission Template
28. Only One Bid or Proposal Template
29. Printing Specifications Template
30. Procurement File Checklist – Micro Purchase
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## **ACCESS TO RECORDS AND REPORTS**

a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-Contracts, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.

b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

## **AMERICANS WITH DISABILITIES ACT (ADA)**

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

## **BOND REQUIREMENTS**

**Bid Guarantee.** Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to the Agency. The amount of such guaranty shall be equal to the value or a percentage of the total bid price.

In submitting this bid, it is understood and agreed by bidder that the Agency reserves the right to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [90] days subsequent to the opening of bids, without the written consent of Agency.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of their bid within [90] days after the bid opening without the written consent of the Agency, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent Agency's damages occasioned by such withdrawal, or refusal, or inability to enter into a Contract, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense Agency for the damages occasioned by default, then the undersigned bidder agrees to indemnify Agency and pay over to Agency the difference between the bid guarantee and Agency's total damages so as to make Agency whole.

The undersigned understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

**Performance Guarantee.** A Performance Guarantee in the amount of 100% of the Contract value is required by the Agency to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Contract. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the Agency within ten (10) business days from Contract execution. The Agency requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the Agency and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. Agency may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Agency may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit

for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the Agency if:

1. A bank in good standing issues it. The Agency will not accept a Letter of Credit from an entity other than a bank.
2. It is in writing and signed by the issuing bank.
3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.
4. The Agency is identified as the Beneficiary.
5. It is in an amount equal to 100% of the Contract value. This amount must be in U.S. dollars.
6. The effective date of the Letter of Credit is the same as the effective date of the Contract
7. The expiration date of the Letter of Credit coincides with the term of the contract.
8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the Agency and the Contractor the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

Payment Bonds. A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Agency as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (Agency) and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

## **BUS TESTING**

The operator of the bus testing facility is required to provide the resulting test report to the entity that submits the bus for testing. The manufacturer or dealer of a new bus model or a bus produced with a major change in component or configuration is required to provide a copy of the corresponding full bus testing report and any applicable partial testing report(s) to the Agency during the point in the procurement process specified by the Agency, but in all cases before final acceptance of the first bus by the Agency. The complete bus testing reporting requirements are provided in 49 C.F.R. § 665.11.

## **BUY AMERICA REQUIREMENTS**

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be

obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

## **BYRD ANTI-LOBBYING AMENDMENT**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Agency.”

## **CARGO PREFERENCE REQUIREMENTS**

The contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## CHARTER SERVICE

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that Recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(d);
2. FTA regulations, "Charter Service," 49 C.F.R. part 604;
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
3. Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

## CIVIL RIGHTS LAWS AND REGULATIONS

The following Federal Civil Rights laws and regulations apply to all contracts.

- 1 **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
  - a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
  - b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
- 2 **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal

Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

- 3 **Nondiscrimination on the Basis of Age.** The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
- 4 **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

### **Civil Rights and Equal Opportunity**

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are

employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.
4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
5. **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

## **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

### Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et

seq.

- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

#### Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.”

#### **CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

#### **CORONAVIRUS RELIEF AND CARES ACT CERTIFICATION**

The Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (Pub. L. 116–260, Div. M), requires that, to the maximum extent possible, funds made available under the Act and in title XII of division B of the CARES Act (Pub. L. 116–136) shall be directed to payroll and operations of public transit (including payroll and expenses of private providers of public transportation), unless the recipient certifies that it has not furloughed any employees.



## **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

- a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

### Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The agency shall upon its own

action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

### **DAVIS BACON ACT AND COPELAND ANTI-KICKBACK ACT**

a. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

b. The Non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

#### “Compliance with the Copeland “Anti-Kickback” Act.

- (1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

## **DEBARMENT AND SUSPENSION**

- a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs for a contract in the amount of at least \$25,000
- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
  - (2) C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
  - (3) The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency and subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

### **DHS SEAL, LOGO, AND FLAGS**

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FTA pre-approval.

### **DISPUTES, BREACHES, DEFAULTS, AND LITIGATION**

(a) FTA Interest. FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.

(b) Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220. (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements. (3) Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters

as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a 95 criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

(c) Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA’s prior written concurrence.

(d) Enforcement. The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

## **ENERGY CONSERVATION**

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## **EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on

behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the

United States to enter into such litigation to protect the interests of the United States.

## **FEDERAL CHANGES**

49 CFR Part 18 Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## **FLY AMERICA**

- a) Definitions. As used in this clause—
- 1) “International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
  - 2) “United States” means the 50 States, the District of Columbia, and outlying areas.
  - 3) “U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

### Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

- e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

## **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

Incorporation of Federal Transit Administration (FTA) Terms - The provisions within include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the current FTA Circular 4220 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

## **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Agency, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **NOTIFICATION TO FTA**

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal



Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

## **PATENT RIGHTS AND RIGHTS IN DATA**

### Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT.

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.

For purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical

reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and

b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

6. The Contractor agrees to include these requirements in each subcontract for experimental,

developmental, or research work financed in whole or in part with Federal assistance.

### **PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES**

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

### **PROCUREMENT OF RECOVERED MATERIALS**

- (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—
  - i. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - ii. Meeting contract performance requirements; or
  - iii. At a reasonable price.
  
- (2) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>."

### **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract."

### **PROMPT PAYMENT**

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of

work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

## **PUBLIC TRANSPORTATION AGENCY SAFETY PLANS (PTASP)**

For Fiscal Year 2020, FTA required this certification from each applicant under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), each rail operator that is subject to FTA's state safety oversight programs, and each State that is required to draft and certify a public transportation agency safety plan on behalf of a small public transportation provider pursuant to 49 CFR § 673.11(d) by July 20, 2020. This certification does not apply to any applicant that receives financial assistance from FTA exclusively under the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310), the Formula Grants for Rural Areas Program (49 U.S.C. § 5311), or combination of these two programs.

## **PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS**

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
2. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
  1. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

## **SAFE OPERATION OF MOTOR VEHICLES**

### **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles,

company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Agency.

### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

### **SCHOOL BUS OPERATIONS**

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, “School Bus Operations,” 49 C.F.R. part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

### **SEISMIC SAFETY**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

## **SIMPLIFIED ACQUISITION THRESHOLD**

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)

## **SPECIAL DOL EEO CLAUSE**

Applies to construction contracts > \$10,000; This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

## **SPECIAL NOTIFICATION REQUIREMENTS FOR STATES**

Applies to States –

- a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
  - (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
  - (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
  - (3) The amount of federal assistance FTA has provided for a State Program or Project.
- b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

## **SUBSTANCE ABUSE REQUIREMENTS**

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or Agency, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 and to submit the Management Information System (MIS) reports to the Agency.

## **TERMINATION**

### Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

### Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

### Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

#### Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

#### Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

#### Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

#### Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor



was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

#### Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.
3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

#### Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency.

#### Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

## **VETERANS HIRING PREFERENCE**

Veterans Employment - Recipients of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

## **VIOLATION AND BREACH OF CONTRACT**

### Rights and Remedies of the Agency

The Agency shall have the following rights in the event that the Agency deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include.

### Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the Agency, the Contractor expressly agrees that no default, act or omission of the Agency shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the Agency directs Contractor to do so) or to suspend or abandon performance.

### Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Contract will be a default of this Contract. In the event of a default, the Agency will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Contract by the Contractor before the Agency takes action contemplated herein, the Agency will provide the Contractor with sixty (60) days written notice that the Agency considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

### Disputes

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by an authorized representative of Agency. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Agency's authorized representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Agency's authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section,

or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Agency's direction or decisions made thereof.

#### Performance during Dispute

Unless otherwise directed by Agency, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

#### Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

#### Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Agency and the Contractor arising out of or relating to this Contract or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Agency is located.

#### Rights and Remedies

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.



**ALTERNATE PROCUREMENT (AP) REQUEST**  
 OFFICE OF MANAGEMENT AND BUDGET  
 CENTRAL SERVICES - STATE PROCUREMENT OFFICE  
 SFN 51403 (07-2021)

**Submit Completed Request:** Attachment 2.

1) [SPO Work Request System](#), or

2) Email to: [infospo@nd.gov](mailto:infospo@nd.gov)

Contact the State Procurement Office at  
 (701) 328-2740 for assistance.

State agencies and institutions must prepare an Alternate Procurement (AP) Request when they plan to obtain less competition than required by purchasing thresholds. Information technology (IT) requests over \$25,000 must be approved by the Information Technology Department. There are some instances in which an AP Request is not required, such as purchases from government entities and state sources of supply. See N.D.A.C. § 4-12-09 for goods and services that do not require an AP Request.

**AGENCY INFORMATION**

Agency Name		Date of Request
Procurement Officer	Telephone Number	Email Address

**PROCUREMENT TYPE** *(check all that apply)*

- Noncompetitive Procurement   
  Limited Competitive Procurement   
  Contract Amendment Exception  
 Purchase from Another Government Entity's Contract   
  Formal Sealed Competitive Process Exemption

**VENDOR INFORMATION**

Vendor Name		Website
Contact Person	Telephone Number	Email Address

**DESCRIPTION OF SERVICE OR COMMODITY**

Describe exactly what is being purchased and the intended purpose. (Include manufacturer, brand, model, and other identifiers.)

**MARKET RESEARCH, JUSTIFICATION, AND SUPPORTING DOCUMENTATION**

Describe any market research that has been conducted and what other services or commodities exist. Explain WHY a fully competitive procurement process is impracticable or not in the best interest of the state. Factual evidence which is sufficient for the approver to independently determine that the justification is true and accurate MUST be provided. Factual evidence consisting of written documents, reports, supporting data, affidavits, patent or copyright information, research, or other information may be attached as supplemental information to this request.

### TOTAL COST

The total cost must include all contract renewal options, extension option, maintenance, support, hosting, travel, and any other costs which will be incurred during the life of the contract (e.g., \$10,000 per year with two (2) renewal options = \$30,000 Total Cost). Consider if this is a one-time purchase or if multiple purchases will be made (e.g., 4 units this year and 4 units next year).

Total Cost
------------

### CONTRACT INFORMATION *(recurring purchases only)*

Describe the contract period being contemplated. Attach any draft contracts, vendor quotes, or proposals.

Initial Contract Term <i>(provide dates - e.g. 7/1/21-6/30/22)</i>	Number of Renewals <i>(e.g. 2 at 12 months each)</i>	Extension Period <i>(e.g. 6 month, 12 month)</i>
--	--	--

A renegotiation option would normally be used for a strategic solution/product, for example a critical line of business application that is expected to be used for an extended period of time and where it is in the state's best interest to have the ability to renegotiate the contract. Renegotiation occurs after completion of the initial term and any extensions and renewals.

Will a renegotiation option be included in the contract? <input type="checkbox"/> Yes <input type="checkbox"/> No	Requested Expiration Date*
--	----------------------------

\*OMB reserves the right to make any changes to the requested expiration date.

### INFORMATION TECHNOLOGY ONLY

New or Existing IT Service or Commodity <input type="checkbox"/> New <input type="checkbox"/> Existing	Agency received approved <a href="#">Request for Exemption to IT Standard</a> (SFN 51687) from ITD <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA
---	--

If the IT service or commodity has an IT function and/or capability it may require an exemption to any IT Standard. The agency must have the vendor complete the [IT Application Questionnaire](#). Agency has attached the completed IT Application Questionnaire.

<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA
--

### NOTICE OF INTENT TO MAKE A LIMITED OR NONCOMPETITIVE PURCHASE ISSUED *(if applicable)*

Attach a copy of the notice, bidders and SPO Online System solicitation notification email.

Responses Received <input type="checkbox"/> NO - none received <input type="checkbox"/> YES - response(s) received. See actions below.
---

Attach vendor responses, communications, evaluations and determinations. List vendor(s) below *(attach additional pages, if needed)*.

### AUTHORITY FOR LIMITED OR NON-COMPETITIVE PROCUREMENT

Competition can be limited under the following N.D.C.C. or N.D.A.C. provisions. Check the appropriate authority reference(s).

- The commodity or service is available from only one source. [N.D.C.C. § 54-44.4-05 (2)(a)]
- The commodity or service is for experimentation or trial. [N.D.C.C. § 54-44.4-05 (2)(b)]
- No acceptable bid or proposal was received pursuant to a competitive bidding or competitive proposal process. [N.D.C.C. § 54-44.4-05 (2)(c) and N.D.A.C. § 4-12-11-08]
- Commodities are being purchased for over-the-counter resale. [N.D.C.C. § 54-44.4-05 (2)(d)]
- A used commodity is advantageous to the state and the commodity is available on short notice. [N.D.C.C. § 54-44.4-05 (2)(g)]
- The commodity is a component or replacement part for which there is not commercially available substitute and which can be obtained only from the manufacturer. [N.D.C.C. § 54-44.4-05 (2)(h)]
- Compatibility with equipment currently owned by the state is essential to the proper functioning of that equipment. [N.D.C.C. § 54-44.4-05 (2)(i)]
- The services or the circumstances are of such a nature that deviation from the procurement process is appropriate. [N.D.C.C. § 54-44.4-05 (2)(j)]
- Products or services exclusive to particular individuals or business entities are required, but competition for that proprietary product exists. [N.D.A.C. § 4-12-09-02 (1)(a)]
- Circumstances require that commodities or services be provided by vendors within a specific geographic area, such as equipment requiring local service, on-site service within a specific time, or delivery of ready mix concrete. [N.D.A.C. § 4-12-09-02 (1)(b)]
- It is determined that a competitive sealed bid or competitive sealed process is impracticable or not in the best interest of the state. [N.D.A.C. § 4-12-09-02 (1)(c)]
- The commodity or service is available from another government entity's contract. [N.D.C.C. § 54-44.4-13].

NOTE: Attach a copy of the contract. OMB State Procurement Office approval is required regardless of the dollar amount.

### APPROVAL - OMB AND ITD ONLY

#### STEP 1: OFFICE OF MANAGEMENT AND BUDGET, STATE PROCUREMENT OFFICE APPROVAL (\$10,000 and over)

Approved <input type="checkbox"/> Yes <input type="checkbox"/> No	Expiration Date <i>(if applicable)</i>	If Applicable, Renegotiation Option Approval <input type="checkbox"/> Yes <input type="checkbox"/> No
Comments		
OMB Approver Name	Signature	Date

#### STEP 2 (if required): INFORMATION TECHNOLOGY DEPARTMENT (IT Purchases over \$25,000)

Approved <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>ITD Review Considerations:</b> Is the product or service consistent with the agency's strategic IT plan and compliant with North Dakota Enterprise Architecture Standard, STD-ITD-001? <input type="checkbox"/> Yes <input type="checkbox"/> No	
ITD Comments		
ITD Approver Name	Signature	Date

**REJECTION LETTER  
(March 2018)**

When you reject a bid or proposal, you must send a letter of rejection to the offeror or bidder indicating the reason for the rejection. Proposals and bids must be rejected if they are not responsive to the requirements of the solicitation or if the offeror or bidder is determined to be not responsible. See [N.D.A.C. § 4-12-11](#) for guidelines on responsiveness and responsibility. Bids or proposals rejected for responsiveness and responsibility will be retained in the procurement file.

You do not need to reject a bid or proposal if a mistake or omission is determined to be a minor informality. Minor informalities are insignificant omissions and mistakes related to form rather than substance with a negligible effect on price, quality, delivery, or contractual conditions that can be waived or corrected without prejudice to other offerors or bidders. See [N.D.A.C. § 4-12-10](#) for guidance mistakes in bids and proposals including minor informalities.

Late bids or proposals must be rejected, regardless of the degree of lateness. See [N.D.A.C. § 4-12-08-13](#). Procurement rules only allow late responses to be accepted if the delay is due to the error of the purchasing agency and discovered before selection of the successful bidder or offeror. (Example: a bid accidentally placed in the wrong bid folder). For late bids and proposals, the procurement officer may retain the late bid or proposal in the procurement file, return the late bid or proposal, or notify the vendor to make arrangements for pickup of the late bid or proposal by a specified date. If the late bid or proposal was returned, a record of the return must be made and placed in the procurement file. If you retain and open the late bid, it is subject to open records laws. If you return the late response, the State will no longer have the record. If you retain the late response unopened, then only the information available on the envelope or package is subject to open records laws.

Sometimes, the procurement officer makes a decision to reject all bids or proposals and cancel the solicitation. Procurement rules require you to send notice to all offerors or bidders indicating the reason for the cancellation. See [N.D.A.C. § 4-12-11-09](#). You can use the Solicitation Cancellation Template.

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE ALL INSTRUCTIONS BEFORE PRINTING**



**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

Date

Business Name  
Contact Person  
Address  
City, State Zip

Subject: [Insert Solicitation Number, Title](#)

Dear [Insert name](#):

Thank you for the recent response to the solicitation referenced above. Regrettably, your response has been rejected. The reason for the rejection is as follows:

**NOTE: CHOOSE THE APPROPRIATE REASON(S) FOR THE REJECTION, INSERT APPLICABLE INFORMATION AND DELETE THE UNUSED REASONS.**

- The response was delivered late.
- The response does not meet the requirements of the solicitation. [Describe the requirement they failed to meet, cite the specific section of the solicitation that states the requirement, and indicate how their response failed to meet that specification or requirement.](#)
- The response was faxed, and a formal sealed response was required.
- The response was not legible.
- Your company is not an approved bidder as required in the solicitation.
- The equipment offered by your firm as an equivalent is rejected as not being equivalent for the following reason: [Insert reason equipment is not an equivalent.](#)

The rejected response will be retained in the procurement file. If you have any questions, please contact me.

Sincerely,

[Insert name](#)  
Procurement Officer  
E-mail: [Insert email](#)  
Telephone: [Insert number](#)  
TTY Users call: 7-1-1

**BIDDERS LIST APPLICATION INVITATION  
(April 2017)**

Use this template to invite vendors to apply to be placed on the Bidders List maintained by the State Procurement Office.

The following text may be sent as a letter or copy/pasted into an email.

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE ALL INSTRUCTIONS BEFORE PRINTING**

STATE OF NORTH DAKOTA  
AGENCY OR INSTITUTION NAME  
ADDRESS  
CITY, STATE ZIP

NORTH DAKOTA BIDDERS LIST APPLICATION

Date

Business Name  
Contact Person  
Address  
City, State Zip

Subject: North Dakota Bidders List Application

Dear [Insert Name](#):

The State of North Dakota maintains a Bidders List. Vendors on the Bidders List receive notice of state bidding opportunities issued on the State Procurement online system.

Please visit the Office of Management and Budget website to find the Bidders List Application and instructions. Vendors must also comply with North Dakota Secretary of State registration requirements.

<https://www.nd.gov/omb/vendor/bidders-list-application-and-maintenance>

Please contact the Vendor Registry Help Desk at 701-328-2773 or [infospo@nd.gov](mailto:infospo@nd.gov) if you have any questions about the Bidders List Application.

Thank you for your interest in doing business with the State of North Dakota!

Sincerely,

[Insert name](#)  
Procurement Officer  
E-mail: [Insert email](#)  
Telephone: [Insert number](#)  
TTY Users call: 7-1-1

**BOND CLAUSES  
(January 2019)**

Use this template if your solicitation will require a bid or performance bond. Customize as needed, and insert into the solicitation.

Consult your agency's legal counsel when contemplating bond requirements. See N.D.A.C. Chapter [4-12-08 Managing Contractual Risk](#).

If used, the solicitation must clearly detail the form and substance of the performance bond. Bid bonds, performance bonds or other types of surety are not routinely needed. Make sure the bond is needed before it is specified. Select an appropriate amount for a performance bond and surety deposit. The amount should be equal to the cost of a replacement contract. Attach your agency's bond form or visit the OMB procurement "[Templates](#)" webpage for a Contract Bond form.

Cut and paste the clauses into your solicitation. Revise as needed.

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE ALL INSTRUCTIONS BEFORE PRINTING**

## BOND CLAUSES (January 2019)

Sample clauses for use in solicitations requiring bid or performance bonds:

No bonds are required.

**OR**

The following is required.

- **Bid Bond.** Offerors must obtain a bid bond and submit it with the proposal. The amount of the bid bond for this contract is **INDICATE SPECIFIC DOLLAR AMOUNT OR PERCENTAGE OF THE PROPOSAL PRICE, UP TO 5 PERCENT**. The bid bond will be immediately forfeited to the STATE in the event an offeror is selected to receive the contract and fails to negotiate, or fails to deliver a fully executed contract after negotiation. The time limit for negotiation or delivery of a contract is 14 calendar days from the date the offeror receives the Notice of Intent to Award from the procurement officer, unless the time is extended in writing by the STATE. Proposals submitted without a bid bond will be rejected.
- **Bid Security.** In lieu of a bid, a certified check or cashier's check drawn on a federally insured bank, or other form of bid security acceptable to the STATE may be substituted. The amount of the surety deposit must be **INDICATE SPECIFIC DOLLAR AMOUNT OR PERCENTAGE OF THE PROPOSAL PRICE, UP TO 5 PERCENT**. Substitution of a surety deposit must be approved by the STATE prior to its submittal. An offeror's failure to provide the surety deposit, within the required time, will cause the STATE to reject the proposal.
- **Performance Bond.** Offerors must obtain a letter of commitment for a performance bond from a bonding company and submit it with the proposal. The amount of the performance bond must be equal to **SPECIFY DOLLAR AMOUNT OR PERCENTAGE OF THE CONTRACT PRICE FOR THE FULL TERM OF THE CONTRACT, UP TO 100 PERCENT**.  
If the contractor fails to satisfactorily perform the contract, the bonding company that provided the performance bond will be required to pay the dollar amount of the bond to the STATE. The actual performance bond must be obtained from the bonding company and provided to the STATE within 14 CALENDAR DAYS (OR TIME REQUIRED BY AGENCY) after the date of the Notice of Intent to Award unless the time is extended in writing by the purchasing agency. An offeror's failure to provide the performance bond, within the required time, will cause the STATE to reject the proposal.
- **Surety Deposit.** In lieu of a performance bond, a certified check or cashier's check drawn on a federally insured bank, or other form of bid security acceptable to the STATE may be substituted. The amount of the surety deposit must be **SPECIFY DOLLAR AMOUNT OR PERCENTAGE OF THE CONTRACT PRICE FOR THE FULL TERM OF THE CONTRACT, UP TO 100 PERCENT**. Substitution of a surety deposit must be approved by the STATE prior to its submittal. An offeror's failure to provide the surety deposit, within the required time, will cause the STATE to reject the proposal.

**CONFIDENTIAL INFORMATION DETERMINATION  
(March 2017)**

This template can be used to determine whether proposals contain confidential information for both pre-award and post-award (open records request).

Some proposals received are marked “confidential” or include confidentiality agreements. However, information is only confidential if determined to be so under state or Federal laws.

The State Procurement Office recommends you review all proposals for confidentiality statements and complete any necessary redacting prior to issuing the notice of intent to award. Doing this step ahead of time can save you valuable time if there is an open records request.

After award, proposals are subject to North Dakota open records laws, and procurement officers commonly receive open records requests. It is essential that you provide a timely response to open records requests, especially during the protest period.

This template may be used to draft a letter, or the text may be copy/pasted into an email.

Customize as needed. Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE INSTRUCTIONS BEFORE PRINTING**

**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

Date

Business Name  
Contact Person  
Address  
City, State Zip

Subject: Confidential Information Determination  
Insert Solicitation Number and Title

Dear Insert name:

Your firm submitted a proposal in response to the solicitation referenced above.

Section [Insert Section Number](#) of the solicitation explained that proposals and other materials submitted are subject to North Dakota's open records laws. Your proposal contained portions marked as confidential. Information within proposals can only be kept confidential if it determined to be so under North Dakota or Federal law.

Section [Insert Section Number](#) of the solicitation also instructed Offerors to include a brief statement that sets out the reasons for confidentiality.

I noticed you have ([option 1: several items marked as confidential](#); [OPTIONAL: insert the specific items in a bulleted list OR option 2: the whole proposal is marked confidential or proprietary](#)). In order to hold any information confidential, please review our [open records law](#). We need to understand if the information marked as confidential is a trade secret, proprietary, commercial or financial.

Please respond to me via email by [Insert Time](#) CT on [Insert Month, Day](#). The State will review your response and make a final determination regarding whether the information is confidential under North Dakota or Federal Law. If we do not receive a response by the specified time, the proposal contents will be subject to North Dakota open records laws.

The following websites contain more information about North Dakota laws related to Confidentiality and Open Records:

North Dakota Office of the Attorney General Open Records Manual  
<https://attorneygeneral.nd.gov/sites/ag/files/documents/OpenRecordsManual.pdf>

North Dakota Century Code Chapter 44-04 <http://www.legis.nd.gov/cencode/t44c04.pdf>

Please contact me with any questions.

Sincerely,

[Insert name](#)

Procurement Officer

E-mail: [Insert email](#)

Telephone: [Insert number](#)

TTY Users call: 7-1-1



**CONFLICT OF INTEREST/CONFIDENTIALITY STATEMENT - EVALUATOR  
(March 2017)**

You may use this template in conjunction with the RFP Evaluator's Guide. It is important to explain the RFP evaluation process to individuals serving as evaluators.

Use this template only for non-state employees.

Contact legal counsel if customizing. Contact the State Procurement Office at 701-328-2740 or [info@spo.nd.gov](mailto:info@spo.nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE ALL INSTRUCTIONS BEFORE PRINTING**

## CONFLICT OF INTEREST/CONFIDENTIALITY STATEMENT - EVALUATOR

I, the undersigned, a member of the review team for the Request for Proposal (RFP), for [insert solicitation number, title](#), will participate in the process under the guidelines, procedures and requirements of the State of North Dakota.

Further, I represent as follows:

1. I have a professional interest that the reading of the vendor responses to this Request for Proposal can be supported and defended, and that the recommendation of the review team will lead to a potential proposal most advantageous to the State of North Dakota and a successful RFP process.
2. Except as I have disclosed in detail, I neither have nor shall I during the review acquire any financial or pecuniary interest, direct or indirect, in any offeror or otherwise that would conflict in any manner or degree with my review responsibilities. Members of my immediate family (spouse or children) and other family members who are in my household are subject to the same restriction and disclosure requirements.
3. I am aware that this review will involve my knowledge of official information and possible vendor commercial information not publicly known. I agree not to disclose any information gained during the course of my service on this review team to any person, except to other State employees who may in the normal course of State business have a need for such information or to other members of the review team in the course of our participation in this process.
4. During the process of review and while meetings are in session, the review team shall maintain confidentiality. No member shall transmit, communicate, or otherwise convey preliminary conclusions or results of what was bid by the vendors, or that a given vendor will be selected. All internal workings of the review team shall be kept confidential until the team has completed its work and a Notice of Intent to Award has been issued by the Procurement Officer.

If I should become aware of any situation, which might arise, that could alter any of the representations above, or that might otherwise create the appearance of a conflict or other impropriety, I will notify the Procurement Officer immediately.

RFP Title and Number (print) \_\_\_\_\_

Name (print) \_\_\_\_\_

Title and Organization (print) \_\_\_\_\_

Signature \_\_\_\_\_

## **CONTRACT AMENDMENT (March 2017)**

Use this template to create a contract amendment. An amendment makes an addition, deletion, or change in a contract. Reasons for amending a contract include, but are not limited to, changes to the scope of work, terms and conditions, pricing, or the contract term.

When you amend a contract, reference the contract section being amended and describe how it is being changed. Consult your assistant or special attorney general for assistance.

### **Anticipated Contract Amendments**

An anticipated contract amendment is a change that was expected, and the contract contained provisions for making the change. For example: price adjustments, renewals and extensions.

### **Renewal vs. Extension**

A contract extension provides the contractor with additional time for performance. It is typically for a short duration and all the terms and conditions of the contract remain the same and in full force and effect.

A contract renewal awards the contractor an additional contract period upon successful completion of the initial or a subsequent contract period. Contracts with renewal options commonly include provisions for price adjustments at the time of renewal.

An amendment to renew or extend the contract must be executed before the contract expires.

### **Contract Assignment**

A contract also must be amended if the contractor changes its name (e.g. the company is purchased by another company) or the contract is assigned to another party. [N.D.A.C. § 4-12-13-02](#)

### **Execution**

Usually all parties to the contract must sign the amendment. On occasion, the amendment is only signed by the State. An amendment is unilateral if it is only signed by one party and bilateral if both parties sign. Some contracts are executed between more than two parties, so all parties may be required to sign. Contact your legal counsel to make a determination which parties should sign the contract amendment.

Either party may sign the contract addendum first. The addendum is not effective until signed by all required parties. It is acceptable to use digital signatures and receive signed addendums via email/fax.

For additional information, consult with your assigned legal counsel and see the [Attorney General Contract Drafting and Review Manual](#).

Contact the State Procurement Office at 701-328-2740 or [info@spo.nd.gov](mailto:info@spo.nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE ALL INSTRUCTIONS BEFORE PRINTING**

## CONTRACT AMENDMENT

**CONTRACT NAME AND NUMBER:** [Insert Name & Number](#)

**AMENDMENT NUMBER:** [Insert Number](#)

This amendment is made to [Insert contract number or contract title](#) (Contract) between the State of North Dakota, acting through its [Insert name of Agency](#) (STATE), and [Insert Contractor's legal name](#) (CONTRACTOR).

The parties agree to the following terms and conditions and expressly agree that if any of the following terms and conditions conflict with any of the terms and conditions of the Contract, then, notwithstanding any term in the Contract, the following terms and conditions govern and control the rights and obligations of the parties.

The parties agree to amend the Contract as follows:

### EXAMPLES:

#### Renewal and Extensions

Contract Section [Number](#), Term of Contract. The Contract commenced on [Insert original contract start date](#) for a period of [Insert number months/years](#) with an option to [renew or extend](#) the contract for up to [Insert number months/years](#).

*If the contract was previously renewed / extended, then add:* The Contract was previously [renewed or extended](#) for [Insert number months/years](#).

The parties have agreed to renew or extend the Contract for an additional [Insert number months/years](#); therefore, the contract is amended to change the expiration date to [Insert new expiration date](#). The Contract has [Insert number](#) renewals remaining. The Contract can be extended for an additional [Insert number months or years](#).

#### Scope of Work

Contract Section [Number](#), Scope of Work. The scope of work is hereby amended as follows:

[Describe the change being made \(e.g. The third paragraph is deleted in its entirety and replaced with...\)](#) (e.g. Section [insert number](#) of the Contract stated that the CONTRACTOR may be required to perform additional work within the scope of the original contract. Therefore, the CONTRACTOR must insert a description, schedule, and price for the additional work.)

This change is authorized under [Describe what provision of the solicitation, contract, rule, or law gives you authority to make the change](#).

#### Price Adjustment

Contract Section [Number](#), Compensation. The Compensation is hereby amended as follows: [Describe the change being made \(e.g. Item 1, Widget, is increased from \\$10.00 each to \\$12.00 each\)](#) (e.g. the contractual amount will change from X to X.) The price adjustment is effective on [Insert date](#).

This change is authorized under [Describe what provision of the solicitation, contract, rule, or law gives you authority to make the change](#).

**Contract Assignment**

Contract Section [Number](#), Assignment and Subcontracts. On [Month Day, Year](#), STATE and CONTRACTOR entered into a Contract for [Insert contract title or a brief description](#). Option 1: On [Month Day, Year](#), [Insert original contractor name](#) was acquired by [New contractor name](#) OR Option 2: On [Month Day, Year](#), [Insert original contractor name](#) will assign all right and duties under the Contract to [Insert new contractor](#).

Due to this [acquisition or assignment](#), STATE and [Insert new contractor](#) hereby amend the Contract to accurately reflect that [Insert new contractor](#) has acquired all rights and obligations of [Insert original contractor](#) in the Contract.

The parties agree that the terms and conditions of the Contract and this Amendment govern and control the rights and obligations of the parties.

This change is authorized under [describe what provision of the solicitation, contract, rule, or law gives you authority to make the change](#).

All other terms of the Contract remain in effect. This Contract Amendment is not effective until fully executed by all parties.

**EXECUTION**

<b>CONTRACTOR</b>	<b>STATE OF NORTH DAKOTA</b>
<a href="#">Insert Contractor</a>	Acting through its <a href="#">Insert Agency</a>
BY:	BY:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:

**CONTRACT DEFAULT  
(March 2017)**

When there are problems with a contract, you need to notify the contractor in writing and demand a remedy. Remedy is a procedure to address a wrong or obtain relief from a grievance.

Inform the contractor that their performance is not acceptable and demand a remedy. Establish deadlines for correcting deficiencies. Explain what will happen if the deficiencies are not corrected. Document all conversations with the contractor. You must establish a contract administration paper trail.

Send the letter by certified mail with return receipt requested. If you have been unsuccessful working with a representative of the firm, it is recommended that the letter be addressed to an owner or president of the firm. Check the contract to determine the appropriate person to receive notices on behalf of the contractor.

If the contractor does not correct the problems, you may need to terminate the contract for cause.

Be sure to inform the State Procurement Office if the contractor's performance is not acceptable. The contractor may be suspended or debarred from the state bidders list. To initiate a suspension or debarment, submit a [Complaint Form](#) SFN 2565 to the State Procurement Office.

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE ALL INSTRUCTIONS BEFORE PRINTING**

**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

Date

Certified Mail [Insert number](#) Return Receipt Requested

Business Name  
Contact Person  
Address  
City, State Zip

Dear [Insert name](#):

This is to advise you that [Insert business name](#) has failed to comply with the terms and conditions of its contract with [Insert agency name](#). The award of the contract was based upon your company's response to [Insert solicitation number and title](#). This solicitation was incorporated into the contract by reference.

The purpose of this letter is to demand corrective action. Your company has failed to meet the following requirements: [Describe the requirement that the contractor has failed to meet](#). Reference the appropriate section in the solicitation or contract. Describe how the contractor's performance has been deficient.

***Example:** Contract, Item 12. Delivery, required delivery within 30 calendar days after the receipt of the order. The order was placed with your firm on February 1, 20xx. As of today, April 1, 20xx, we have not received delivery.*

Your company is hereby given notice that you must [Insert what corrective action the contractor must take](#).

***Example:** Your firm must provide delivery by April 30, 20xx.*

If you fail to comply with this requirement, the consequences will be as follows: [Reference the section of the solicitation or contract that describes actions that would be taken in the event of default](#).

***Example:** Termination of Contract, Item 13c. Termination for Cause, states that if your firm fails to deliver within the time specified, the State may terminate the whole or any part of this contract. STATE may also consider your firm to be a not responsible bidder on future solicitations based on its failure to perform under the terms and conditions of this contract, and your firm may be suspended or debarred from the state bidders list.*

This matter requires your immediate attention. Please respond to this letter in writing by [Insert date](#) and indicate whether your company will be able to comply with these requirements within the required time. If you have any questions or need additional information, please contact me.

Sincerely,

[Insert name](#)  
Procurement Officer

Telephone: [Insert number](#)

Email: [Insert email](#)

TTY users call: 7-1-1



**CONTRACT**  
**(September 2021)**

This template is used to draft a contract for commodities or services. This template is based upon the sample contract in Appendix 1 of the Office of Attorney General, Contract Drafting and Review Manual, January 2018 edition.

A purchasing agency should review the contract checklist in Appendix 1-a of the Attorney General's Contract Drafting and Review Manual before using this template. See the manual for information related to the contract process, the purpose and recommended language for contract clauses.

Customize this template as needed with assistance from legal counsel.

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE ALL INSTRUCTIONS BEFORE PRINTING**

**OFFEROR INSTRUCTIONS**

Offeror shall review the STATE’s Contract.

The proposal must include indicate whether or not the offeror accepts the terms and conditions in the STATE’s Contract.

An offeror may state that they accept the STATE’s Contract as written.

An offeror may state any objections or propose changes or additions to the STATE’s Contract. Describe the changes to the Contract being proposed or provide a red-line of the STATE’s Contract. Offerors are not to submit their own contract or standard terms and conditions with their proposals. Offeror should address the specific language in the attached contract and submit any proposed changes.

North Dakota procurement statutes, rules, and policies allow some negotiation of the terms and conditions. No changes to the terms and conditions will be permitted without prior written approval from the STATE.

**CONTRACT**

The parties to this contract (Contract) are the state of North Dakota, acting through its *Department/Office* (STATE), and *Name of Business a type of business (e.g. Delaware corporation or privately held company)* having its principal place of business at *principal business address* (CONTRACTOR);

**1. SCOPE OF WORK**

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, shall provide the following:

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*[Describe what is to be done under the contract. If the description is too vague, it will be difficult for the state to enforce the contract or establish a breach of contract by the contractor. If the Scope of Work is a lengthy document, you may consider referencing the Scope of Work as a separate exhibit at the end of the contract.]*

**2. COMPENSATION**

**a. Contractual Amount**

STATE shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed *[Amount]* (Contractual Amount).

The Contractual Amount is firm for the duration of this Contract and constitutes the entire compensation due CONTRACTOR for performance of its obligations under this Contract regardless of the 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.

**b. 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 shall make payment under this Contract within forty-five (45) calendar days after receipt of a correct 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 payments that are or will become due and payable to CONTRACTOR under this Contract.

**Note: In the event that your contract will allow for separately billed travel expenses (i.e.: outside of fixed price contract). Modify or delete the following clauses as applicable:**

**c. Travel**

CONTRACTOR acknowledges travel costs are covered by the Contractual Amount and shall not invoice STATE for travel costs.

**OR**

STATE shall reimburse CONTRACTOR for expenses related to travel at amounts not to exceed those outlined below:

- 1) **Lodging:** Reimbursement shall not exceed the then current, published GSA rate for the travel location. Copies of receipts are required for lodging reimbursement. STATE shall not reimburse for incidental and miscellaneous expenses charged to the room, including: alcohol, telephone charges, or entertainment (e.g., movies).
- 2) **Transportation.** Air travel shall be reimbursed by STATE at the actual cost of air fare for coach class travel only. CONTRACTOR shall make air travel arrangements at least fourteen (14) days in advance whenever possible. Reimbursement for rented, chartered, or contracted vehicle transportation shall be limited to reasonable rates as determined by STATE
- 3) **Meals:** Meals shall be paid on a per diem basis for each day of travel at then current, published GSA per diem rate for the travel location. Per diem for the first and last day of travel shall be paid at seventy five percent (75%) of the GSA per diem rate. Requests for per diem payments must include the start and end dates of travel, the location where the services are performed, and the allowable per diem amount for each trip on the billing/invoice.

Payment for any travel expenses that exceed the travel budget as agreed upon by the parties must be approved by STATE.

**d. Prepayment**

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

**e. 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. STATE will furnish certificates of exemption upon request by the CONTRACTOR.

f. **Taxpayer ID**

CONTRACTOR'S federal employer ID number is: *[Insert FEIN]*.

g. **Purchasing Card**

STATE may make a payment using a government credit card. CONTRACTOR will accept a government credit card without passing the processing fees for the government credit card back to STATE.

**3. TERM OF CONTRACT**

This Contract term (Term) begins on *[Month, Day], 20[Year] or its Effective Date*, and ends on *[Month, Day], 20[Year]*.

a. **No Automatic Renewal**

This Contract will not automatically renew.

*Note: Any exercise of an Extension, Renewal, or Renegotiation requires a written contract amendment identifying the amended terms and conditions. Contract amendments should be drafted in consultation with an agency's assigned legal counsel.*

a. **Renewal Option**

*Note: A Renewal provision is normally used when a multi-year contract is anticipated. The renewal provision allows the contract to be renewed for additional terms after the completion of the initial contract period.*

STATE may renew this Contract upon satisfactory completion of the initial Contract Term. STATE reserves the right to execute up to *[Number]* options to renew this Contract under the same terms and conditions for a period of *[Number]* months each.

b. **Extension Option**

*Note: An Extension provision is a brief period of time used to wrap up ongoing work that could not be completed by the end of the contract. It may also be used when all renewal options have been exercised and additional time is needed to close out the Contract.*

STATE reserves the right to extend this Contract for an additional period of time, not to exceed *[Number]* months, beyond the current termination date of this Contract.

c. **Renegotiation Option**

*Note: A Renegotiation option would normally be used for a strategic solution/product, for example a critical line of business application that is expected to be used for an extended period of time and where it is in the state's best interest to have the ability to renegotiate the contract. Renegotiation occurs after completion of the initial term and any extensions and renewals.*

In view of the fact that it is unknown how long the products and services will be employed by STATE and that STATE will require ongoing maintenance and support of the products for as long as the system is operational, therefore after completion of the initial term of the Contract including any extensions and renewals, STATE and CONTRACTOR may renegotiate the Contract upon mutual agreement of the parties.

#### 4. TIME IS OF THE ESSENCE

*Note: Generally, if time is not of the essence, reasonable delay in performance does not constitute a material breach; unreasonable delay constitutes a material breach. If time is not of the essence, DELETE this clause.*

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

##### a. Termination by Mutual Agreement

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

##### b. Early Termination in the Public Interest

STATE is entering into this Contract for the purpose of carrying out the public policy of the State of North Dakota, as determined by its Governor, Legislative Assembly, Agencies and Courts. If this Contract ceases to further the public policy of the State of North Dakota, STATE, in its sole discretion, by written notice to CONTRACTOR, may terminate this Contract in whole or in part.

##### c. 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.

##### d. 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, riot, terrorism, 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 promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

**7. INDEMNIFICATION**

*Please see the "Guidelines to Managing Contractual Risk" of OMB's Risk Management Division found at: [Risk Services \(sharepoint.com\)](http://Risk Services (sharepoint.com))*

**8. INSURANCE**

*Please see the "Guidelines to Managing Contractual Risk Manual" of OMB's Risk Management Division found at: [Risk Services \(sharepoint.com\)](http://Risk Services (sharepoint.com))*

**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 for STATE or purchased by STATE under this Contract belong to STATE and must be immediately delivered to STATE at STATE'S request upon termination of this Contract.

**11. NOTICE**

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

<b>STATE</b>	<b>CONTRACTOR</b>
<i>Name</i>	<i>Name</i>
<i>Title</i>	<i>Title</i>
<i>Address</i>	<i>Address</i>
<i>City, State, Zip</i>	<i>City, State, Zip</i>

Notice provided under this provision does not meet the notice requirements for monetary claims against the State found at N.D.C.C. § 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 public records law, [N.D.C.C. CH. 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 LAWS**

Under the North Dakota public records law and subject to the Confidentiality clause of this Contract, certain records may be open to the public upon request.

Public records may include: (a) records STATE receives from CONTRACTOR under this Contract, (b) records obtained by either Party under this Contract, and (c) records generated by either Party under this Contract.

CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to such 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, provided, however, that CONTRACTOR may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Contract, whether by merger, reorganization, operation of law, or otherwise. Should Assignee be a business or entity with whom STATE is prohibited from conducting business, STATE shall have the right to terminate without cause.

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 with whom CONTRACTOR contracts. CONTRACTOR does not have authority to contract for or incur obligations on behalf of STATE.

## **16. SPOILIATION – PRESERVATION OF EVIDENCE**

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 such evidence, including the scene of an accident.

**17. MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS**

***NOTE: FOR BREVITY, ONLY FOUR DOCUMENTS HAVE BEEN INCLUDED. PLEASE MAKE SURE YOU LIST ALL DOCUMENTS TO BE CONSIDERED INCLUDING AMENDMENTS TO THE RFP OR PROPOSAL, BEST AND FINAL OFFERS, QUESTIONS AND ANSWERS TO THE RFP, ETC. IN ADDITION, MAKE SURE THE ORDER OF THESE DOCUMENTS ALWAYS HAS STATE'S DOCUMENTS FIRST, AND CONTRACTOR'S DOCUMENTS LAST, IN ORDER TO ENSURE THAT STATE'S DOCUMENTS ALWAYS TAKE PRECEDENCE. CONSULT WITH YOUR ATTORNEY GENERAL COUNSEL IF YOU HAVE QUESTIONS ON THE ORDER OF PRECEDENCE.***

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 must control in this order of precedence:

- a. The terms of this Contract as may be amended;
- b. STATE's Solicitation Amendment #1 to Request for Proposal ("RFP") number \_\_\_\_\_ dated \_\_\_\_\_;
- c. STATE's Request for Proposal ("RFP") number \_\_\_\_\_, dated \_\_\_\_\_;
- d. CONTRACTOR's proposal dated \_\_\_\_\_ in response to RFP number \_\_\_\_\_.
- e. All terms and conditions contained in any automated end-user agreements (e.g., click-throughs, shrink wrap, or browse 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 to be illegal or unenforceable by a court having competent jurisdiction, 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 this 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 of North Dakota. Any action to enforce this Contract must 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**

By entering into this Contract, STATE does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The parties may enforce the 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 N.D.C.C. § 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 applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. (See N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women.)

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, 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.

CONTRACTOR’s failure to comply with this section may be deemed a material breach by CONTRACTOR entitling STATE to terminate in accordance with the Termination for Cause section of this Contract.

**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, if required. CONTRACTOR shall maintain all of these records for at least three (3) years following completion of this Contract and be able to provide them upon reasonable notice. STATE, State Auditor, or Auditor’s designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.

**24. EFFECTIVENESS OF CONTRACT**

This Contract is not effective until fully executed by both parties. If no start date is specified in the Term of Contract, the most recent date of the signatures of the parties shall be deemed the Effective Date.

<b>CONTRACTOR</b>	<b>STATE OF NORTH DAKOTA</b>
<insert business>	Acting through its <insert agency>
BY: <Signature>	BY: <Signature>
<Printed Name>	<Printed Name>
<Title>	<Title>
Date:	Date:

**DRAFT SOLICITATION  
(November 2018)**

You may issue a draft solicitation to obtain feedback from prospective bidders or offerors.

The State Procurement Online System has a solicitation type for “Pre-Solicitation Notice.”

Send the draft solicitation to a representative number of vendors who sell the goods or services, based upon your market research.

Post this notice on the State Procurement Office Online System. You may also mail, fax, or email to bidders or offerors.

The second page of this template is a cover letter that can be included when the final version of the solicitation is issued. The cover letter identifies which components, if any, were modified in reflection of the vendor comments received regarding the draft.

Contact the State Procurement Office at 701-328-2740 or [info@spo.nd.gov](mailto:info@spo.nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE ALL INSTRUCTIONS BEFORE PRINTING**

**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

**DRAFT SOLICITATION**

Date

Solicitation Number and Title: [Insert solicitation number and title](#)

Opening Date and Time: [Insert date and time](#)

Dear Prospective Bidder:

The [Insert purchasing agency name](#) has issued a draft of this solicitation to obtain comments and reactions from prospective bidders.

Interested vendors are encouraged to review the draft for the following:

- Restrictive specifications that would unnecessarily decrease competition;
- Requirements that could dramatically increase costs to the State;
- Requirements that do not reflect current industry standards;
- Language this is confusing, contradictory, or unclear;
- State-specific information that is missing or deficient to a level that would preclude potential bidders from responding in a complete and cost effective manner;
- Costing methodology that is unclear or inconsistent with industry pricing structures.

Please identify the section of the solicitation when making comments.

Please submit your comments by email with a subject line "[Insert Solicitation Title](#)

[Insert name](#)  
Procurement Officer  
E-mail: [Insert email](#)

We would like to thank you for your time and efforts in reviewing this solicitation and providing your comments to the Procurement Officer:

Sincerely,

[Insert name](#)  
Procurement Officer  
E-mail: [Insert email](#)  
Telephone: [Insert number](#)  
TTY Users call: 7-1-1

**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

Date

Dear Prospective Bidder:

Subject: [Insert Solicitation Number and Title \(e.g. RFP 110-19-32 Consulting Services\)](#)

The [Insert purchasing agency name](#) issued this solicitation in draft and requested input from vendors. The draft solicitation was changed as follows based upon the feedback received:

- [Insert Section Number and Title and briefly describe the change](#)

Thank you to those vendors who provided comments on the draft solicitation.

Sincerely,

[Insert name](#)

Procurement Officer

E-mail: [Insert email](#)

Telephone: [Insert number](#)

TTY Users call: 7-1-1



**EMERGENCY PURCHASE EXPLANATION**  
 OFFICE OF MANAGEMENT AND BUDGET  
 CENTRAL SERVICES - STATE PROCUREMENT OFFICE  
 SFN 51627 (07-2021)

You must complete an Emergency Purchase Explanation form, SFN 51627 when making an emergency purchase. After the purchase has been made, promptly forward the completed form to the Office of Management and Budget (OMB), State Procurement Office (SPO) using the [SPO Work Request System](#). State agencies and institutions that do not have access to the SPO Work Request System must email the Emergency Purchase Explanation and supporting documentation to [infospo@nd.gov](mailto:infospo@nd.gov). Contact the State Procurement Office at (701) 328-2740 for assistance.

Emergency purchases must follow the requirements found in N.D.C.C. § 54-44.4-02 (07) and N.D.A.C. § 4-12-09-04 (detailed on page 2 of this form).

Agency Name	Business Unit Number	Procurement Officer
Date of Purchase	Total Purchase Cost	Contractor Name
Describe the Needed Commodity or Service		
Explain the Emergency Circumstance		
If the emergency circumstances warrant a noncompetitive purchase, the Office of Management and Budget or the purchasing agency shall document within the procurement file a written determination of the basis for the noncompetitive purchase, including the circumstances that justified the noncompetitive purchase. Describe the determination and justification for the noncompetitive purchase below.		
If the emergency purchase is subject to federal funding reimbursement, the Office of Management and Budget or the purchasing agency acknowledges that it has ensured that the procurement procedures and documentation are adequate to satisfy requirements for federal reimbursement. <input type="checkbox"/> N/A <input type="checkbox"/> Yes		

Contractor	Product/Service Offered	Unit Price	Total Price

**ACKNOWLEDGEMENT - OMB STATE PROCUREMENT OFFICE ONLY**

Comments		
State Procurement Office Representative	Signature	Date

**LAWS/RULES FOR EMERGENCY PURCHASES**

The law related to emergency purchases is N.D.C.C. § 54-44.4-02 (7):

Emergency purchases that OMB or a purchasing agency cannot make within the required time and which involve public health or public safety, or when immediate expenditures are necessary for repairs of state property to protect it against further loss or damage, or to prevent or minimize serious disruption in state services

- a. Emergency purchases made under this subsection must treat all bidders fairly and promote competition as is practicable under the circumstances.
- b. The procurement file must contain a written determination of the basis for the emergency, and the basis for the selection of the particular contractor.
- c. If the emergency circumstances warrant a noncompetitive purchase, the Office of Management and Budget or the purchasing agency shall document within the procurement file a written determination of the basis for the noncompetitive purchase, including the circumstances that justified the noncompetitive purchase.
- d. If the emergency purchase is subject to federal funding reimbursement, the Office of Management and Budget or the purchasing agency shall ensure the procurement procedures and documentation are adequate to satisfy requirements for federal reimbursement.
- e. If time allows emergency purchases for commodities under this subsection may require a sample for use in determining whether an offered product meets specifications

The rule related to emergency purchases is N.D.A.C. § 4-12-09-04

- 1. Procurements may be made under emergency conditions in a circumstance when there is insufficient time for usual competitive procurement methods and which involve public health, public safety, or when immediate expenditures are necessary pursuant to North Dakota Century Code section 54-44.4-02. If the circumstance does not meet the provisions of North Dakota Century Code section 54-44.4-02, a determination to limit or waive competition must be made.
- 2. An emergency procurement need not be made through competitive sealed bidding or competitive sealed proposals but must be made with competition that is practicable under the circumstances.
- 3. The purchasing agency shall limit the quantity of commodities or services being purchased to that necessary to meet the emergency circumstance.
- 4. The purchasing agency shall prepare a written determination for the use of emergency procurement procedures, including an explanation as to why emergency conditions exist, a description of the required commodities or services, and evidence necessary for the independent examination and determination of the material facts of the procurement.
- 5. The responsible agency official shall promptly forward the emergency determination to the state procurement office after the procurement.
- 6. The procurement officer shall conduct negotiations, as appropriate, regarding price, delivery, and terms. Such negotiations must be conducted in accordance with chapter 4-12-12.
- 7. The procurement officer responsible for the emergency procurement shall prepare and retain in the procurement file a record of the emergency procurement that includes the emergency determination, description of the commodities or services procured, and basis for the selection of the vendor.

Attachment 13.

To access FTA Circular 4420.1F Third Party Contracting Guidance click on the following link:

[Third Party Contracting Guidance | FTA \(dot.gov\)](#)

Attachment 14.

To access the FTA Master Agreement (Version 28 – February 9, 2021) click on the following link:

[FTA Master Agreement \(version 28, February 9, 2021\) | FTA \(dot.gov\)](#)





October 2021  
GUIDELINES TO MANAGING  
CONTRACTUAL RISK

NORTH  
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Risk Management  
MANAGEMENT AND BUDGET

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## ESTABLISHING CONTRACTUAL RISK MANAGEMENT GUIDELINES

The State and its agencies enter into numerous contracts for goods and services. These include contracts for construction, professional services, nonprofessional services, delivered supplies, and leases. These contractual relationships ordinarily have some degree of risk associated with them - there can be potential harm to state property, employees, and members of the public.

Recognizing the risks associated with a contemplated contractual relationship and addressing them in the contract itself is the purpose behind these guidelines. This information is intended to assist State employees who procure goods, services, and leases on behalf of the state of North Dakota. These guidelines have been drafted in coordination with the State Procurement Office and Office of Attorney General to comply with the written directives of the Office of Management and Budget (OMB) related to procurement, [N.D.C.C. ch. 54-44.4](#), and [N.D.A.C. Article 4-12](#) as well as [N.D.C.C. § 32-12.2-17](#).

This document should be reviewed in conjunction with a thorough risk assessment – ***prior to preparing a bid or proposal***. Keep in mind that the dollar amount of the contract is not a good index to measure the level of risk. Instead, the overall potential for damage to property or personal injury should be analyzed, not just the loss of the contract expenditure itself. One important consideration in addressing risk is the potential for third party claims to be brought against the State for activities arising under the contractual relationship.

Ordinarily a person is not responsible for the negligent acts of an independent contractor or a vendor (goods or services). This principle is reinforced in the [State Tort Claims Act](#), which specifically excludes independent contractors from the definition of a “State employee”. However, the general rule that a person is not responsible for the negligent acts of an independent contractor has numerous exceptions and it is unclear to what extent such exceptions can be applied to the State. In addition, the State remains liable for any condition or use of property under circumstances in which a private party would be liable. As a result, work performed on the State’s behalf by a contractor could still result in a claim being brought against the State. The uncertainty for when a claim may be brought, coupled with a growing litigious society, has made it necessary to ensure that the State’s potential risk for third party claims arising from its contractual relationships is dealt with effectively. The Risk Management Fund is only funded to address exposures associated with State activities through its employees, not activities of contractors and vendors providing goods or services.

The following is a tool to assist with drafting indemnification and insurance clauses in State contracts. These guidelines represent the best practices to protect the State’s interests without unduly burdening contractors. For services contracts, indemnification requirements must be limited to the State’s potential vicarious liability, unless a more stringent level of indemnification is deemed appropriate and approved by OMB. Even more stringent indemnification should focus on derivative claims, where the contractor remains the primary or actively negligent/responsible party and should be primarily concerned with reinforcing agency policy decisions on what duties, activities, and responsibilities are delegated to a contractor. Insurance requirements should address the contractor’s ability to meet any indemnification obligations, as well as potential direct losses to the State.

Agencies should always consult with the agency's assigned Assistant Attorney General and/or the Risk Management Division when addressing indemnification and insurance requirements in State contracts.

### ***Evaluate Contractual Relationship Both Factually and Legally***

Every contract has risks that must be reviewed from the perspective of protecting the State's assets and interests. Remember, the dollar amount of the contract is not necessarily a good index of the level of risk associated with the contract. The following will help you manage those risks when you contract on behalf of the State. An inherent part of contract management is to:

1. Evaluate the risks involved;
2. Decide whether to avoid, transfer, or accept the risks; and
3. Implement appropriate risk transfer and/or risk financing mechanisms deemed necessary.

Read the contract thoroughly and anticipate events or situations that could happen within the scope of work outlined. Ask yourself:

1. Who are all the parties involved?
2. What kind of work is being done?
3. What type of accidents or losses could occur?
4. What is the worst-case scenario in terms of financial loss and/or injury to persons or property?
5. Are the responsibilities for the risks appropriately placed with those in the best position to control them?
6. What is each party's ability to manage the risks and absorb the losses?
7. Is the contract legal and enforceable?

Within the contract, risk transfer is accomplished through a combination of indemnification, hold harmless, and waiver of subrogation clauses. Insurance is commonly required as a means of providing the financial support to back the indemnitor's obligation to hold the indemnitee harmless. ***Remember, the purpose of risk transfer is not to make a contractor or vendor assume the State's liability for its own actions, but rather to reinforce the responsibilities the contractor has over risks it controls or has been delegated pursuant to the contract.***

The State's goal is to establish contract guidelines for insurance coverage that can be consistently applied with few exceptions. To ensure the continued success of the State's contract review program, once insurance requirements have been set, they must be communicated in all solicitations for bids or proposals **prior** to awarding the contract. The program will not be successful if the insurance is negotiated *after* the contractor has been selected. Also, a change in bidding requirements, such as changing the insurance requirements, could result in a protest of the award by the unsuccessful bidders.

This section provides several methods of dealing with contractual risk. The Risk Management Fund recommends these procedures be followed by any person involved in procurement and drafting contracts for the State. The discussion will include **1)** screening contractors; **2)** safety requirements for bid specifications and contracts; **3)** contractual risk transfer through indemnification/hold harmless clauses; and **4)** insurance requirements.

**PLEASE NOTE:** Use of the following recommended clauses and forms does not ensure that all contracts and agreements will be adequately drafted to protect the State's interests. **Each entity's legal counsel should review all contracts and agreements before they are executed.**

### ***Screening Contractors***

There simply is no substitute for dealing with a safety-conscious contractor who prevents or minimizes damages and injuries through safe work practices. Keep in mind that for every dollar of loss prevented, there is perhaps an additional dollar of frictional and "soft" costs saved (legal fees, claims handling costs, lost employee productivity, and so on).

Screen your contractors carefully before entering into any contract. Screening is probably the simplest and yet most effective method of controlling contractual risk. Suggested steps include:

- Deal only with reputable firms.

There are several ways to check the reputation of contractors. For example, a clause could be inserted into the bid solicitation mandating contractors explain their safety program and safety problems or violations over the past five years. The agency could also talk with agency employees or review records from other projects performed by that contractor for the agency.

- Check references.

The bid solicitation should require the contractor to disclose the name, address and telephone number of at least 3 people who have hired the contractor to do a similar job in the past five years. The bid solicitation should also provide that the State may contact each reference for additional information.

- Check records of safety violations through OSHA and the Secretary of State's records.

The OSHA office in each state maintains records regarding safety violations by various contractors including construction contractors. For example, under 40 U.S.C. Section 333, the Secretary of Labor, who oversees OSHA, is required to investigate and hold hearings regarding safety violations by construction contractors. The Secretary of Labor ultimately may send a list of contractors who have engaged in safety violations to the Comptroller General and that list is circulated among federal agencies.

State agencies can obtain information on safety violations by a contractor who has done business in North Dakota by contacting [OSHA in North Dakota](#), 521 East Main Avenue, Suite 200, Bismarck ND 58501; telephone (701) 250-4521.



In addition, pursuant to [N.D.C.C. ch. 43-07](#), the North Dakota [Secretary of State](#) regulates contractors and maintains public records regarding their activities. The records include information on the contractor's experience and qualifications, liability insurance, workers' compensation coverage, unemployment coverage, and other information regarding the applicant's fitness to act in the capacity of a contractor. The records may also show the level of activity the contractor is authorized to engage in, the type of work the contractor engaged in over the past year, whether the contractor abandoned a contract without legal excuse, diverted funds, engaged in fraudulent acts, or made a false statement. Information concerning construction related contractors can be obtained from the Secretary of State's office at (701) 328-3665.

- Monitor compliance with contract terms.

Care should be exercised by the State to determine if contractor's activities are consistent with each part of the contract. The State should not monitor contracts by retaining control over the means, method and manner of producing the result because that blurs the line between whether the contractor is actually an independent contractor, for which the State ordinarily would have no liability, or an employee, for which the State may have much greater liability.

### ***Safety Requirements for Bid Specifications and Contracts***

A key step in a major construction project is preparing the bid specifications, outlining the scope, and requirements of the project. Safety requirements should be a vital part of the bid specifications. For example, we recommend the following language be incorporated into all construction contracts:

**Safety Requirements:** The Contractor shall keep informed of and comply with all federal, state, and local laws, regulations, and other legal requirements governing the safety, health, sanitation, and performance of the contract in general. In addition, the Contractor shall provide, inspect and maintain all safeguards, safety devices, protective equipment, safety programs and other needed actions the Contractor determines necessary to reasonably protect the life, health and property of the Contractor, subcontractors, the State, the public and each of the employees, officers, assigns and agents of the Contractor, subcontractors and the State, in connection with the performance of work resulting from or arising out of the contract.

The Contractor shall submit to the State a copy of the written safety program to be used as guidelines and direction for the Contractor's and subcontractors' activities. This program must meet all federal, state and local laws, regulations and other legal requirements and include the following minimum provisions: (1) a worksite safety policy and mission statement; (2) assigned responsibilities among management, supervisors and employees; (3) a system for periodic self-inspections, including inspections of job sites, materials, work performance and equipment; (4) a thorough accident and injury reporting and investigation process; (5) a safety orientation program including first aid, medical attention, emergency facilities, fire protection and prevention, housekeeping, illumination, sanitation, personal protective equipment, and occupational noise exposure; and (6) a safety training program including safety "tool box" meetings and other systems for ongoing training and also including training for employees on the recognition, avoidance and prevention of unsafe conditions.

It will be a condition of the contract and shall be made a condition of each subcontract entered into pursuant to that contract, that the State is assuming no liability relating to its receipt and review of the Contractor's safety plan or activities. Safety remains the responsibility of the Contractor. Furthermore, the right of the State to receive and review the safety plan or activities shall not give rise to a duty on the part of the State to exercise this right for the benefit of the Contractor or any other person or entity.

### ***Spoliation (Notice of Potential Claims) Clause***

The Risk Management Division recommends a clause entitled Spoliation (Notice of Potential Claims) be added to State lease agreements and service contracts. Spoliation is defined as **the destruction or severe modification of evidence**.

Court decisions have held that the action of merely cleaning the scene of an accident before the accident can be adequately investigated and the loss and cause of loss documented can be a breach of a legal duty giving rise to potential liability.

While the State has a concern to preserve evidence, consideration must also be given to the need to appropriately secure or clear the site to mitigate any immediate safety threat.

To ensure the State is afforded an opportunity to adequately investigate and document losses that pertain to contracts to which the State is a party, it is recommended the following clause be included in an agreement. This clause has been incorporated in the [Attorney General Office's Contract Drafting & Review Manual](#) and contract template.

- Contractor (or Landlord) agrees to promptly notify State of all potential Claims which arise from or result from this agreement. Contractor (or Landlord) further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the State the opportunity to review and inspect such evidence, including the scene of the accident.

### ***Contractual Risk Transfer Through Indemnification/Hold Harmless Clauses***

Contractual risk is generally transferred with an indemnification/hold harmless clause. The purpose of the clause is to define who pays when a third party makes a claim for damages arising out of the work performed under the contract. The party that exercises the most control over the activities governed by the contract is in the best position to enforce safety and loss control practices and should, therefore, generally be responsible for injuries or damages arising from those activities.

Future agency contributions to the Risk Management Fund are based on actual losses incurred as well as costs incurred to defend any losses. This, of course, includes losses and costs related to claims arising from services provided by contractual agreements. By not implementing an in-depth analysis of all agency agreements and incorporating the appropriate indemnification language into the agreement, the agency may adversely impact its required contributions.

Any person contracting on behalf of the State must know that the Risk Management Fund cannot, by law, defend or pay settlements or judgments on behalf of any parties other than the State, a State

entity, or a State employee. Therefore, **agencies must remember that if the agency were to sign a contract agreeing to indemnify a private third party, the Risk Management Fund would not be able to defend or pay any settlement or judgment on behalf of that third party.** Any such cost would be the sole expense of the contracting agency raising issues of whether or not the agency has appropriation authority to pay such costs and if by signing such an agreement the employee would be determined to not be acting within the scope of his or her employment. See also the discussion concerning limiting the liability of vendors within these Guidelines.

Indemnification/hold harmless clauses assist agencies in addressing potential exposures and should be used in conjunction with insurance clauses. There are three basic forms of indemnification/hold harmless provisions that can be used in State contracts:

1. **No Indemnification of Liability** provision: Each party agrees to assume the liability and expenses (e.g., defense and investigation costs) for their own acts. This is essentially the same as the liability that would exist under common law, but it is specified in the agreement. Ordinarily, there is no need to have this type of clause in most contracts. A modified comparative fault indemnification clause, however, may be considered if the contract will be performed in a jurisdiction that retains joint and several liability.
2. **Limited Vicarious Liability** provision: *Pursuant to N.D.C.C. § 32-12.2-17, this indemnification provision is to be the default form for State service contracts requiring indemnification.* While this provision results in having each party assume its own direct liability, it provides additional protection for the State in that the Contractor agrees to be responsible for any liability alleged against the State resulting from the Contractor's sole actions and provides defense for the State to resolve those allegations.

Remember, **an agreement between the State and a Political Subdivision** may not contain a provision that requires one party to assume the liability of the other or the liability of a third party or to bear the costs of defense of actions against the other or against a third party. However, contractors for political subdivisions can be required to indemnify the State. (See, N.D.C.C. § 32-12.2-13 and N.D.C.C. § 32-12.2-17)

3. **Intermediate** provision: Requires Contractor to be responsible for its own liability and the joint liability of the Contractor and the State. This provision will be allowed only after the OMB Director's designee has determined the contract presents a high-risk scenario that requires an indemnification provision more stringent than the [Limited Vicarious Liability form](#). (See N.D.C.C. § 32-12.2-17). Except in rare circumstances, agencies should not focus on seeking to have a contractor indemnify an agency for its own active acts of negligence. Rather, the focus should remain on potential derivative claims where the contractor is the primary/actively negligent party. The indemnification clause reinforces the executive decisions made on what activities and responsibilities are delegated to the contractor.

### ***Insurance Requirements for Contractors***

Insurance requirements are designed to ensure that contractors can meet their financial obligations in the event their activities cause property damage, personal injury, or other non-contractual losses. While insurance can be complicated, the guide for recommended insurance requirements is simply



to ask what could go wrong under the contract and then making sure that the contractor can financially meet its obligations to address those losses. In most circumstances, a contractor should be required to maintain reasonable insurance coverage and provide written proof of this protection.

▪ **Commercial General Liability Insurance**

Virtually all businesses maintain some form of Commercial General Liability insurance. This insurance is designed to cover claims involving bodily injury and property damage arising out of the insured contractor's premises, operations, products and completed operations, as well as certain personal and advertising injury claims. Standard Commercial General Liability policies also have contractual liability provisions which are designed to cover a contractor's indemnity obligations as well as mechanisms to make those that engage the services of the contractor an additional insured for claims that arise out of the contractor's work under the contract.

When the activities contemplated under a contract pose some realistic risk of personal injury or property damage, the contractor should generally be required to maintain Commercial General Liability insurance at levels sufficient to meet the identified potential losses. When the risk of loss to the State involves being held responsible for the actions of the contractor, the contractor should be required to maintain levels of insurance that meet or exceed the State's statutory limits of liability.<sup>1</sup> For projects with considerable loss exposure, higher aggregate limits or project specific limits should be considered to mitigate the potential of policy limits being eroded from claims arising from other activities of the contractor. Activities of a contractor that take place in another state can also give rise to greater risk of loss that may necessitate significantly higher limits of insurance.

▪ **Automobile Liability Insurance**

As with an individual's personal automobile insurance, a commercial Automobile Liability Insurance policy is designed to cover claims arising from the operation of motor vehicles.

Generally, the need to specify minimum levels of auto liability insurance only arises when the contractual relationship contemplates driving on behalf of the State in furtherance of the contractor's obligations and responsibilities under the contract.

Incidental driving that is not directly in furtherance of contractual obligations and responsibilities, such as an ordinary commute from a business location to an agency location to begin work,

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<sup>1</sup> Pursuant to 2021 House Bill 1057, the statutory caps on State liability (N.D.C.C. § 32-12.2-02) will increase each year starting July 1, 2022 through July 1, 2026.

- 7/1/22: \$375,000 per person, \$1 million per occurrence
- 7/1/23: \$406,250 per person and \$1,625,000 per occurrence
- 7/1/24: \$437,500 per person and \$1,750,000 per occurrence
- 7/1/25: \$468,750 per person and \$1,875,000 per occurrence
- 7/1/26: \$500,000 per person and \$2,000,000 per occurrence
- 7/31/27: Act becomes ineffective and will require legislation making future adjustments or making past adjustments permanent.

ordinarily does not require minimum levels of automobile insurance to be included in the contract.

Contracts that involve the movement of people, goods, materials or driving between multiple work sites generally should require minimum automobile limits consistent with the State's limits of liability. If the policy has split limits the contract should specify that any per person limit must meet the per person statutory cap. Policies with a combined single limit should have coverage limits consistent with the per occurrence statutory cap.

In situations when a contractor is relying upon a personal automobile policy, an agency should take additional steps to ensure that the contemplated driving activities are not excluded as a business use.

- **Professional Liability Insurance**

This insurance provides coverage for errors and omissions in the provision of professional services.

Contracts that involve specialized intellectual services should consider the need for Professional Liability Insurance. Contracts for attorneys, health care providers, design professionals, accountants and some technology services may require some type of Professional Liability Insurance.

A primary focus should be on agency's ability to detect and correct errors before damages can occur. In those cases when the professional negligence may remain undetected even after the contractual relationship has ended, agencies should include an Extended Reporting Endorsement requirement in the contract.

- **Workers Compensation and Employers Liability/Stop Gap Coverage**

Workers Compensation laws and corresponding coverage requirements vary by state. In most jurisdictions, coverage is secured through commercial insurance policies.

Most standard commercial workers compensation policies include a separate Employers Liability coverage part for liability an employer has to employees for work-related injury that is not imposed by the workers compensation laws. In states that have monopolistic state administered funds such as North Dakota, Employers Liability is not provided through the state administered fund. This Gap in coverage is addressed through a "**Stop Gap Endorsement**" to the Commercial General Liability policy or the Workers Compensation policy if the employer has operations in states that do not operate a monopolistic fund.

Workers compensation coverage generally only applies to business entities that have employees. Sole proprietorships and other business entities that do not have employees are generally not required to secure workers compensation coverage, although optional voluntary coverage may be available. Personal service contracts and other contracts for which workers compensation coverage is not required should be evaluated to determine whether optional voluntary coverage should be required or whether a waiver of liability provision should be included in the contract.

## ▪ **Other Insurance**

Other types of insurance may be warranted depending on the unique risks that arise from the contractual relationship. For example:

- Contracts that involve vendor hosting of confidential or sensitive information may call for the vendor to maintain a Cyber Liability policy covering third-party claims as well as first party notification and remediation costs following a data breach.
- Building construction contracts may call for an Owners and Contractors Protective Liability coverage and Builder Risk Insurance.
- Construction contracts should always be carefully reviewed by legal counsel.
- When leasing space, it is critical that the contract specifically require the Landlord to maintain property insurance on the building and contents and agree to a waiver of subrogation or release in favor of the State.
- Contracts that involve a reasonable possibility of pollution-related claims should require pollution coverage. If a spill or other source of contaminant may not be immediately and readily discovered, the policy should be written on an occurrence basis or contain a long tail or extended reporting period to cover the time in which the pollution event may remain undiscovered. Attempts to limit coverage to sudden and unexpected events should generally be rejected.

### ***Certificates of Insurance***

The primary means of ensuring that a contractor has the insurance required in a contract is through a Certificate of Insurance that is issued by the contractor's insurance agent or broker. A Certificate of Insurance is not part of and does not amend the underlying insurance policies, but rather is simply an indication of the insurance that is in place at that moment in time.

It is impermissible to ask for language on a Certificate of Insurance that does not reflect the actual insurance coverages that are in place.

When an agency is made an additional insured pursuant to a blanket additional insured endorsement, the Certificate of Insurance should indicate that the State is an additional insured to the extent required by contract or other appropriate description.

Contracts that extend beyond the coverage period specified in a Certificate of Insurance should be evaluated to determine whether the Contractor should be required to provide updated current Certificates of Insurance throughout the term of the contract. In many contracts requiring the Contractor to provide updated Certificates only in the event of any changes in coverage is adequate.

### ***Additional Insureds***

A common requirement in many commercial transactions is for one party to be made an Additional Insured on the other party's insurance, typically the commercial general liability policy and any

umbrella or excess policies. The purpose is to provide a direct right of access to defense and indemnity through the other party's insurance.

A party to a contract can be made an Additional Insured through a manual endorsement, whereby the party is specifically included as an Additional Insured by name on an endorsement to the policy or through a blanket Additional Insured endorsement typically whereby anyone the contractor is required by contract to include as an Additional Insured is automatically provided that coverage.

Most transactions that involve the State being made an Additional Insured will be through a blanket Additional Insured endorsement. This is perfectly fine in most transactions, but drafters should be aware that Additional Insured coverage through a blanket Additional Insured endorsement typically is limited to the contractor's ongoing operations and does not extend to completed operations.

### ***Determining Appropriate Indemnification and Insurance Provisions***

The first step when drafting a contract or a solicitation is to consider the potential risk associated with the contract being contemplated and select the appropriate clauses. For example:

1. **No Indemnification of Liability provision with Certificate of Insurance** should be used:
  - a) When contracting for intellectual services when the contractor will not be providing on-site services, or only limited on-site services presenting a low risk of harm. (Examples of professionals providing intellectual services would include attorneys, architects, engineers, accountants, insurance agents and brokers, appraisers, loss claims adjusters, tax consultants, risk investment brokers, and investment and divestiture consultants.)
  - b) When the services to be provided present a minimal threat to the safety, health and well-being of participants or third parties, has little potential to cause disruption of business schedule, financial loss/increased cost, or degradation of performance.
  - c) If the terms of the Lease do not require the landlord to provide snow and ice removal and maintenance on walkways and parking lots or to maintain common areas, or members of the public will not visit the leased property.
  - d) Most standard product purchases that do not involve ongoing on-site maintenance.

Obtain a certificate of insurance documenting required coverages are in place prior to executing or before beginning work under the contract.

2. **Limited Vicarious Indemnification with Additional Insured Endorsement – This is the default indemnification provision for State service contracts and leases.** When a contractual relationship poses some realistic risk of claims being brought against the State arising from the contractor's activities and operations, the contract should require the Contractor to indemnify the State. In most service contracts and leases, the indemnity obligation should be limited to vicarious claims - those brought against the State merely because of the business relationship between the contractor and the State, i.e. the damage occurred on a State project or property. In addition, the State must be made an additional insured on the Contractor's Commercial General Liability insurance, providing coverage for all claims that arise out the Contractor's work.

Obtain a certificate of insurance documenting required coverages are in place **prior** to executing or before beginning work under the contract. When a manual additional insured endorsement is required, it may take up to 90 days until the insurance carrier provides it. Make sure to verify receipt of the endorsement within 90 days.

3. **Intermediate Indemnification with Additional Insured Endorsement** – Requires the contractor to be responsible for its own liability and the joint liability of the contractor and the State. Use the intermediate indemnification clause if there is the potential that the contractor’s activities present a high degree of risk over which the State has no supervision or control that could create liability for the State. Prior to requiring this level of indemnification in a contract, the State agency must obtain the approval of the OMB Director’s designee.

The process a State agency or facility should use to obtain that approval is to complete [SFN 58571](#) form, the ***Application to Require a More Stringent Indemnification Provision***. The form, along with a copy of the proposed contract should be filed with the Risk Management Division of OMB for processing unless the OMB director has determined an alternate designee to review the proposed contract. OMB, through Risk Management, will work with the agency to analyze the exposure presented by a proposed agreement and determine what level of indemnification would be appropriate.

The OMB Director has determined that it is appropriate that **State software contracts** contain indemnification requirements indemnifying and holding the State harmless from and against all third-party claims alleging the software infringes a United States patent or copyright, or any similar intellectual property right in the United States. This provision is normally a default in software vendor’s license agreements. State agencies do not have to go through the SFN 58571 Application for approval to use this indemnification provision in an agreement.

4. **No Indemnification or Insurance Requirements** – should be used in contracts between state agencies and with political subdivisions if no subcontractor will be used. Where a contract with a political subdivision contemplates a subcontractor directly providing services on behalf of the State or on State property, the contract should require the subcontractor to indemnify the State and maintain insurance commensurate with the risk. In addition, purchases of routine “off the shelf” products that do not pose any realistic risk of harm and that are delivered through common carrier generally do not require any indemnification or insurance provisions.

### ***Risk Analysis***

Before making decisions about indemnification and insurance requirements, it is necessary to evaluate the potential risks associated with the contract. The identification of potential risks generally requires a thorough understanding of the scope of the contract and may involve discussions with others more familiar with it.

The Risk Management Analysis Matrix below is a tool to assist with the risk assessment and determination of the indemnification and insurance requirements that appropriately address the specific risks associated with the contract. **The Matrix is not a substitute for proper analysis and**

**identification of the specific risks that arise under a contract and tailoring the contract language to meet the identified risks.**

Following the Matrix are examples of indemnification and insurance clauses that can be incorporated into the body of a contract, **as appropriate**, or be used as an appendix to a solicitation (i.e. Informal Request for Bids, Informal Request for Proposal, Invitation for Bid, or Request for Proposal), and then be incorporated into the purchase order or contract.

***Note: Not every recommended insurance requirement will apply to every contemplated contract.***

**REMEMBER TO CONSULT WITH LEGAL COUNSEL  
AND/OR RISK MANAGEMENT WHEN ADDRESSING  
THESE RECOMMENDED TERMS AND CLAUSES**

**RISK MANAGEMENT ANALYSIS MATRIX:** provides an overview of the risk analysis process.

<b>RISK MANAGEMENT ANALYSIS MATRIX</b>			
		<b>Indemnification and Insurance Provisions</b>	<b>Indemnification and Insurance Provisions</b>
<b>Rating</b>	<b>Definition</b>	<b>Commodities</b>	<b>Services</b>
<p style="text-align: center;"><b><u>LOW</u></b></p> <ul style="list-style-type: none"> <li>▪ Inter-Agency &amp; Political Subdivision</li> <li>▪ Professional Services <b>Not</b> Requiring On-Site Services <b>or</b> Low Risk On-Site Activities</li> <li>▪ Non-Professional Services Posing Little Realistic Risk of Harm or Damage to Property</li> <li>▪ Contracted Services That Do <b>Not</b> Involve Handling of Confidential Information</li> </ul>	<p>Presents a minimal threat to safety, health and well-being of participants and third parties, has little potential to cause disruption of business schedule, financial loss/increased cost, or degradation of performance.</p>	<p style="text-align: center;">None</p> <p style="text-align: center;">(The purchase of routine off the shelf products.)</p>	<p style="text-align: center;">None</p> <p style="text-align: center;">~ <b>or</b> ~</p> <p style="text-align: center;">No Indemnification of Liability with Certificate of Insurance</p>
<p style="text-align: center;"><b><u>MODERATE</u></b></p> <ul style="list-style-type: none"> <li>▪ <b>Professional</b> Services Agreements Requiring Significant On-Site Services</li> </ul>	<p>Special intellectual ability required to perform the contracted services some of which will be performed on-site. <b>On-site</b> generally involves a significant presence or activity giving rise to a risk of injury or damage to property, rather than a single visit or low risk activities such as classroom training.</p>	N/A	<p>Limited Vicarious Liability with Certificate of Insurance and Additional Insured Endorsement and Errors and Omissions Coverage</p>
<p style="text-align: center;"><b><u>MODERATE</u></b></p> <ul style="list-style-type: none"> <li>▪ Routine <b>Non-Professional</b> Services</li> <li>▪ Some Unique or Specially Made Products</li> <li>▪ Routine <b>Leases</b></li> </ul>	<p>Potential to cause injury/illness, property damage, some disruption of business schedule, financial loss/increased cost, or degradation of performance.</p>	<p>Limited Vicarious Liability with Certificate of Insurance and Additional Insured Endorsement</p>	<p>Limited Vicarious Liability with Certificate of Insurance and Additional Insured Endorsement</p>
<p style="text-align: center;"><b><u>HIGH RISK</u></b></p> <ul style="list-style-type: none"> <li>▪ Requires More Stringent Provisions</li> <li>* Requires Authorization from OMB Director's Designee <b><u>SFN 58571</u></b></li> </ul>	<p>State has little or no supervision or control over contractor's actions which may cause severe injury/death, major property damage, significant disruption of business schedule, financial loss/increased cost, or degradation of performance.</p>	<p>Intermediate with Certificate of Insurance and Additional Insured Endorsement</p>	<p>Intermediate with Certificate of Insurance and Additional Insured Endorsement</p>

## SAMPLE SERVICE AGREEMENTS

### LOW RATED RISK

#### Agreements Between State Agencies (Inter-Agency) and With Political Subdivisions

##### Indemnification

None

##### Insurance

None

#### Professional/Non-Professional Services Agreements Involving Low Risk Activities

##### Indemnification

None **OR:** The State and Contractor each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

##### Insurance

Contractor shall 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 \$2,000,000 per occurrence.
- 2) Professional errors and omissions with minimum limits of \$1,000,000 per claim and in the aggregate, Contractor shall continuously maintain such coverage during the contract period and for three years thereafter. In the event of a change or cancellation of coverage, Contractor shall purchase an extended reporting period to meet the time periods required in this section. ***[If Applicable]***
- 3) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence. ***[If Applicable]***
- 4) Workers compensation coverage meeting all statutory requirements.

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

- 1) 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.

- 2) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement.
- 3) Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.
- 4) Contractor shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. An updated, current certificate of insurance shall be provided in the event of any change to a policy.

**MODERATE RATED RISK**

**Professional Services Agreements Requiring Significant On-site Presence or Activity**

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 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 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. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. Contractor also agrees to reimburse the State 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.

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 \$2,000,000 per occurrence.

- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence. ***[If Applicable]***
- 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 \$2,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- 5) Professional errors and omissions with minimum limits of \$1,000,000 per claim and in the aggregate, Contractor shall continuously maintain such coverage during the contact period and for three years thereafter. In the event of a change or cancellation of coverage, Contractor shall purchase an extended reporting period to meet the time periods required in this section. ***[If Applicable]***

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

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. ***Optional Provision:*** The amount of any deductible or self-retention is subject to approval by the State.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in 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 on a primary and noncontributory basis, 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 the Contractor.
- 5) A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State.
- 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.
- 8) Contractor shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of

insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration. **Optional Provision:** An updated, current certificate of insurance shall be provided in the event of any change to a policy.

**Routine Non-Professional Service Contracts Requiring  
On-site Services or Involving Moderate Risk**

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 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 must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. Contractor also agrees to reimburse the State 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.

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 \$2,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence. **[If Applicable]**
- 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 \$2,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

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

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. **Optional Provision:** The amount of any deductible or self-retention is subject to approval by the State.

- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in 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 on a primary and noncontributory basis, 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 the Contractor.
- 5) A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State.
- 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.
- 8) Contractor shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration. **Optional Provision:** An updated, current certificate of insurance shall be provided in the event of any change to a policy.

## **HIGH RATED RISK**

**Agreements Requiring More Stringent Indemnification** - For example, contracts for construction, alteration, renovation, or maintenance of a building, structure, highway, road, bridge, water line, railroad right of entry, sewer line, oil line, gas line, appurtenance, appliance or other improvement to real property, including any moving, demolition or excavation, carnival rides.

**Use of the following provisions requires authorization from OMB Director's Designee. Use SFN 58571 to obtain authorization.**

### Indemnification

Contractor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from claims resulting from the performance of the contractor or

its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this agreement, except claims based upon the State's sole negligence or intentional misconduct. 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. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. Contractor also agrees to reimburse the State for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

### Insurance

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

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$2,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$500,000 per person and \$2,000,000 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 \$2,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

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

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

- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy on a primary and noncontributory basis, 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 the Contractor.
- 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 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 must 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) 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.
- 8) Contractor shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration.

For high-risk contracts, agencies should consult with the Risk Management Division to evaluate whether to require notice from the carrier through an endorsement.

If Contractor's insurance carrier cannot provide the insurance requirements listed above, Contractor will be required to purchase a project-specific insurance policy on behalf of State including but not limited to an Owner's Protective Liability insurance policy or a Project Management Protective Liability insurance policy with an occurrence limit of not less than \$2,000,000 and an aggregate of \$2,000,000. Said insurance shall be kept in force until the project is accepted by State.

For some large construction projects, it may be determined that the most effective insurance would be the purchase of **All Risk Builder's Risk** coverage. Requirements for such coverage should include:

Builder's Risk insuring the interest of the State, contractor(s) and subcontractor(s) of all tiers including coverage on an All Risk basis, including but not limited to, coverage against fire, lightning, wind damage, hail, explosion, riot or civil commotions, aircraft and other vehicles, collapse, flood, earth movement, and coverage available under the so-called Installation Floater. The policy(ies) for such coverage shall be secured and maintained by contractor in an amount equal to the Full Completed Value of the project. Any deductible amount under the policy(ies) shall be the sole responsibility of the Contractor.

For operations involving a risk of environmental pollution such as a ruptured pipeline, contractors should be required to provide proof of **pollution liability** coverage. Requirements should include:

Pollution Liability: Contractor shall provide Contractor's Pollution Liability coverage for Personal Injury, Property Damage and Cleanup Cost arising from pollution conditions caused by the operations of the Contractor for limits of \$5,000,000. Occurrence coverage is preferred but coverage may be provided on a claims-made form that includes a three-year tail coverage endorsement. Coverage shall include contractual liability coverage for claims arising out of liability of subcontractors, loading and unloading, unlimited completed operations, and non-owned disposal site coverage (if applicable).

## LEASES

**MODERATE Risk Lease** - If the terms of the Lease **DO** require the landlord to provide snow and Ice removal and maintenance on walkways and parking lots or to maintain common areas, or if it is likely members of the public will visit the facility.

### Indemnification

Lessor 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 Lessor 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. Lessor also agrees to reimburse the State for all costs, expenses and attorneys' fees incurred if the State prevails in an action against Lessor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

### Insurance

Lessor shall secure and keep in force during the term of this agreement and 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 \$2,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence. **[If Applicable]**
- 3) Property insurance insuring the full and true value of all Lessor's real property and personal property located on or in the building in which the leased premises are located for all losses. Lessor waives any right to seek compensation from State for any covered losses for which this required insurance is to apply. **Optional Provision:** Lessor shall require all other tenants to have property insurance covering the full and true value of all of tenant's personal property located on or in the building together with a waiver of subrogation.
- 4) 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.
- 5) Employer's liability or "stop gap" insurance of not less than \$2,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

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

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. **Optional Provision:** The amount of any deductible or self-retention is subject to approval by the State.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in 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 on a primary and noncontributory basis, 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 the Contractor.
- 5) A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State.
- 6) The Lessor 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) Lessor shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. Lessor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration. **Optional Provision:** An updated, current certificate of insurance shall be provided in the event of any change to a policy.

**LOW Risk Lease** - If the terms of the Lease do **not** require the landlord to provide snow and ice removal and maintenance on walkways and parking lots or to maintain common areas, or if it is unlikely members of the public will visit the facility, the following indemnification and insurance language is acceptable. **Omit indemnification language for leases with political subdivisions.**

#### Indemnification

None or Lessor and Lessee each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

#### Insurance

Lessor shall secure and keep in force during the term of this agreement, from insurance companies or a government self-insurance pool authorized to do business in the state of North Dakota, the following insurance coverages:

- 1) Commercial general liability, including contractual coverage, with minimum liability limits of \$2,000,000 per occurrence.
- 2) Workers' compensation coverage meeting all statutory requirements.
- 3) Property insurance insuring the full and true value of all Lessor's real property and personal property located on or in the building in which the leased premises are located for all losses. Lessor waives any right to seek compensation from State for any covered losses for which this required insurance is to apply. **Optional Provision:** Lessor shall require all other tenants to have property insurance covering the full and true value of all of tenant's personal property located on or in the building together with a waiver of subrogation.

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

- 1) Any deductible or self-retention amount of other similar obligations under the policies shall be the sole responsibility of the Landlord (or Tenant).
- 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. "Follows form" means the excess policy must be written with the same terms and conditions as the policy to which it is excess.

- 3) Lessor shall furnish a certificate of insurance evidencing the required coverages are in effect prior to commencement of the agreement.
- 4) Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.
- 5) Lessor shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements. Lessor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration. **Optional Provision:** An updated, current certificate of insurance shall be provided in the event of any change to a policy.

### ***Limiting the Liability of Certain Vendors***

The need for State agencies and facilities to purchase software, communication, and electronic equipment has presented challenges for state procurement - that of a vendor's request to limit its liability.

This issue is not unique to North Dakota. In fact, state and corporate members of the National Association of Chief Information Officers of the States (NASCIO) formed a subcommittee to address the issue because it is of nationwide concern. That subcommittee published the *NASCIO Procurement Subcommittee's Recommendations on Liability Limitations for State IT Contracting*. That document contains specific recommendations for contractually addressing liability for direct and indirect damages in IT contracts. It recommends that States *should hold* vendors responsible for direct damages arising out of a contract and that States *should not hold* vendors responsible for indirect damages unless responsibility is specifically allocated to the vendor in the contract.

N.D.C.C. § 32-12.2-15 is generally consistent with this recommendation and allows agencies to limit the liability of a vendor for indirect losses for certain products and related services when the agency determines, in consultation with the Attorney General's Office and the Office of Management and Budget, that agreeing to the limitation is in the best interests of the State. Direct losses may also be limited to an estimated amount when it is difficult to quantify any potential direct loss beyond the price paid for the product or service, with any agreed upon limitation of direct loss presumed to be twice the contract amount. Although third-party claims being brought against the State are often a primary reason a vendor seeks a contractual limitation of liability provision, agencies must be careful to distinguish between third-party claims alleging vicarious or other derivative liability of the State based upon the actions of a vendor as opposed to claims that simply relate in some way to the contract. Agencies may **not** limit the State's right to contractual or common law indemnification or contribution as well as losses resulting from fraud, intentional or willful misconduct, breach of confidentiality obligations, or personal injury or damage to tangible property.

Agencies must also maintain documentation of the justification for agreeing to any limitation. *No form or template is necessary, and an email exchange is often sufficient.* A state employee that

agrees to a limitation of liability without consulting with the Attorney General's Office and the Office of Management and Budget may be acting outside the scope of their employment.

## **CERTIFICATES OF INSURANCE AND ENDORSEMENTS**

Contractors are required to provide the State with a Certificate of Insurance and/or Endorsement documenting the required coverages are in place, prior to commencement of the contract. A Certificate of Insurance will ordinarily only reflect the coverages that are in place at the time the Certificate is issued and may often not reflect the contract terms that require an endorsement. A person may not request that a certificate of insurance include items that are not part of the underlying policy but may request that it identify policy provisions that meet the contractual requirements.

When a manual additional insured endorsement is required it may take up to 90 days until the insurance carrier will provide it. Make sure that you verify receipt of the endorsement within 90 days.

A sample letter of instruction for the successful vendor can be found on the Team ND Connect State Procurement [Templates](#) web page.

Certificate of Insurance: A completed Certificate of Insurance should contain the following:

- Name and address of agent, phone number and fax number;
- Name of insurance company(ies) and policy number(s);
- Policy period;
- Name and street address of insured;
- Description of coverage(s);
- Name/Number of Project;
- Policy limits as provided in the contract;
- Special instructions or terms of coverage (for example: identification of project or operations with respect to certificate being issued);
- State and/or agency listed as the certificate holder; and
- Signature of the insurer's agent or representative and date.


Endorsement: When the contract terms provide that the State must be named as an additional insured, an endorsement is required. The only way that an entity other than the named insured (contractor) is protected under the terms of the contractor's insurance policy is by adding, by endorsement, an additional insured.

Under some circumstances, a contractor's policy may provide for a blanket additional insured, meaning that additional insured status is automatic under the terms of the policy where the contractor has by contract agreed to add the State as an additional insured. For higher risk

activities, agencies should consult with the Risk Management Division in evaluating the adequacy of the State being an additional insured through a blanket endorsement. When the State is being made an additional insured through a blanket additional insured endorsement/provision, the certificate of insurance should indicate the State is an additional insured to the extent required by contract or other appropriate description.

# Sample/Understanding the Certificate of Insurance

Field descriptions and additional information provided on the following pages.

		<b>CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) <b>(1)</b>			
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER. <b>(2)</b>							
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s). <b>(3)</b>							
PRODUCER <b>(4)</b> Insurance Broker/Agency		CONTACT NAME: <b>(5)</b> PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____ INSURER(S) AFFORDING COVERAGE <b>(7)</b> NAIC # _____ INSURER A : A+ rated XYZ insurance company INSURER B : _____ INSURER C : _____ INSURER D : _____ INSURER E : _____ INSURER F : _____					
INSURED <b>(6)</b> Vendor/Title of Business in Contract							
<b>COVERAGES</b>		<b>CERTIFICATE NUMBER:</b>		<b>REVISION NUMBER:</b>			
<b>(8)</b> THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
INSR LTR	TYPE OF INSURANCE <b>(14)</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <b>(a)</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PER ACCIDENT <input type="checkbox"/> LOC OTHER: _____ <input type="checkbox"/> AUTOMOBILE LIABILITY <b>(b)</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> UMBRELLA LIAB <b>(c)</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED _____ RETENTION \$ _____ <input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <b>(d)</b> Y/N _____ ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below <b>(e)</b> may see professional liability or other	RLOC INSD	RUSH WWD	POLICY NUMBER <b>(12)</b> must see policy number	POLICY EFF (MM/DD/YYYY) <b>(13)</b> current-effective during contract	POLICY EXP (MM/DD/YYYY)	LIMITS <b>(15)</b> EACH OCCURRENCE \$ _____ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ _____ MED EXP (Any one person) \$ _____ PERSONAL & ADV INJURY \$ _____ GENERAL AGGREGATE \$ _____ PRODUCTS - COMPROP AGG \$ _____ COMBINED SINGLE LIMIT (Ea accident) \$ _____ BODILY INJURY (Per person) \$ _____ BODILY INJURY (Per accident) \$ _____ PROPERTY DAMAGE (Per accident) \$ _____ EACH OCCURRENCE \$ _____ AGGREGATE \$ _____ PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ _____ E.L. DISEASE - EA EMPLOYEE \$ _____ E.L. DISEASE - POLICY LIMIT \$ _____
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) <b>(16)</b> may reference such things as: the contract, location, additional insured, or any other special provisions							
CERTIFICATE HOLDER <b>(17)</b> State of North Dakota Agency/Department Attn: _____ Address City, State ZIP			CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. <b>(18)</b> AUTHORIZED REPRESENTATIVE <b>(19)</b> signed by agent issuing the Certificate				
© 1988-2016 ACORD CORPORATION. All rights reserved.							
ACORD 25 (2016/03)		The ACORD name and logo are registered marks of ACORD					

## Understanding the Certificate of Insurance

FIELD		DESCRIPTION	NOTATION
1	DATE	Actual date the Certificate was issued.	Date ensures that the Certificate is current.
2	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.	This statement makes it clear that the Certificate of Insurance cannot amend, extend, or alter the underlying policies of insurance and the certificate holder has no contractual rights as a result of receipt of the certificate.	A certificate of insurance may be relied upon to verify types, dates, and limits of coverage. Additional terms/requirements such as being made an additional insured should be verified through receipt and review of the endorsement and/or policies of insurance.
3	IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).	This statement clarifies that if the certificate holder has asked to be named as an additional insured, this cannot be accomplished simply by the issuance of a certificate – the policy must be endorsed. The same can be true of waivers of subrogation.	Generally, one should obtain any required endorsement(s) to ensure all requirements are met.
4	PRODUCER	Broker or agent that prepared and provides the certificate.	
5	PRODUCER CONTACT	Contact information for the producer/broker/agent.	
6	INSURED	The name of the insured (the entity that purchased the insurance).	This entity should be the contractor – the party requested to provide coverage.
7	INSURER(S) AFFORDING COVERAGE	This section is used to identify the insurance	The State requires that insurers are rated "A-" or

FIELD		DESCRIPTION	NOTATION
		companies issuing the policies described in the certificate. Each insurer is identified by letter (letter will be referenced in <b>9</b> ). May indicate the rating of the insurance company.	better by A.M. Best Company, Inc. Less than an "A-" rating must be approved by the State.
<b>8</b>	THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.	The insurance policies listed were issued to the insured and all insurance provided is subject to the normal policy terms, exclusions, and conditions.	The certificate affords no contractual rights even if such rights are referenced or made part of the contract between the insured and certificate holder.
<b>9</b>	INSR LTR	The Company letter of the insurer as identified in "Insurer(s) Affording Coverage" (from <b>7</b> ).	
<b>10</b>	ADDL INSR	Indicates if the certificate holder has been named as an additional insured on the policy.	Must obtain the endorsement to ensure requirement is met, if not through a blanket additional insured.
<b>11</b>	SUBR WVD	Indicates if subrogation has been waived on the policy.	Must obtain the endorsement to ensure requirement is met, if not through a blanket waiver of subrogation.
<b>12</b>	POLICY NUMBER	Identification number assigned to specific policy.	Should not be left blank-insist that all policy numbers be provided.

FIELD	DESCRIPTION	NOTATION
13	POLICY EFF / POLICY EXP	Date that the terms and conditions of the policy will commence and expire. Ensure that the policy period covers the time frame of the project.
14	TYPE OF INSURANCE	<p><b>a) Commercial General Liability:</b> Protection from liability arising out of a business operation.</p> <ul style="list-style-type: none"> <li>• <i>Claims Made</i>- coverage for occurrences taking place during the policy period and the claim must be made or reported during the policy period.</li> <li>• <i>Occur</i> – coverage is provided for occurrences taking place during the policy period regardless of when an actual claim is made or reported.</li> <li>• <i>General Aggregate</i> – the most a policy will pay in a given policy period, regardless of the number of insured or claims.</li> </ul> <p><b>b) Automobile Liability:</b> Protection from liability arising out of negligent operation, maintenance or use of a covered auto, which result in bodily injury or property damage to a 3<sup>rd</sup> party.</p> <p><b>c) Umbrella Liab/Excess Liability:</b> Liability coverage in addition to or on top of the primary general liability policy.</p> <p><b>d) Workers Compensation &amp; Employers’ Liability:</b> Coverage for employee injuries occurring within the course of their employment.</p> <p><b>a)</b> Generally, “occurrence” affords better coverage. If the general aggregate limit applies to the policy, coverage may be limited if there are other additional insured.</p> <p><b>b)</b> Combined single limit is the most a policy will pay for 3rd party bodily injury and property damage combined for each accident.</p> <p><b>c)</b> State generally doesn’t request umbrella or excess liability coverage, but it may provide proof of more coverage.</p> <p><b>d)</b> <i>Workers Comp.</i> should meet statutory requirements. <i>Employers Liability or Stop Gap Coverage</i> is used to</p>



FIELD		DESCRIPTION	NOTATION
		<p>e) <b>Professional Errors and Omissions or other specialty coverage:</b> Coverage for professionals against liability as a result of errors and omissions in performing those services.</p>	<p>cover liability actions against an employer arising out of a work-related accident/illness. While workers' compensation is intended to be the exclusive remedy for injured workers, there are occasional situations in which an employer may be separately liable to an injured worker or his family. The employers' liability component of a workers' compensation policy covers this exposure with defined limits of liability.</p> <p>e) Generally not possible to be named an additional insured on a professional errors and omissions policy.</p>
15	LIMITS	Coverage limit amounts.	The Risk Management recommended limits are based upon the State's limits set by statute. The "per person and per occurrence" language is in the statute, but generally, insurance policies are not written on a person person/per occurrence basis, but rather per occurrence and a general aggregate.
16	DESCRIPTION OF OPERATIONS/ LOCATIONS/VEHICLES	Records information necessary to identify the operations, locations, vehicles, specific job site/location or contract number, exclusions added by endorsement, and/or	If the certificate of insurance states you are an additional insured, it is not a guarantee that you are an additional insured on the

FIELD		DESCRIPTION	NOTATION
		special provisions for which the certificate was issued.	actual policy – request a copy of the endorsement.
17	CERTIFICATE HOLDER	Entity to which the certificate is issued.	Specify the State agency/entity involved and its address (i.e. State of North Dakota, Agency...).
18	CANCELLATION	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.	A certificate holder and additional insured cannot plan on receiving any notice from the insurance company if coverage is being cancelled or non-renewed.
19	AUTHORIZED REPRESENTATIVE	Producer/broker/agent who has been authorized to sign the Certificate.	

# Sample Additional Insured Endorsement

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

Name Of Additional Insured Person(s) Or -	Location(s) Of Covered Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

SAMPLE

## Sample Letter when Certificate Is Inadequate

Date:

To:

To Whom It May Concern:

Thank you for forwarding the Certificate of Insurance. After review, the certificate does not reflect required limits and/or coverages as outlined in the contract dated \_\_\_\_\_. If those coverages are in place, please amend the certificate form to reflect the following:

***[INSERT THE INSURANCE PROVISIONS FROM CONTRACT]***

Please forward the amended Certificate by    (10 days)   . If you have any questions, please call me at \_\_\_\_\_.

Sincerely,

## Sample Letter for Expiration of Certificate of Insurance

Date:

To:

To Whom It May Concern:

Our records indicate that your Certificate of Insurance currently on file with us has either expired or will be expiring. Please have your insurance agent send us a new Certificate of Insurance evidencing the following:

***[INSERT THE INSURANCE PROVISIONS FROM CONTRACT]***

*Delete if there is no additional insured endorsement requirement*

Further, ensure that the state of North Dakota, **Agency Name** is named as an additional insured and if applicable, provide an Endorsement to the policy within 30-60 days documenting that the required coverage is in place.

If you have any questions, please call me at \_\_\_\_\_.

Sincerely,

## DEFINITIONS OF COMMON INSURANCE TERMS

### A

**Additional Insured** — A person or entity other than the named insured who is protected by the policy, often regarding a specific interest. This coverage is typically extended through a policy endorsement. Contrast with “Named Insured.”

**Adjuster** — A person who settles claims for insurers.

**Aggregate** — Cumulative. An annual aggregate limit of \$1 million means that when the total of all claims in a year reaches \$1 million, coverage ceases.

**All States Endorsement** — Automatically extends statutory workers compensation coverage to states where the contractor’s new operations are added during the policy term.

### B

**Bodily Injury** — Injury, sickness, or disease sustained by a person, including death resulting therefrom. See also Personal Injury.

**Bond** — An obligation of the insurance company to protect one against financial loss caused by the acts of another.

**Breach** — Failure to live up to the warranties or condition of an insurance contract.

### C

**Cancellation** — The termination of an insurance policy or bond before its expiration by the insured or insurer.

**Carrier** — An insurance company.

**Certificate of Insurance** — A form used to convey information (valid only as of the date it is issued) regarding the client’s insurance coverages. It does not confer rights upon a certificate holder or alter, extend, or amend policy coverage.

**CGL – Commercial General Liability Coverage** — Principal form of liability insurance for businesses that provides coverage for bodily injury and property damage, personal and advertising injury, contractual, products and completed operations on an occurrence basis.

**Claim** — The amount of damage for which a third party seeks reimbursement from the insured and/or insured seeks reimbursement from his or her insurance company. Once the amount has been determined, it becomes a loss. Claim and loss are often used interchangeably. Self-insured losses are often called claims.

**Contractual Liability** — Coverage for liability assumed under contract.

**Coverage** — A term used to designate the type of protection provided by an insurance policy.

**D**

**Deductible** — An amount of loss to be absorbed by the insured.

**E**

**Effective Date** — The date on which an insurance policy goes into effect starting date.

**Employer's Liability** — Liability insurance for employers to protect against bodily injury claims resulting from accident or disease of employees not covered by workers compensation.

**Endorsement** — An amendment to an insurance policy that in some way modifies the original contract provisions.

**Errors and Omissions** — Commonly referenced as E&O, or professional liability. Should be required when requested services require special intellectual ability rather than strict physical activity. Examples: Engineers, accountants, consultants, technology designers/installers, public officials, directors and officers. Medical personnel E&O is often called medical malpractice coverage.

**Exclusions** — Specific items identified as not being covered under a particular policy.

**F**

**Follows Form** — A requirement that an excess policy to be written with the same terms and conditions as the policy to which it is excess.

**H**

**Hold Harmless Agreement** — A clause found in contracts and leases that shifts (or attempts to shift) liability for loss from one party to another.

**I**

**Indemnify/Indemnity** — Making "whole" or restoring financially, after a loss.

**Indemnity Agreement** — Same as a hold harmless agreement.

**Insured** — The person who has purchased an insurance policy and is protected by it; sometimes also referred to as the "assured."

**Insurer** — The insurance company.

**L**

**Lessee** — A tenant who has signed a lease.

**Liability Insurance** — Any form of coverage whereby the insured is protected against claims of other parties arising from specified causes.



**Limit** — The maximum amount the insured can collect under the terms of a policy.

**Loss** — Any destruction or disappearance of value.

## N

**Named Insured** — Any person, firm or corporation, or any member thereof, specifically designated by name as insured(s) in a policy as distinguished from the others who, though unnamed, are protected under some circumstances. A common application of this latter principle is in auto liability policies wherein by a definition of “insured,” coverage is extended to other drivers using the car with the named insured’s permission. Other parties can also be afforded protection of an insurance policy through being named an Additional Insured (see definition) through a policy endorsement. Other rights and responsibilities of the Named Insured include: rights to request policy endorsements or additional coverage, terminate policy, receive premium refund; obligations to notify insurer of a claim, pay premiums, and to comply with all other policyholder obligations.

**Negligence** — Failure to exercise that degree of care that a reasonable person would exercise under the same circumstance.

## P

**Primary and Noncontributory Basis** — Term commonly used in contract insurance requirements to stipulate the order in which multiple policies triggered by the same loss are to respond.

**Property Insurance** — Insurance that indemnifies an individual or entity with an ownership interest in real or personal property for loss of or damage to property or the loss of business income-producing ability.

## R

**Reinsurance**—A contract to transfer all or a portion of the insurer’s (ceding insurance company’s) risk, assumed on behalf of its insureds, to another insurer/reinsurer. The reinsurer agrees to reimburse the insurer/ceding insurance company for the claim’s reinsured portion. A reinsurer may, in turn, seek reinsurance on some portion of the risk it has reinsured, a process known as “retrocession.”

**Risk** — The chance or probability of financial loss.

## S

**Self-insurance** — Retention of risk. This generally refers to a planned program for financing or otherwise recognizing losses. It is not the same as insurance.

**Stop Gap** — Specific form developed to provide employer’s liability coverage for the employer’s activities in monopolistic workers compensation states.

**Subrogation** — The right of an insurer to recover from a third party an amount paid on a loss when the third party is at fault.

**T**

**Tail Coverage — Extended Reporting Period** — Provides for a specific time period after the policy expiration during which the insured can file a claim that occurred but was not reported during the claims-made policy term.

**Term** — The length of time for which a policy or bond is written.

**Third Party** — Someone other than the parties directly involved in an action or transaction; someone other than the insured and the insurer.

**U**

**Umbrella or Excess Policy** — A broad, high-limit liability policy usually requiring the insured to carry primary or underlying insurance.

**V**

**Vicarious Liability** — A form of secondary liability that assigns responsibility for an injury to a person that did not cause the injury but who has a particular relationship with the person that was negligent. It is sometimes referred to as imputed negligence.

**W**

**Waiver** — The relinquishment of a known right; for example, waiver or subrogation under a fire insurance policy.

**Waiver of Subrogation** — A waiver by the named insured giving up any right of recovery against a third party. Normally an insurance policy requires that subrogation (recovery) rights be preserved.

**REQUEST FOR QUOTE  
(October 2019)**

**INSTRUCTIONS: LEVEL 1 (MICRO) – Less than \$10,000**

Use the Request for Quote (RFQ) template when requesting quotes for a Level 1 Micro Purchase.

Please refer to the Level 1 Micro Purchase Mini Manual to help guide you through the Level 1 process.

The template is designed to help you plan the procurement and the resultant contract. Customize this template by adding, modifying or deleting sections or attachments to the RFQ.

The template includes instructions and notes in *blue bold italics* for an agency to consider. After you have read the instructions, please delete the text.

**INSTRUCTIONS: LEVEL 2 (SMALL) – At least \$10,000 but less than \$50,000**

Use the Request for Quote (RFQ) template when requesting quotes for a Level 2 Small Purchase.

Please refer to the Level 2 Small Purchase Mini Manual to help guide you through the Level 2 process.

The template is designed to help you plan the procurement and the resultant contract. Customize this template by adding, modifying or deleting sections or attachments to the RFQ.

The template includes instructions and notes in *blue bold italics* for an agency to consider. After you have read the instructions, please delete the text.

**NOTE: DELETE INSTRUCTIONS BEFORE PRINTING**

**State of North Dakota**  
**Request for Quote**  
 OMB (10/2019)

<b>Title:</b>		<b>Purchasing Agency:</b>	
<b>Number:</b>		<b>Procurement Officer:</b>	
<b>Date Issued:</b>		<b>Telephone:</b>	
<b>Question Deadline:</b>		<b>E-mail:</b>	
<b>Closing Deadline:</b>		<b>Fax:</b>	

**SUBMISSION INSTRUCTIONS**

Responses may be submitted using one (1) of the delivery methods listed below. Responses must be received by the Purchasing Agency by the Closing Deadline. Vendors assume the risk of the delivery method selected.  
**Late responses will be rejected.**

<b>Mailing/Delivery Address:</b> Submit response to the address listed to the right. Contact the Procurement Officer to confirm receipt.	Number: <a href="#">Insert Number</a> Closing Deadline: <a href="#">Insert Date and Time</a> Purchasing Agency: <a href="#">Insert Agency Name</a> Address: <a href="#">Insert Address</a> City, State, Zip Code: <a href="#">Insert City, State, Zip</a>
--	---

**Emailed or Faxed Responses Allowed:** Responses may be emailed or faxed directly to the Procurement Officer.

*OPTIONAL – SPO ONLINE. You may post your Request for Quote on the SPO Online System. You may also enable Electronic Receipt on SPO Online to allow vendors to submit responses electronically. Delete if not used.*

**SPO ONLINE**

This solicitation is posted on SPO Online at: <https://www.nd.gov/omb/vendor>  
 Click on “Bidding Opportunities.” Go to “Recent Solicitations” and find this solicitation.  
 Vendors must check this website for any amendments and notices related to this solicitation.

**Uploading Response using State Procurement Office Online system (SPO Online):** Vendors may upload a Response to the SPO Online system. Use “Upload Response” to upload a maximum of five, clearly labeled documents before the Closing Deadline.

**Important Uploading Requirements:** The maximum file size allowed is 50mb per file. All field entries must be alphanumeric. Dashes and underscores are allowed; however the system **DOES NOT accept** other special characters such as apostrophe, & symbol, quotation marks, etc.

Offerors will receive an email confirmation from [infospo@nd.gov](mailto:infospo@nd.gov) that the upload response was received including the “File Description” for the uploaded files. Review this email to ensure all files were successfully uploaded. If you do not receive an email confirmation, the upload was not successful, and you will need to upload the files again. If you do not receive an email confirmation after the reattempt, contact the Procurement Officer or the State Procurement Office at [infospo@nd.gov](mailto:infospo@nd.gov) or 701-328-2740.

Visit <https://www.nd.gov/omb/vendor/bidder-resources> for the SPO Electronic Response Job Aid which describes how to submit an electronic response

## BIDDER INSTRUCTIONS

1. Contact the Procurement Officer as soon as possible with any questions related to the solicitation. A solicitation amendment will be issued if changes are made to this solicitation.
2. The Purchasing Agency must receive the response by the closing deadline. Late responses will be rejected.
3. The vendor assumes the risk of the response delivery method selected. Contact the Procurement Officer to confirm receipt.
4. The State does not pay sales tax. Contact the Procurement Officer for the tax exemption number and certificate. (State sales tax exemption #: E-2001. Federal Employer Identification Number 45-0309764.)
5. Prices must be delivered prices (F.O.B. Destination). The successful vendor must pay all transportation and handling charges and file any claims with the carrier for breakage or other losses.
6. Prices must be based upon the specified unit of measure. In the event of mathematic differences between the unit price and extended total price, the unit price will prevail.
7. Award will be made to the lowest responsible vendor considering conformity with specifications, terms of delivery, quality, and serviceability. Responses that do not meet specifications and solicitation requirements will be rejected.
8. N.D.C.C. § 44-08-01 related to ND preference laws shall be applied to any responses received from out-of-state vendors.
9. Contact the Procurement Officer to receive a bid summary.
10. Vendors must complete Bidders List Registration to receive notice of bidding opportunities. Contact Vendor Registry at [infospo@nd.gov](mailto:infospo@nd.gov) or 701-328-2683. Register online at: [www.nd.gov/omb/vendor](http://www.nd.gov/omb/vendor).

## TERMS AND CONDITIONS

1. The Vendor must comply with all applicable State and Federal laws.
2. All material and workmanship are subject to inspection by the State. The State reserves the right to reject any commodities or services and terminate the contract if the Vendor fails to comply with the specifications, terms and conditions, or the seller's express or implied warranties. Rejected commodities will be removed at the Vendor's expense. Failure to satisfactorily perform may result in suspension or debarment from the State Bidders List.
3. The State may make a payment using a government credit card. Vendor will accept a government credit card without passing the processing fees for the government credit card back to the State.
4. The State shall make payment under this Contract within forty-five (45) calendar days after receipt of a correct invoice.
5. Supplemental terms and conditions on vendor documents are null and void, unless specifically accepted in writing by the State. All automated end user agreements (e.g. click-through) are specifically excluded, null and void. Clicking shall not represent acknowledgement or agreement to any terms and conditions contained in that agreement. Terms and conditions contained within any documents furnished by the Contractor, including packing slips, shall not supersede the terms and conditions of this contract.
6. This procurement and the resultant contract are subject to all applicable state laws, rules, policies and procedures.
7. **NDUS ONLY (delete if not NDUS):** New Equipment, Used Equipment, Refurbished Equipment and Materials Certification - Unless otherwise indicated in the detailed specifications of this solicitation, all equipment and materials will be new and under current production for use in the United States. All equipment and assemblies of equipment will be in full compliance with all current applicable standards established by federal, state, and local governments. The equipment must be listed and labeled by a nationally recognized testing laboratory (NRTL) or certified by field evaluation and labeled by a NRTL. All costs associated with required listings will be included in the bid price. Each piece of equipment or assembly of equipment offered in the response to this bid will be either listed and labeled or certified and labeled prior to shipment by the successful bidder.

**Request for Quote  
Response Sheet**

**Title:** Insert Title    **Number:** Insert Solicitation Number

Insert detailed specifications. Customize for the goods or services being purchased.  
If requesting multiple items, you can insert item specification here or in the bid response below.

**Date Delivery Required:** Insert Date

**Delivery (F.O.B. Destination) Address:** Insert Agency Name, Address, City, State, Zip Code

**Billing Address:** Insert Agency Name, Address, City, State, Zip Code

**RESPONSE**

Item No.	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
1		Each	Insert item specifications  Offered make/model/part #:	\$	\$
2		Each	Insert item specifications  Offered Make/Model/Part #:	\$	\$
<b>Award will be made: <i>SELECT OPTION:</i> All or None <i>OR</i> By Item</b>				<b>GRAND TOTAL</b>	\$

**Can your firm meet the delivery date requirements?      (Circle One) YES    NO**

**Vendor Delivery Date (After Receipt of Order):**

**Vendor Name:**

**Address:**

**City:**

**State:**

**Zip Code:**

**Contact Person:**

**Title:**

**Telephone:**

**Email:**

**Authorized Signature:**

**Date:**

**OPTIONAL: BID RESPONSE SPREADSHEET**

**RESPONSE SPREADSHEET REQUIRED**

Vendors must submit an electronic version of the response spreadsheet. Do not submit as a PDF. If mailing or physically delivering your response, include a copy on a USB Flash Drive or other storage device. **OPTIONAL IF SPO ONLINE RESPONSE ENABLED:** If submitting by SPO Online Upload Response, upload an Excel file.

**CONTRACT OPTION:** *Customize as needed. Delete this section if not used.*

**CONTRACT REQUIREMENT**

The successful vendor will be required to sign the attached contract. The vendor must comply with the terms and conditions set forth in attached contract. No changes to the terms and conditions will be permitted without prior written approval from the State. Pursuant to [N.D.A.C. § 4-12-11-06](#), conditions imposed by the vendor may result in the bid response being rejected as nonresponsive, as determined by the State.

*Choose appropriate Contract template and INSERT it here. Customize as needed.*

- 1. After reviewing Chapter 2 of the Office of the Attorney General's (AG) Contract Drafting and Review Manual, select the contract that best fits your agency's needs and add it here. Sample AG Contract available at <https://www.nd.gov/omb/agency/procurement/templates>*
- 2. Insert your agency's contract approved by legal counsel.*

**INVITATION FOR BID (IFB) – LEVEL 2, 3, & 4  
(July 2021)**

Use this template when issuing an Invitation for Bid (IFB) for commodities or services. The template is designed to help you plan the procurement and the resultant contract. Customize this template by adding, modifying, or deleting sections or attachments to the IFB. The Information Technology Department (ITD) must review IT purchases over \$25,000.

The template includes instructions and notes in ***blue bold italics*** for an agency to consider. After you have read the instructions, please delete the text. Word choices and information that needs to be inserted are indicated by **blue text**. For example: **will or will not**. Be sure to update and change any remaining **blue text** to black.

<b>Procurement Level</b>	<b>Notice Requirements</b>	<b>Receiving/Opening Proposals</b>
Level 2 At least \$10,000 but less than \$50,000	Solicit <b><i>informal bids</i></b> from at least three (3) vendors or post to SPO Online with appropriate State Bidders List. May send to additional vendors.	Informal bids may be received by mail, delivery service, email, fax, or electronic receipt. Bids may be opened upon receipt.
Level 3 At least \$50,000 but less than \$100,000	Solicit <b><i>informal bids</i></b> using SPO Online with the appropriate State Bidders List. May send to additional vendors.	Informal bids may be received by mail, delivery service, email, fax, or electronic receipt. Bids may be opened upon receipt unless utilizing the electronic receipt through SPO Online.
Level 4 \$100,000 and over	Solicit <b><i>formal sealed bids</i></b> using SPO Online with the appropriate State Bidders List. May send to additional vendors.	Formal sealed bids are required. Bids can be received by mail, delivery service, or through SPO Online secure electronic receipt.  Bids cannot be submitted by email or fax, unless sent to a third party to place in a sealed envelope and delivered to the receiving address.

In competitive bidding, the award is made to the lowest responsible Bidder considering conformity with specifications, terms of delivery, quality and serviceability required in the solicitation. The award method is commonly described as “low bidder meeting spec.” ([N.D.C.C. § 54-44.4-05](#))

This template has award options for the Procurement Officer to consider, such as determining whether all items will be awarded to one vendor or whether award will be split on an item-by-item basis. Bidders need to know how award will be made to develop their pricing in consideration of quantities, shipping, etc. So, if you are reserving the right to make either an “all or none” or “split” award, ask for pricing both ways.

Multiple award means that you are awarding more than one contract for the same commodities or services. Multiple award can be made when it is determined to be in the best interest of the STATE, such as ensuring adequate delivery of service or product compatibility. The intent to make a multiple award must be stated in the solicitation. ([N.D.A.C. § 4-12-11-07](#))

Contact the State Procurement Office at 701.328.2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions.

**DELETE ALL INSTRUCTIONS BEFORE PRINTING**



**STATE OF NORTH DAKOTA  
INVITATION FOR BID (IFB)  
(July 2021)**

<b>DATE ISSUED</b>		<b>BID NUMBER</b>	
<b>BID TITLE</b>		<b>COMMODITY CODE(S)</b>	
<b>BID QUESTION DEADLINE</b>		<b>CONTRACT NUMBER</b>	
<b>BID RESPONSE DEADLINE</b>		<b>CONTRACT PERIOD</b>	

**PROCUREMENT OFFICER**

The Procurement Officer is the point of contact for this IFB. Bidders shall direct all communications regarding this IFB to the Procurement Officer. Please do not add the Procurement Officer to any marketing distribution lists.

PURCHASING AGENCY (STATE): [INSERT PURCHASING AGENCY](#)  
 PROCUREMENT OFFICER: [INSERT PROCUREMENT OFFICER NAME](#)  
 EMAIL: [INSERT EMAIL](#)  
 PHONE: [INSERT PHONE NUMBER](#)  
 TTY Users call: 7-1-1

Engaging in unauthorized communication or seeking to obtain information about an open solicitation with any state employee or official other than the responsible Procurement Officer or designee is sufficient grounds for suspension or debarment. [\[N.D.A.C. § 4-12-05-04\(7\)\]](#)

**BID QUESTION DEADLINE**

Bidders should carefully review the IFB including all attachments. Bidders may ask questions to obtain clarification and request additional information, or object to material in the IFB. Questions and objections must be submitted to the Procurement Officer in writing by the deadline identified in the IFB. If no deadline is specified, questions or objections must be received at least seven days prior to the Bid Response deadline. The Procurement Officer may elect to respond to questions received after the deadline.

Email is the preferred method of submission with the IFB number and title cited in the email subject line. Responses to questions will be distributed as a solicitation amendment unless the question can be answered by referring the bidder to a specific section of the IFB.

**STATE PROCUREMENT WEBSITE (SPO ONLINE)**

***Level 2. You may post to SPO Online but are not required to do so. Use this option if you are not using SPO Online.***

This solicitation has not been posted to the State Procurement website. The Procurement Officer will contact all bidders solicited regarding any amendments to this solicitation and award notices.

***Level 2, 3 and 4 Using SPO Online: The IFB and all related amendments must be placed on SPO Online and issued to offerors on the applicable State Bidders List. You may also send to any other known potential bidders. Check your agency's internal procedures or requirements related to any grant monies received to determine whether additional public notice is required. Log onto SPO Online at <https://intranetapps.nd.gov/csd/spo/services/login.htm>***

This IFB and any related amendments and notices will be posted on the North Dakota OMB website using the State Procurement Online system (SPO Online). Bidders are responsible for checking this website to obtain all information and documents related to this IFB: <https://apps.nd.gov/csd/spo/services/bidder/main.htm>

Select Recent Solicitations and find this solicitation. Recent solicitations are listed by close date.

Bidders not having completed the Bidders List registration may request to receive notices related to this IFB by contacting the Procurement Officer in writing with the following information: IFB title, business name, contact person, mailing address, telephone number, and email address.

## SECTION 1 BIDDERS INSTRUCTIONS

1. **Bidder Checklist.** Have you remembered to?
  - a. Ensure your Bid Response complies with all instructions, terms and conditions, delivery requirements, and specifications.
  - b. Prepare your price in the specified unit of measure, FOB: Destination to the shipping location.
  - c. Sign your, and initial any changes or corrections
  - d. Ensure your Bid Response is received by the Procurement Officer by the Bid Response deadline. Called to confirm receipt.
  - e. If using a delivery service, check tracking to ensure the Bid Response will be delivered on time. Contact the Procurement Officer as soon as possible in the event of delays due to weather, etc.
  - f. Submit any required samples or documents.
  
2. **Definitions.**
  - a. **Bidder:** any person or firm submitting a competitive bid in response to a solicitation.
  - b. **Bid Response:** the executed document submitted by a Bidder in response to a solicitation.
  - c. **Commodities:** all property, including equipment, supplies, materials, printing, insurance, and the lease of equipment.
  - d. **Contractor:** any person or firm having a contract with a governmental body.
  - e. **Procurement Officer:** an individual duly authorized to enter into and administer purchasing contracts and make written determinations with respect thereto; also includes an authorized representative acting with the limits of designated purchasing authority.
  - f. **Purchasing Agency (STATE):** the entity on which the purchase is being made on behalf of.
  - g. **Services:** the furnishing of labor, time, or effort by a Contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.
  - h. **Solicitation:** a document to notify prospective Bidders of a bidding opportunity.
  - i. **N.D.A.C.:** North Dakota Administrative Code; rules with the force and effect of law.
  - j. **N.D.C.C.:** North Dakota Century Code; state laws.
  - k. **OMB:** Office of Management and Budget (OMB); a North Dakota state agency.
  - l. **SPO:** State Procurement Office, a division of the Office of Management and Budget.
  - m. **SPO Online:** a procurement information website maintained by the State Procurement Office pursuant to [N.D.C.C. § 54-44.4-14](#).
  
3. **Bidders List and Secretary of State Registration Requirements.** Bidders must comply with requirements related for OMB Bidders List application and Secretary of State registration [N.D.C.C. § 54-44.4-09]. Bidders Lists are used to notify vendors when solicitations are issued on the State Procurement Office Online system (SPO Online).

***See the [Vendor Registration Guidelines](#) Select the appropriate option. Contact the State Procurement Office at 701.328.2740 for assistance in selecting the appropriate option.***

***Level 2 Procurement - if Secretary of State Registration is required.***

Bidders may complete the Bidders List application process if desired, but it is not required. Registration with the North Dakota Secretary of State is required before award.

***Level 2 Procurement – if Secretary of State Registration is not required.***

Bidders may complete the Bidders List application process if desired, but it is not required. Registration with the North Dakota Secretary of State is not required.

***Levels 3 & 4 – If successful offeror must be registered prior to contract signing. The Procurement Officer may specify a period of time than less than 60 days. At least 30 days is recommended for nonresident bidders to register.***

Bids will be accepted from bidders that are not on the Bidders List. The successful bidder must complete the Bidders List application process and comply with Secretary of State registration requirements within 60 calendar days from the date a notice of intent to award is issued. If the successful bidder does not register within this time, its bid may be rejected.

**Levels 3 & 4 – If all offerors must register by the deadline for receipt of bids. It is recommended this option is used only if there is a well-established bidders list.**

Bidders are required to complete the Bidders List application process and comply with Secretary of State registration requirements prior to the Bid Response deadline. Bids received from bidders that are not approved vendors on the Bidders List will be rejected.

**Levels 3 & 4 – If Bidders List and Secretary of State registration is not required. The Procurement Officer must prepare a written determination for the procurement file that registration with the Secretary of State and appointment of an agent for service of process is not required (N.D.C.C. § 54-44.4-09).**

Bidders may complete the Bidders List application process if desired, but it is not required. Registration with the North Dakota Secretary of State is not required.

### **Bidders List and Secretary of State Information**

1. Secretary of State Registration and Online Bidder Registration instructions are available online at [How to Bid | Office of Management and Budget, North Dakota](#).
  2. Offeror should check the [Bidders List](#) to determine if Offeror is already registered.
  3. An Offeror that needs to complete the registration process shall:
    - a. Register with the Secretary of State (fees apply) and obtain a “System ID” number.
    - b. Complete the [On-line Bidder Registration](#) including selecting [commodity codes](#). Notices related to this RFP will be sent to the Bidders List for the needed commodity or service and other known potential Offerors. The commodity codes used for this solicitation are: [Insert all applicable 5-digit commodity codes](#)
  4. **State Agencies Only – NDUS Institutions may customize or delete.** The successful Offeror may be required to register as a new supplier to receive payment from the STATE. New vendors (suppliers and individuals) looking to receive payment from the STATE should use the online [Supplier Registration](#).
4. **Submission Instructions.** Please follow these instructions to submit your Bid Response. Bid Responses must be received by the Procurement Officer by the Bid Response deadline. Bidders assume the risk of the delivery method selected. Late Bid Responses will be rejected.

### **Email**

**Level 2 and 3 OPTION: Level 2 & 3 Procurements are informal, so the Procurement Officer may allow bidders to submit Bid Responses by email.**

Bidders may submit bids by email to [INSERT EMAIL](#)

Indicate the IFB number and title in the subject line. Bidders are encouraged to begin the process well in advance and to allow for sufficient time for transmission to meet the Bid Response deadline. The bid must be received by the Procurement Officer by the Bid Response deadline. Bidders may contact the Procurement Officer to confirm receipt.

Email messages over 50 MB in size are rejected. A Bidder may split the response through multiple emails as needed and indicate the total number of messages intended (e.g., 1 of 3, 2 of 3, and 3 of 3). In addition, be aware that Bidder’s internet service provider may limit the size of attachments to outgoing emails. The STATE takes no responsibility for electronic submissions that are captured, blocked, filtered, quarantined, or otherwise prevented from reaching the proper destination server by any anti-virus or other security software. Encrypted documents or links to documents on an external server are not allowed without prior written approval from the STATE. DO NOT submit documents that are embedded (zip files), movies, wmp, encrypted, or mp3 files.

**Level 4 OPTION: Level 4 Procurement are formal sealed, so Bid Responses cannot be submitted by email directly to the Procurement Officer.**

Sealed bids are required; therefore, bids cannot be submitted by email to the Procurement Officer.

**OPTION: *Submit in person, by mail, or delivery service.***

**Submit in Person, by Mail or Delivery Service**

Bidders may submit Bid Response in a sealed envelope or package to the following address. Bidders may email Bid Responses to a third party to place in a sealed envelope and deliver by the Bid Response deadline. Contact the Procurement Officer to confirm receipt. Bidder shall submit one (1) copy of the Bid Response on a USB Flash Drive or other storage device. If an Excel file is provided, do not convert the Excel spreadsheet into a PDF file.

IFB #: **INSERT IFB NUMBER**  
IFB Title: **INSERT IFB TITLE**  
ATTN: **NAME OF PROCUREMENT OFFICER**  
**NAME OF AGENCY OR INSTITUTION**  
**NAME OF DIVISION, SECTION, OR DISTRICT**  
**MAILING ADDRESS**  
**CITY, STATE, ZIP CODE**

The STATE assumes no responsibility for delays caused by any delivery service. Postmarking by the Bid Response deadline shall not substitute for actual Bid Response receipt by the STATE. The STATE's time of receipt will be used to determine timely receipt.

**OPTION: *Use if Electronic Submission is enabled on SPO Online.***

**Upload Response Through the State Procurement Online System (SPO Online):**

Bidders (*Insert may or must*) electronically submit Bid Responses through the State Procurement Office Online system (SPO Online) by the Bid Response deadline.

DO NOT WAIT UNTIL THE "LAST MINUTE" TO SUBMIT A RESPONSE. Recommend uploading response 24 hours prior to the Bid Response deadline.

Bidder must begin the electronic submission process well in advance of the Bid Response deadline to allow for transmission and resolution of any technical difficulties. Be advised that the STATE is not responsible for a Bidder's failure to timely submit a Bid Response due to any technical difficulties. If you experience any technical difficulties contact the Procurement Officer or the State Procurement Office at [infospo@nd.gov](mailto:infospo@nd.gov) or 701.328.2740.

If documents are in the process of being uploaded when the Bid Response deadline occurs, the upload process will stop. The attempted submission will not be uploaded successfully and is ineligible for consideration. The STATE takes no responsibility for electronic submissions that are captured, blocked, filtered, quarantined, or otherwise prevented from uploading by any anti-virus or other security software.

1. This solicitation is posted on SPO Online at: <https://apps.nd.gov/csd/spo/services/bidder/main.htm>
2. Select "Recent Solicitations" and find this solicitation. Solicitations are listed by close date.
3. Use "Upload Response" to upload a maximum of five (5), clearly labeled documents before the Bid Response deadline.
4. Offerors must upload their Bid Response as requested in the Bid Response section of this IFB.
5. The maximum file size allowed is 50mb per file.
6. There is a 50 character file name limitation for the document being uploaded.
7. There is 75 character limit in the TITLE field within SPO Online.
8. All SPO Online field entries must be alphanumeric. Dashes and underscores are allowed; however, the system does not accept other special characters such as apostrophe, & symbol, quotation marks, etc.
9. DO NOT submit documents that are embedded (zip files), movies, wmp, encrypted, or mp3 files.
10. Bidder will receive an email confirmation from [infospo@nd.gov](mailto:infospo@nd.gov) that the upload response was received including the "File Description" for the uploaded files. Review this email to ensure all files were successfully uploaded. If Bidder do not receive an email confirmation, the upload was not successful, and you will need to upload the files again. If Bidder does not receive an email confirmation after the reattempt, contact the Procurement Officer or the State Procurement Office at [infospo@nd.gov](mailto:infospo@nd.gov) or 701.328.2740.

Visit <https://www.omb.nd.gov/sites/www/files/documents/doing-business-with-the-state/procurement/spo-electronic-response-external-job-aid.pdf> for the SPO Electronic Response Job Aid which describes how to submit an electronic response.

5. **Additional Terms and Conditions.** Additional terms and conditions submitted with a Bid Response are of no effect unless accepted in writing by the Procurement Officer. Bid Responses with additional terms and conditions may be rejected as non-responsive. ([N.D.A.C. § 4-12-11-06](#)).
6. **Assistance to Bidders with a Disability.** Bidders with a disability that need an accommodation must contact the Procurement Officer prior to Bid Response deadline so reasonable accommodation can be made.
7. **Bid Response Held Firm.** Bid Responses are not awarded at the bid opening. Bidders must hold their Bid Responses firm for 30 days, unless otherwise specified by the Procurement Officer in writing.
8. **Bid Response Opening.** A public Bid Response opening will be held. The Procurement Officer will hold the Bid Response opening will be held:

**OPTION 1:**

**Onsite**

- Date: [Insert date](#)
- Time: [Insert time, AM/PM, C.T.](#)
- Location: [Insert place](#)  
[Insert floor, room number](#)  
[Insert street address](#)  
[Insert City, ND Zip Code](#)

**OPTION 2:**

**Webinar or Conference Call**

Participation Instructions: [Insert webinar or conference call instructions](#)

9. **Bid Response Results.** Interested parties may contact the Procurement Officer to obtain a summary of all Bid Responses received and the award. Bid Response results may be posted on SPO Online: <https://apps.nd.gov/csd/spo/services/bidder/main.htm>
10. **Bidders List - Suspension and Debarment.** Placement on the Bidders List does not guarantee a vendor will receive notice of every solicitation. A vendor may be removed from the Bidders List if a solicitation notice is undeliverable. Vendors may be suspended or debarred from the Bidders List for cause. ([N.D.A.C. ch. 4-12-05](#))
11. **Changes/Corrections.** Bidders must initial any changes or corrections to the Bid Response, such as erasures and crossed out/rewritten prices. The Procurement Officer may confirm the Bid Response when changes are not initialed.
12. **Multiple Bid Responses.** Bidders may submit more than one Bid Response in response to this solicitation. Each Bid Response submitted must be prepared in accordance with the Bid Response instructions and meet the stated requirements.
13. **Open Records Requests.** Bid Responses are exempt records until the date and time of the Bid Response opening. After the Bid Response opening, all Bid Responses are subject to North Dakota open records laws. Interested parties may contact the Procurement Officer to request information related to this solicitation.
14. **Packaging.** All packaging must be strong and secure in accordance with accepted commercial practices.
15. **Protests.** Protests of the solicitation must be received by the Procurement Officer within seven days before the Bid Response deadline. Protests of the award or Notice of Intent to Award must be received by the Procurement Officer within seven days after receiving notice of award. Seven calendar days after award or issuance of the Notice of Intent to Award it will be assumed that all interested parties knew or should have known all the facts surrounding the award. Protests must be made in writing to the Procurement Officer and include the basis for the protest. ([N.D.C.C. § 54-44.4-12](#); [N.D.A.C. ch. 4-12-14.](#))

16. **Signature.** The Bidder's authorized representative must provide their printed name, title, and sign the Bid Response. The lack of a signature may be waived as a minor informality, provided a signed Bid Response is submitted by the deadline established by the Procurement Officer. ([N.D.A.C. ch. 4-12-10](#))
17. **Specifications, Compliance.** All Bid Responses must comply with the stated specifications, and the successful Bidder will be held responsible. Bidders who desire to submit commodities or services that deviate from these specifications or have any objections to the stated specifications must contact the Procurement Officer by the deadline for questions or at least seven days before the Bid Response deadline, so the Procurement Officer can determine whether the specifications need to be amended.
18. **Withdrawal or changes to a Bid Response prior to the Bid Response deadline.** Before the Bid Response deadline, the Bidder's authorized representative may withdraw or change a Bid Response by making a written request to the Procurement Officer.
19. **Withdrawals or changes to a Bid Response after the Bid Response deadline.** After the Bid Response deadline, no changes may be made to Bid Response, except as provided in [N.D.A.C. ch. 4-12-10](#). The Bidder's authorized representative may make a written request to withdraw the Bid Response.



## SECTION 2 EVALUATION AND AWARD

*Customize this section for the purchase. Contact your agency's Lead Procurement Officer, your agency's assigned legal counsel, or the OMB State Procurement Office for assistance.*

1. **Award.** Award will be made to the responsible Bidder with the lowest priced Bid Response that is responsive to the specifications and all other requirements stated herein. Award will be made as follows:

**OPTION: Select one and delete unused options.**

- All or none.
- Split award per item.
- Split award per group
- Multiple awards to more than one Bidder (*Describe how you will determine which Bidders will be awarded a contract. Document the reason a multiple award is necessary in the procurement file in accordance with [N.D.A.C. § 4-12-11-07](#)*)

2. **Award – Printing Preference Laws.** If practicable, all state, county, and other political subdivision public printing, binding, and blank book manufacturing, blanks, and printed stationery must be awarded to a resident North Dakota Bidder. ([N.D.C.C. § 46-02-15](#), [N.D.C.C. § 44-08-02](#), [N.D.A.C. § 4-12-16-01](#))

**OPTION: Select one and delete the others.**

- Bid Responses from nonresident (out-of-state) Bidders will not be accepted.
- Bid Responses from nonresident (out-of-state) Bidders will be accepted. If Bid Responses are considered from nonresident (out-of-state) Bidders, the Procurement Officer will apply reciprocal preference, if applicable, in accordance with [N.D.C.C. § 44-08-01](#). See [Guidelines to North Dakota Purchasing Preference Laws](#).

3. **Award – Preference Laws.** If Bid Responses are received from nonresident (out-of-state) Bidders, the Procurement Officer will apply reciprocal preference, if applicable, in accordance with [N.D.C.C. §44-08-01](#). See [Guidelines to North Dakota Purchasing Preference Laws](#).

4. **Award – Tie Bid Response Preference.** After applying any reciprocal preference, if a tie occurs between two or more Bidders with equal Bid Response prices or offerors with identical evaluation scores:
  - a. Preference must first be given to Bid Responses submitted by resident North Dakota vendors. ([N.D.C.C. § 44-08-01.1](#))
  - b. If a tie remains, preference is given to approved vendors on the Bidders List. ([N.D.C.C. § 54-44.4-09\(4\)](#))
  - c. If a tie still remains, award shall be made in accordance with [N.D.A.C. § 4-12-11-05](#).

5. **Late Bid Responses.** Bid Response responses must be received by the Procurement Officer by the Bid Response deadline. Late Bid Responses will be rejected, regardless of the degree of lateness, unless the delay is due to the error of the Procurement Officer and discovered before the selection of the successful Bidder. ([N.D.A.C. § 4-12-08-13](#))

6. **Responsiveness of the Bid Response.** Any Bid Response that does not meet the requirements of the solicitation, other than mistakes determined to be minor informalities, will be rejected. ([N.D.A.C. § 4-12-11-03](#))

7. **Minor Informalities.** The STATE reserves the right to waive minor informalities in Bid Responses. Minor informalities are insignificant omissions or nonjudgmental mistakes that are matters of form rather than substance, evident from the Bid Response document, with a negligible effect on price, quantity, quality, delivery, or contractual conditions that can be waived or corrected without prejudice to other Bidders. ([N.D.A.C. ch. 4-12-10](#))

8. **Mistakes.** The Procurement Officer may confirm the Bid Response in the event of apparent errors, such as an unreasonably priced Bid Response. Mistakes will be handled in accordance with [N.D.A.C. ch. 4-12-10](#).

9. **Responsibility of the Bidder.** The Procurement Officer, at any time, may make a supplementary investigation as to the responsibility of any Bidder, even though the Bidder may be on the Bidders List. If a Bidder is determined to be not responsible, that Bid Response will be rejected even if it is the lowest Bid Response, and the Bidder may be debarred or suspended from the Bidders List. ([N.D.A.C. § 4-12-11-04](#))

10. **Rejection.** The STATE reserves the right to reject any and all Bid Responses in whole or in part. The Procurement Officer will send a rejection notice, including the reason for rejection. Bid Responses will be rejected if:
- a. the Bid Response is determined to be not responsive to the instructions, specifications, and other requirements of the solicitation, other than mistakes or omissions determined to be minor informalities;
  - b. the Bid Response is determined to be late;
  - c. the Bidder fails to comply with Bidders List Application requirements by the stated deadline;
  - d. the Bidder is determined to be not responsible, in accordance with [N.D.A.C. § 4-12-11-04](#);
  - e. the Bid Response is not legible.

If all Bid Responses are rejected, the Procurement Officer will send written notice to Bidders, including the reason all Bid Responses were rejected. ([N.D.A.C. § 4-12-11-09](#))



**SECTION 3  
SPECIAL TERMS AND CONDITIONS**

*Customize this section for the purchase. Contact your agency's Lead Procurement Officer, your agency's assigned legal counsel, or the OMB State Procurement Office for assistance.*

*OPTION: Must be authorized by OMB, State Procurement Office. Delete the following clause as applicable:*

1. **State Contract.** The contract resulting from this solicitation will be a State Contract made available to North Dakota state agencies and institutions.

*OPTION: Must be authorized by OMB, State Procurement Office. Delete the following clause as applicable:*

2. **Cooperative Purchasing.** This contract is a cooperative purchasing contract established pursuant to [N.D.C.C § 54-44.4-13](#). This contract is made available to state entities, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, governmental boards and commissions), nonprofit entities established on behalf of public entities, tribal agencies, transportation providers under [N.D.C.C § 39-04.2](#), and the International Peace Garden (hereafter known as "Ordering Agencies"). Participation in this open-ended contract is not mandated; therefore, the estimated volume of this contract is not known. CONTRACTOR may contact the Procurement Officer for assistance in determining whether an entity is eligible to purchase under this contract.

3. **Term of the Contract.** The term of the contract issued as a result of this solicitation will be as follows:

- a. **Contract Period.** This Contract term (Term) begins on [Insert Month, Day, Year](#), or its Effective Date, and ends on [Insert Month, Day, Year](#).
- b. **No Automatic Renewal.** This Contract will not automatically renew.

*Any exercise of an Extension or Renewal requires a written contract amendment identifying the amended terms and conditions. Contract amendments should be drafted in consultation with an agency's assigned legal counsel.*

*An Extension is a brief period used to wrap up ongoing work that could not be completed by the end of the contract. It may also be used when all renewal options have been exercised and additional time is needed to close out the Contract.*

- c. **Extension Option.** STATE reserves the right to extend this Contract for an additional period of time, not to exceed [Insert Number](#) months, beyond the current termination date of this contract.

*A Renewal provision is normally used when a multi-year contract is anticipated. The renewal provision allows the contract to be renewed for additional terms after the completion of the initial contract period.*

- d. **Renewal Option.** STATE may renew this Contract upon satisfactory completion of the initial Contract Term. STATE reserves the right to execute up to [Insert Number](#) options to renew this Contract under the same terms and conditions for a period of [Insert Number](#) months each.

*OPTION: Must be authorized by OMB, State Procurement Office. Delete the following clause as applicable:*

*A Renegotiation option would normally be used for a strategic solution/product, for example a critical line-of-business application that is expected to be used for an extended period of time and where it is in the state's best interest to have the ability to renegotiate the contract. Renegotiation occurs after completion of the initial term and any extensions and renewals.*

- e. **Renegotiation Option.** In view of the fact that it is unknown how long the products and services will be employed by STATE and that STATE will require ongoing maintenance and support of the products for as long as the system is operational, therefore after completion of the initial Term of this Contract including any extensions and renewals, STATE and Contractor may renegotiate this Contract upon mutual agreement of the parties.

4. **Billing Address.** After delivery of commodities or services under contract, the CONTRACTOR must submit a correct invoice. Payment will be made after inspection and acceptance.

*OPTION: Select one and delete the others. Customize as needed.*

- Invoices must be addressed to the Purchasing Agency. All invoice and payment inquiries must be directed to the Purchasing Agency.
- Invoices must be addressed to the Ordering Agency that places an order under this contract. All invoice and payment inquiries must be directed to the Ordering Agency. Any problems related to late payment may be escalated to the Procurement Officer.

5. **Contract Amendment – Unanticipated Amendment.** After a binding contract has been entered into, no changes may be made, unless prior written approval has been obtained from the Purchasing Agency through execution of a contract amendment. The Contractor may request changes, such as substitutions of a product, by submitting a written request to the Procurement Officer. Unanticipated amendments must be within the scope of the original contract, authorized by the terms of the contract and due to legitimate, unforeseen circumstances. ([N.D.A.C. ch. 4-12-13](#))

6. **Contract Estimated Volume.** The volume of this contract is estimated. Estimates are not to be considered as either a minimum or maximum, but rather an estimate based upon past and anticipated usage. The CONTRACTOR or CONTRACTORS will be required to furnish actual requirements upon receipt of an order. This contract will not include items of a similar nature, which must be bought for emergency use.

7. **Contract Sales Reports.** The CONTRACTOR must maintain records of sales under the contract and furnish volume of sales information to the Procurement Officer. The CONTRACTOR must furnish reports listing all purchases made by all government entities using this contract. The report must be furnished within [Insert Number](#) days after the request by the Procurement Officer.

***OPTION: Select one and delete the other. Customize as needed.***

The report format will be determined by mutual agreement of the CONTRACTOR and the Procurement Officer.

***OR***

The contract sales report will have the following fields: [Insert appropriate fields of information that is desired.](#)

***OPTION: Customize as needed. Delete if not requiring catalogs and literature.***

8. **Ordering Catalogs and Literatures.** CONTRACTOR will be required to furnish copies of catalogs and price lists to ordering agencies, upon request at no additional cost to the STATE.

***OPTION: Customize as needed. Delete if not requiring an ordering website.***

9. **Ordering Website.** CONTRACTOR will be required to establish a secure website for online ordering under this contract. The ordering website must be limited to commodities offered under this contract. The

***OPTION: Customize as needed. Delete if not requiring order confirmation.***

10. **Order Confirmation.** The CONTRACTOR must confirm the receipt of orders by communicating with the Ordering Agency within [Insert Number](#) working days of the order placement.

***OPTION: Customize as needed. Delete if not requiring training.***

11. **Training.** CONTRACTOR will provide training at no expense to the STATE at requested locations. [Insert location addresses and specific training requirements.](#)

12. **Delivery Time Required.** The CONTRACTOR must meet the specified delivery requirements. If delivery cannot be made within the specified time, the CONTRACTOR must notify the Ordering Agency in writing of the delay and the approximate date delivery may be expected.

***OPTION: Select one and delete the others. Customize as needed.***

- Delivery is required by the date indicated in the Specifications of this solicitation.
- Delivery must be made within [Insert Number](#) days after the CONTRACTOR receives an order from the Ordering Agency by issuance of a contract or purchase order or use of a purchasing card.

13. **Delivery Location - F.O.B. Point and Freight.** Delivery, freight, and passage of title shall under this contract shall be as follows:

***OPTION: Select one and delete the others. Customize as needed.***

- F.O.B. Destination to the location in the Specifications of the solicitation. All freight and handling is to be included in the item price. Title will pass to Purchasing Agency upon delivery to the specified destination. The CONTRACTOR will file any claims.
- F.O.B. Destination to any North Dakota location. All freight and handling is to be included in the item price. Title will pass to Ordering Agency upon delivery to the specified destination. The CONTRACTOR will file any claims.
- Orders that meet the minimum order amount of [\\$Insert Dollar Amount](#) will be F.O.B. Destination, Freight Prepaid to any North Dakota destination with all freight and handling included in the item price. Title will pass to Ordering Agency upon delivery to the specified destination. The CONTRACTOR will file any claims.
- Orders that do not meet the minimum order amount will be F.O.B. Destination, Freight Prepaid and Added. CONTRACTOR will prepay all freight and handling and add to the Ordering Agency invoice. Title will pass to the Ordering Agency upon delivery to the specified destination. The CONTRACTOR will file any claims.

**OPTION: Customize as needed. Delete if not requiring samples (See Templates "Sample Return Notice.")**

13. **Sample Submission Requirement.** Bidders must provide representative samples of the commodity being offered at no cost to the STATE to ensure compliance with the specification. All samples must be marked to show the Bidder's name, the bid number and title, and the bid item number. Upon request of the Bidder, samples not destroyed by examination or testing will be returned at the expense of the Bidder. If the Bidder does not request return of the sample within 7 days after notice of award, the sample will become property of the STATE ([N.D.A.C. § 4-12-08-11](#)).

**OPTION: Select one and delete unused options. Customize as needed.**

- The successful Bidder will be required to furnish a sample of items offered in the Bid Response prior to award.
- Bidders must submit samples to the Mailing/Delivery Address above by the Bid Response Deadline.

**OPTION: Select one and delete unused options. Customize as needed.**

- Samples received late will result in the Bid Response being rejected.
- Samples received late may be waived as a minor informality provided the sample is provided within the time limit set by the Procurement Officer.

**OPTION: Customize as needed. Delete if not requiring descriptive literature.**

14. **Descriptive Literature.** The Bid Response must include descriptive literature or detailed manufacturer specifications for the offered equipment or commodities. Bidders are instructed to clearly mark the literature that demonstrates compliance with the specifications. Indicate whether optional features are included to meet the specifications.

**STATE AGENCIES ONLY:**

15. **New Equipment and Materials.** Unless otherwise indicated in the detailed specifications of this solicitation, all equipment and materials shall be new and under current production for use in the United States.

**NDUS ONLY:**

**New Equipment, Used Equipment, Refurbished Equipment and Materials Certification.** Unless otherwise indicated in the detailed specifications of this solicitation, all equipment and materials will be new and under current production for use in the United States. All equipment and assemblies of equipment will be in full compliance with all current applicable standards established by federal, state, and local governments. The equipment must be listed and labeled by a nationally recognized testing laboratory (NRTL) or certified by field evaluation and labeled by a NRTL. All costs associated with required listings will be included in the bid price. Each piece of equipment or assembly of equipment offered in the response to this bid will be either listed and labeled or certified and labeled prior to shipment by the successful bidder.

16. **Inspection and Acceptance or Rejection.** The STATE reserves the right to conduct inspections and investigations related to the Bidder and the offered commodities or services, including but not limited to the firm, personnel, qualifications, and the commodities and services offered to make determinations regarding compliance with the Bid Response requirements and responsibility of the Bidder. All material and workmanship are subject to inspection and testing by the STATE at the point of manufacturer, place of storage, or upon receipt. The STATE reserves the right to reject any commodities or services and terminate the contract if the CONTRACTOR fails to

comply with the specifications, terms and conditions, or the seller's express or implied warranties. Rejected commodities will be removed at the CONTRACTOR's expense. Failure to satisfactorily perform may result in suspension or debarment from the Bidders List.

If commodities or services are rejected as being not compliant with the requirements of this solicitation, the STATE will inform the CONTRACTOR in writing. The Purchasing Agency may provide the CONTRACTOR with a reasonable opportunity to cure, whenever practicable, as set forth in writing by the Purchasing Agency.

17. **Invoicing.**

*OPTION: Customize as needed.*

All invoices and payment inquiries must be directed to the Purchasing Agency.

**OR**

Orders will be placed by state agencies and institutions.

*OPTION: Customize as needed. Delete if not for purchases requesting paper products.*

18. **Paper Recycled.** [N.D.C.C. § 54-44.4-08](#) requires that at least twenty percent of the total volume of paper and paper products purchased for state agencies and institutions contain at least twenty-five (25%) percent recycled material.

19. **Pricing – Tax Exempt.** All prices must be in United States currency. Bid Response prices must include all discounts and deductions, and to be less federal and state taxes. Bidders may contact the Procurement Officer to obtain the Purchasing Agency's tax exemption number and tax-exempt certificate.

20. **Price Adjustment.** Pricing during the term of the contract will be as follows:

*OPTION: Select the provisions that will apply to this contract and delete the others. Customize as needed.*

- **Firm-Fixed.** Pricing shall be firm for the period of the contract.
- **Pricing, Firm-Fixed with Adjustment upon Renewal.** Pricing shall be firm for the first year of the Contract. If a Renewal Option is being considered, the CONTRACTOR may request a price adjustment *Insert Period (Days, Weeks, Months, Year)* of the contract period. After the firm-fixed period, the CONTRACTOR may submit a request for a price increase to the Procurement Officer. Requests for a price increase must include a copy of the manufacturer's official notice or other evidence that the increase or decrease is applicable to all customers. The STATE reserves the right to accept or reject, within 30 days, or cancel the contract. The CONTRACTOR shall immediately inform the STATE of any price decreases. Price changes will become effective upon execution of a contract amendment. All orders placed are to be billed at prices in effect at the time of the order, not the date the shipment is made.
- **Pricing, Firm-Fixed with Adjustment Provisions.** Pricing shall be firm for the first *Insert Period (Days, Weeks, Months, Year)* of the contract period. After the firm-fixed period, the CONTRACTOR may submit a request for a price increase to the Procurement Officer. Requests for a price increase must include a copy of the manufacturer's official notice or other evidence that the increase or decrease is applicable to all customers. The STATE reserves the right to accept or reject, within 30 days, or cancel the contract. The CONTRACTOR shall immediately inform the STATE of any price decreases. Price changes will become effective upon execution of a contract amendment. All orders placed are to be billed at prices in effect at the time of the order, not the date the shipment is made.
- **Pricing, Fuel Surcharges.** Fuel surcharges may be negotiated between the CONTRACTOR and Purchasing Agency when fuel prices rise 15% more from the fuel prices in effect on the day the solicitation was opened. Subsequent adjustments may be requested, subject to approval of the Procurement Officer. Requests for fuel surcharges must be submitted in writing to the Procurement Officer. Within 30 days, the STATE will accept and amend the contract, reject, and allow the contract to continue, or cancel the contract. The contract may also be amended, with 30 days' notice to the CONTRACTOR, to reduce prices in the event declining fuel prices. The Energy Information Agency diesel and gasoline price indexes will be used for this Contract. [http://www.eia.doe.gov/oil\\_gas/petroleum/info\\_glance/petroleum.html](http://www.eia.doe.gov/oil_gas/petroleum/info_glance/petroleum.html)
- **Option for Vehicle Bid Responses: Pricing Changes, Model Year Change.** If during this contract period there is a model year change by the (OEM) manufacturer or additional costs are incurred by the CONTRACTOR from their 3<sup>rd</sup> party, the CONTRACTOR must send a written request for a change by letter or email to the State contract administrator. This request for a price increase or decrease must include a copy of

the (OEM) manufacturer's official notice or other evidence that the increase or decrease is applicable to all customers. Upon receipt of the contract price change request, the STATE reserves the right to accept or reject within 30 days. The price change request, if agreeable to STATE, will become effective as set forth in a written amendment to the contract upon execution by both parties. If STATE does not accept the price change the awarded vehicle may be cancelled by amendment to the contract. If STATE accepts the awarded vehicle contract price change request, the dealer shall supply the new model year at the amended price for the remainder of the awarded contract period. All vehicle shipments are to be billed at prices in effect at the time of the order, not the date the shipment is made.

21. **Pricing, Unit of Measure.** The unit prices is to be according to the unit of measurement specified in the solicitation. In the event of mathematical differences between the unit price and extended total, the unit price will prevail. ([N.D.A.C. § 4-12-10-02](#))

*OPTION: Customize as needed. Delete if not requiring a local service representative.*

22. **Service – Local Requirement.** Services within [Insert Number of Hours](#) after placement of service call is required. CONTRACTOR must have facilities or service providers within a commuting distance to meet this requirement.

*An approved Alternate Procurement is required if limiting the requirements to a particular brand (N.D.C.C. § 44-08-01). Modify or delete the following clauses as applicable:*

23. **Specifications, Brand Name or Equivalent.** Unless otherwise indicated in the solicitation specifications, the use of a specific brand name or make/model is for illustrative purposes only, and the STATE will consider equivalent products. If an alternate brand offered by a Bidder is rejected as not being equivalent, the Procurement Officer send a rejection notice, including the reason for rejection.

**Specifications, Brand Name.** The specific brand name or make/model is required, and substitutions will not be accepted.

*OPTION: Customize as needed. Delete if not requiring background checks.*

24. **Background Checks for CONTRACTOR Personnel.** The Purchasing Agency requires all background checks to be performed on all CONTRACTOR Personnel who will access the facility.

CONTRACTOR shall provide the Procurement Officer with the names of all individuals that will have access to the premises along with background checks for each individual for approval by the Purchasing Agency. This information must be received prior to the CONTRACTOR Personnel attempting to access the facility, and the CONTRACTOR must receive confirmation of approval. CONTRACTOR will be responsible for notifying the Procurement Officer or designee if any CONTRACTOR Personnel changes and provide background checks for any new CONTRACTOR Personnel. Under no circumstance shall any CONTRACTOR Personnel have access to the facility without a background check and approval by the Purchasing Agency. All background check and supporting documentation shall be provided through the North Dakota Bureau of Criminal Investigation. The cost of the background checks will be the CONTRACTOR's responsibility. At any time during the contract period, the Purchasing Agency may request the CONTRACTOR to provide updated background checks of any CONTRACTOR Personnel that have access to the premises.

*OPTION: Customize as needed.*

25. **Travel.** *In the event that your contract will allow for separately billed travel expenses (i.e.: outside of fixed price contract). Modify or delete the following clauses as applicable:*  
CONTRACTOR acknowledges travel costs are covered by the Contractual Amount and shall not invoice STATE for travel costs.

**OR**

STATE shall reimburse Contractor for expenses related to travel at amounts not to exceed those outlined below:

- Lodging: Reimbursement shall not exceed the then-current, published GSA rate for the travel location. Copies of receipts are required for lodging reimbursement. STATE shall not reimburse for incidental and miscellaneous expenses charged to the room, including alcohol, telephone charges, or entertainment (e.g., movies).
- Transportation: Air travel shall be reimbursed by STATE at the actual cost of air fare for coach class travel only. CONTRACTOR shall make air travel arrangements at least fourteen (14) days in advance whenever possible. Reimbursement for rented, chartered, or contracted vehicle transportation shall be limited to reasonable rates as determined by STATE.



- Meals: Meals shall be paid on a per diem basis for each day of travel at then-current, published GSA per diem rate for the travel location. Per diem for the first and last day of travel shall be paid at seventy-five percent (75%) of the GSA per diem rate. Requests for per diem payments must include the start and end dates of travel, the location where the services are performed, and the allowable per diem amount for each trip on the billing/invoice.

Payment for any travel expenses that exceed the travel budget as agreed upon by the parties must be approved by STATE.

26. **Time is of the Essence.** *Generally, if time is not of the essence, reasonable delay in performance does not constitute a material breach; unreasonable delay constitutes a material breach. If time is not of the essence, DELETE this clause.*

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

*Printing commodity specific special terms and conditions are listed below. If these do not apply, DELETE or customize as needed.*

**PRINTING:**

27. **Printing Laws.** This procurement and the resultant contract are submitted to the North Dakota laws related to printing under [N.D.C.C. Title 46](#).
28. **Printing - Negatives, artwork, or electronic media.** When agencies furnish negatives, artwork or electronic media to a Bidder, the Bidder must return them before payment will be made. If changes are made to any of the negatives, artwork or disks, the new, updated negatives, artwork, or electronic media must be returned to the agency before payment will be made. Electronic media must be returned in the same platform as furnished and must have the ability to be changed by the agency, if desired. All charges for these changes must be included in the Bid Response price. The State of North Dakota shall retain all rights and privileges.
29. **Printing - Quantities.** Quantities are for exact counts only. The State of North Dakota will not pay for overruns. Under-runs will not be accepted.
30. **Printing - Soybean-based Ink.** [N.D.C.C. § 54-44.4-07](#) requires that where practicable, specifications for purchasing newsprint printing services should specify the use of soybean-based ink. The North Dakota Soybean Council and the Agriculture Commissioner shall assist OMB in locating suppliers of soybean-based inks and collecting data on the purchase of soybean-based inks.

*Vehicle commodity specific special terms and conditions are listed below. If these do not apply, DELETE or customize as needed.*

**VEHICLES:**

31. **Model Year Changes.** If there is a model year change over the course of the contract period, the CONTRACTOR must send a written request for a change by letter or email to the State contract administrator.
- **This contract change request must identify all vehicle specification changes between the previously awarded model year and the proposed new model year.**
  - Upon receipt of the contract change request, The STATE reserves the right to review within 30 days and may agree to cancel the awarded vehicle by issuance of an amendment to the contract.
  - Awarded vehicle contract changes will become effective as set forth in a written amendment to the contract upon execution by both parties.
32. **Dealer Orders.** If the dealer receives an order from the Purchasing Agency and does not fulfill the order with the manufacturer, the dealer shall be responsible for any additional costs associated with the orders. This includes costs associated with delivery or cost differences as a result of a model year change.
33. **Delivery and Orders.** The CONTRACTOR must deliver commodities and services ordered under this contract by the required time. If after receiving the order, the Bidder learns that the delivery requirements cannot be met, the Bidder must immediately notify the Purchasing Agency by telephone, email or mail and indicate the delay and an approximate delivery date. Repeated delivery delays may be considered as failure to deliver.

**SECTION 4  
RISK MANAGEMENT REQUIREMENTS**

*Customize these provisions for the purchase being contemplated. Please see the [Guidelines to Managing Contractual Risk](#) of OMB's Risk Management Division. Contact your agency's assigned legal counsel or the OMB Risk Management Division for assistance at 701.328.7580.*

Bidders are instructed to review the following provisions. Objections to these provisions must be made in writing to the Procurement Officer by the deadline for questions.

*Visit [Team ND Connect \(Intranet\)](#) for Risk Management Provisions, to select and customize an indemnification and insurance provision appropriate for the circumstances of this solicitation. Contact OMB Risk Management Division for assistance at 701.328.7580.*

<https://ndgov.sharepoint.com/:b:/r/sites/TeamND/Shared%20Documents/Procurement/Procurement%20Templates/indem-insurance-guidelines-managing-contractual-risk.pdf?csf=1&web=1&e=PhUQXt>

1. **Indemnification.** Indemnification provisions are incorporated and made part of this solicitation and resultant contract.
  - [Insert Indemnification Provision](#)
2. **Insurance.** Insurance provisions are incorporated and made part of this solicitation and resultant contract. Bidders are instructed to review the Insurance Requirements. The Successful Bidder will be required to provide the required proof of insurance prior to contract award, and failure to provide evidence of insurance coverage is a material breach and grounds for award rescission. Failure of the CONTRACTOR to keep the required insurance in effect during the term of the contract is grounds for termination of the contract.
  - [Insert Insurance Provision](#)

*OPTION: Customize as needed. Delete if not requiring contract bond or bid surety. See [N.D.A.C. ch. 4-12-07](#) and [Contract Bond Form SFN51815](#).*

3. **Contract Bond.** The CONTRACTOR will be required to furnish a contract bond in the amount of [Insert Amount of Contract Bond](#) that will guarantee compliance with all terms of the solicitation and contract.
4. **Bid Surety.**

*OPTION: Customize as needed. Delete if not requiring bid surety. See [N.D.A.C. Chapter 4-12-07](#).*

**BID SURETY REQUIREMENT**

Each Bid Response must include a bid surety. See [N.D.A.C. ch. 4-12-07](#). Bid sureties of unsuccessful Bidders will be returned upon award determination. The bid surety of the successful Bidder will be returned upon receipt of a completed contract bond and its approval by the STATE.

*OPTION: Select one and delete others. Customize as needed.*

Bid surety may be as follows:

- a certified check, in the amount of [Insert Amount of Bid Surety](#); or
- a bank cashier's check in the amount of [Insert Amount of Bid Surety](#); or
- a money order in the amount of [Insert Amount of Bid Surety](#); or
- a corporate surety bond from a surety company authorized to do business in the State of North Dakota in the amount of [Insert Amount of Bid Surety](#).

**SECTION 5  
BID RESPONSE FORM**

**SPECIFICATIONS**

*Insert Detailed Specifications*

**Delivery Address:** *Insert Purchasing Agency, Delivery Address, City, State, ZIP*

**Delivery Date Time Required:** *Insert date or days after receipt of order*

**Billing Address:** *Insert Address*  
**Same as Delivery Address**  
**As specified in the Order**

ITEM NO.	QTY	UNIT		UNIT PRICE	TOTAL PRICE
1				\$	\$
2				\$	\$
3				\$	\$
4				\$	\$
5				\$	\$
6				\$	\$

<b>Affirm your ability to meet the delivery due date.</b>	YES	NO
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<b>Bidder's Delivery Time:</b>	<b>After Receipt of Order</b>
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<b>Bidder Prompt Payment Discount, if applicable: (Discounts not considered in evaluating prices.)</b>	
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*OPTION: Customize as needed or delete if not needed.*

**TRADE-IN ALLOWANCE OPTION**

**Trade-In:** Equipment offered as trade-in by the STATE are offered on an "as is" and "where is" basis. No condition or warranty will be implied. Removal of trade-in equipment will be the responsibility of the Bidder. Payment under the contract is contingent upon the removal of equipment offered by the STATE.

Bidders are instructed to provide a Purchase Price for the new equipment being offered. Bidders may provide a Trade-In Allowance for the equipment offered by the STATE. The STATE will make a determination whether Trade-In is in the best interest of the STATE and reserves the right to purchase the new equipment with or without exercising the Trade-In Allowance Option.

**OPTION: INSERT DESCRIPTION OF THE EQUIPMENT OFFERED IN TRADE**

Acquisition Date:

Make/Model:

Year:

Hours:

Specifications: (Horsepower, Features, Functionality, Accessories, etc.)



<b>Offered Trade-In Allowance</b>
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*OPTION: Customize as needed or delete if not needed.*

**Service Provider:** The CONTRACTOR must provide a dedicated service provider to support for this contract. During the contract term, the CONTRACTOR shall notify the Procurement Officer if CONTRACTOR's service provider changes.

**Sales Representative:** The CONTRACTOR must provide a dedicated sales representative to provide support for this contract. The sales representative will be required periodically visit ordering agencies to provide information regarding products available under the contract and assistance with order placement. During the contract term, the CONTRACTOR shall notify the Procurement Officer if the CONTRACTOR's sales representative changes.

<b>Service Provider/ Sales Representative Name:</b>	
<b>Address:</b>	
<b>City &amp; State &amp; ZIP</b>	
<b>Phone Number:</b>	
<b>Cell Phone Number:</b>	
<b>Toll Free Number:</b>	
<b>E-Mail Address:</b>	
<b>Fax Number:</b>	

<b>BIDDER INFORMATION AND SIGNATURE</b>
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By submitting a Bid Response, the Bidder agrees to sell, furnish, and deliver to the STATE all commodities and services contained in this Invitation for Bid for which a contract is awarded by the STATE. The Bidder shall fully perform the contract in accordance with all the specifications, requirements, terms, and conditions, and shall comply with all applicable provisions of the North Dakota Century Code, including chapters 54-44.4, 46-02, and 44-08, and North Dakota Administrative Code Chapter 4-12, made part of the Invitation for Bid and resultant contract by reference.

Written acceptance of the Bid Response by the STATE constitutes a binding contract made and entered into by and between the State of North Dakota, acting through the Purchasing Agency, and the Bidder named below. Written acceptance may be made by execution of a contract, purchase order, or order using a state purchasing card.

**NOTICE.** All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties identified herein. Notice provided under this provision does not meet the notice requirements for monetary claims against the STATE found at N.D.C.C. § 32-12.2-04.

<b>Bidder/Contractor Name:</b>	
<b>Contractor Federal Employer Identification Number (FEIN)</b>	
<b>Bidder Street Address/ P.O. Box:</b>	
<b>City, State ZIP:</b>	

<b>Contact Name:</b>	
<b>Contact Title:</b>	
<b>Telephone Number:</b>	
<b>Email:</b>	
<b>Authorized Representative Signature:</b>	
<b>Date:</b>	

**STATE OF NORTH DAKOTA  
BID ACCEPTANCE AND CONTRACT AWARD**

The parties to this contract (Contract) are the state of North Dakota, acting through the Purchasing Agency (STATE), and the above-named Bidder (CONTRACTOR). This Contract is not effective until fully executed by both parties. If no start date is specified in the Term of Contract, the most recent date of signatures of the parties shall be deemed the Effective Date.

**NOTICE.** All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties identified herein. Notice provided under this provision does not meet the notice requirements for monetary claims against the STATE found at N.D.C.C. § 32-12.2-04.

<b>Acting through its Purchasing Agency:</b>	
<b>BY: (Signature)</b>	
<b>Printed Name:</b>	
<b>Title:</b>	
<b>Date:</b>	

## SECTION 6 CONTRACT TERMS AND CONDITIONS

1. **Scope of Work.** CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, shall provide the commodities and services described in this solicitation.
  
2. **Compensation.**
  - a. **Contractual Amount**

STATE shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed the amount indicated on the Bid Response form (Contractual Amount). 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 the 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.
  
  - b. **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 shall make payment under this Contract within forty-five (45) calendar days after receipt of a correct 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 payments that are or will become due and payable to CONTRACTOR under this Contract.
  
3. **Prepayment.** STATE will not make any advance payments before performance by CONTRACTOR under this Contract.
  
4. **Payment of Taxes by State.** STATE is not responsible for and will not pay local, state, or federal taxes. STATE will furnish certificates of exemption upon request by the CONTRACTOR.
  
5. **Purchasing Card.** STATE may make a payment using a government credit card. CONTRACTOR will accept a government credit card without passing the processing fees for the government credit card back to STATE.
  
6. **Termination.**
  - a. **Termination by Mutual Agreement**

This Contract may be terminated by mutual consent of both parties executed in writing.
  
  - b. **Early Termination in the Public Interest**

STATE is entering into this Contract for the purpose of carrying out the public policy of the State of North Dakota, as determined by its Governor, Legislative Assembly, Agencies and Courts. If this Contract ceases to further the public policy of the State of North Dakota, STATE, in its sole discretion, by written notice to CONTRACTOR, may terminate this Contract in whole or in part.
  
  - c. **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.

d. 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.

7. **Force Majeure.** Neither party shall be held responsible for delay or default caused by fire, riot, terrorism, 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 promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.
8. **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.
9. **Work Product.** All work product, equipment or materials created for STATE or purchased by STATE under this Contract belong to STATE and must be immediately delivered to STATE at STATE'S request upon termination of this Contract.
10. **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 public records law, [N.D.C.C. ch. 44-04](#). The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the Term of this Contract.
11. **Compliance with Public Records Laws.** CONTRACTOR Under the North Dakota public records law and subject to the Confidentiality clause of this Contract, certain records may be open to the public upon request. Public records may include: (a) records STATE receives from CONTRACTOR under this Contract, (b) records obtained by either Party under this Contract, and (c) records generated by either Party under this Contract. CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to such request.
12. **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.

13. **Assignment and Subcontracts.** CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE's express written consent, provided, however, that CONTRACTOR may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Contract, whether by merger, reorganization, operation of law, or otherwise. Should Assignee be a business or entity with whom STATE is prohibited from conducting business, STATE shall have the right to terminate without cause. 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 with whom CONTRACTOR contracts. CONTRACTOR does not have authority to contract for or incur obligations on behalf of STATE.
14. **Spoliation – Preservation of Evidence.** 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 such evidence, including the scene of an accident.
15. **Merger and Modification, Conflict in Documents.** *For brevity, only four documents have been included. Please make sure you list all documents to be considered including amendments to the IFB, Best and Final Offers, Questions and Answers to the IFB, etc. In addition, make sure the order of these documents always has STATE's documents first, and CONTRACTOR's documents last, in order to ensure that STATE's documents always take precedence. Consult with your assigned legal counsel if you have questions on the order of precedence.* 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 must control in this order of precedence:
  - a. The terms of this Contract as may be amended;
  - b. STATE's Solicitation Amendments related to this Invitation for Bid;
  - c. STATE's Invitation for Bid;
  - d. CONTRACTOR's Bid Response submitted in response to this Invitation for Bid.
  - e. All automated end-user agreements (e.g., click-through, shrink-wrap, or browse-wrap) are specifically excluded and null and void. Clicking shall not represent acknowledgement or agreement to any terms or conditions contained in those agreements.
  - f. Terms and conditions contained within any documents furnished by the Contractor, including packing slips, shall not supersede the terms and conditions of this contract.
16. **Severability.** If any term of this Contract is declared to be illegal or unenforceable by a court having competent jurisdiction, 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 this Contract did not contain that term.
17. **Applicable Law and Venue.** This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be 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.
18. **Alternative Dispute Resolution – Jury Trial.** By entering into this Contract, STATE does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The parties may enforce the rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.
19. **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 N.D.C.C. § 28-26-04, pay STATE's reasonable attorney fees and costs in connection with the lawsuit.
20. **Nondiscrimination and Compliance with Laws.** CONTRACTOR agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility, and civil rights. (See N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women. 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, 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. CONTRACTOR's failure to comply with this section may be deemed a material breach by CONTRACTOR entitling STATE to terminate in accordance with the Termination for Cause section of this Contract.

21. **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, if required. CONTRACTOR shall maintain all of these records for at least three (3) years following completion of this Contract and be able to provide them upon reasonable notice. STATE, State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.
22. **Effectiveness of Contract.** This Contract is not effective until fully executed by both parties. If no start date is specified in the Term of Contract, the most recent date of the signatures of the parties shall be deemed the Effective Date.

## Lease vs. Purchase Cost/Benefit Analyses Worksheet Instructions

### **PURPOSE**

Use this worksheet to determine if it is more feasible to lease or purchase an asset.

### **ENTERING DATA**

Enter data in rows **3-7** and **10-18** of the worksheet. The remainder of the worksheet has been protected so you cannot enter data.

#### **Purchase cost (D10)**

The total cost of buying the asset for cash goes in cell **D10**. The value you enter must reflect both the costs and advantages of purchasing the asset outright. Costs include such charges as sales tax.

Advantages include items such as rebates.

#### **Resale price at termination of lease (D11)**

Enter the amount for which the asset could be sold at the end of the lease term. This may be a best-guess situation.

#### **Periodic discount rate (D-12)**

Enter the periodic discount rate used to convert future cash flows to their present-value equivalents. This rate must correspond to the lease payment periods. If payments occur monthly, for example, express the discount rate as a monthly rate. If payments are made annually, express the rate as an annual rate. As an example, use the rate at which you could borrow money from the Bank of North Dakota.

#### **Initial Deposit (D-13)**

The initial lease deposit required goes in cell **D-13**.

#### **Periodic payment (D-14)**

Enter the periodic lease payment in cell **D-14**. This value must include all ancillary costs, such as taxes.

#### **Number of periodic payments (D-15)**

Enter the number of periodic lease payments you expect to make during the life of the lease.

#### **Purchase option price (D-16)**

Enter the amount for which you can buy the asset from the lessor when the lease expires.

#### **Initial deposit returned (D-17)**

Enter the amount of the initial deposit that will be returned when the lease expires. Any interest the lessor pays on the initial deposit should be included.

#### **Payment in advance (D-18)**

Enter **Y** in cell **D18** if payments are made at the beginning of the payment period.

Enter **N** if payments are made at the end of each payment period.

### **INTERPRETING THE RESULTS**

The formulas in the worksheet perform two present-value analyses. The first analysis, in rows 27-30, compares the cost of buying the asset with the present-value cost of leasing. This analysis assumes you hold the asset until it wears out. The second analysis, in rows 32-35 compares buying with leasing, assuming you hold the asset only until the end of the lease term.

### **PRINTING THE WORKSHEET**

To print the worksheet, press **CTRL+P**, then select **OK**.

	A	B	C	D		
1	<b>Lease vs. Purchase Cost/Benefit Analysis</b>					
2						
3					<i>Agency:</i>	
4					<i>Division:</i>	
5					<i>Asset Description:</i>	
6					<i>Date:</i>	
7					<i>Prepared by:</i>	
8						
9	<b>Inputs</b>					
10		Purchase cost				
11		Resale price at termination of lease				
12		Periodic discount rate				
13		Initial deposit or down payment/trade-in				
14		Period payment				
15		Number of period payments				
16		Purchase - option price				
17		Initial deposit returned				
18		Payment in advance? (Y/N)				
19						
20	<b>Intermediate Calculations</b>					
21		Adjustment for payment in advance	1.0000			
22		Present value of purchase - option price	\$0			
23		Present value of resale price	\$0			
24		Present value of returned deposit	\$0			
25						
26	<b>Cost Analyses</b>					
27		<b><i>1. Present Value Costs if Held for Life of Asset</i></b>				
28		Purchase costs	\$0			
29		Lease costs	\$0			
30		Saving (cost) of leasing asset	\$0			
31						
32		<b><i>2. Present Value Costs if Held for Term of Lease</i></b>				
33		Purchase costs	\$0			
34		Lease costs	\$0			
35		Saving (cost) of leasing asset	\$0			
36						
37						
38						
39						



**LETTER OF INSTRUCTION FOR SUCCESSFUL OFFEROR OR BIDDER  
(January 2018)**

Use this letter to inform the successful offeror or bidder about what is needed before a contract can be executed.

After the Notice of Intent to Award is issued, an offeror or bidder that submitted a response to the solicitation has seven (7) calendar days to protest the notice of intent to award. It is recommended that you wait until after the protest period to execute the contract. You can work with the successful offeror or bidder during this time to prepare the contract.

Review the solicitation and contract. List everything that the successful offeror or bidder will need to provide prior to executing the contract such as:

- Secretary of State Registration
- Bidders List Registration
- Supplier/Vendor Registration (to receive payments)
- Certificate of Insurance or additional insured endorsement or both
- Performance Bonds

If negotiation of contractual terms and conditions is necessary, you may include instructions for how those negotiations will be conducted. Contact your legal counsel for assistance with contract negotiations.

For Information Technology contracts, [N.D.C.C. § 54-59-22](#) requires that ITD host all information technology systems unless a hosting exemption is granted. The State will consider an offeror or bidder hosted solution; however, award of a contract for any offeror or bidder hosted solution will be contingent upon approval of a hosting exemption. This information can be cut and pasted into an email.

Contact the State Procurement Office at 701-328-2740 or [info@spo.nd.gov](mailto:info@spo.nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE THESE INSTRUCTIONS BEFORE PRINTING**

**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

Date

Business Name  
Contact Person  
Address  
City, State Zip

Subject: Instruction for Successful Offeror or Bidder – Insert Solicitation Number, Title

Dear Insert name:

Congratulations! The State of North Dakota through its insert agency or institution name has announced its intent to award you a contract for the solicitation referenced above.

You are instructed not to begin work, purchase materials, or enter into subcontracts relating to the project until both your company and the State sign the contract.

The following must be accomplished before the contract can be signed:

**NOTE: CUSTOMIZE AS NEEDED**

- Complete the Bidders List and Secretary of State Registration Process as required in insert section number of the solicitation.
- Complete the Vendor On-line Registration to receive payment from the State. Registration can be completed by accessing this link and clicking on “register as a supplier”:  
<https://www.nd.gov/omb/vendor/vendor-payments>
- Furnish a Certificate of Insurance with an Additional Insured Endorsement as required in insert section number of the contract.
- Furnish a Certificate of insurance as required in insert section number of the contract.
- Provide a bond that meets the provisions of insert section number of the solicitation.

**OPTIONAL: REQUEST FOR PROPOSALS ONLY**

Contract negotiation will be held primarily by insert method (e.g. email and conference call). I will be in contact to coordinate contract negotiations.

Please contact me if you have any questions.

Sincerely,

Insert name  
Procurement Officer  
E-mail: Insert email  
Telephone: Insert number  
TTY Users call: 7-1-1

**MINOR INFORMALITY  
(March 2017)**

The following text can be copy/pasted into an email to obtain information from a bidder or offeror whose bid or proposal has a mistake or omission that have been determined to be a “minor informality”. See [N.D.A.C. § 4-12-10-01](#) for guidance.

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions.

**DELETE ALL INSTRUCTIONS BEFORE PRINTING**

**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

Date

Business Name  
Contact Person  
Address  
City, State Zip

Subject: **Insert Solicitation Number, Title**

Dear **Insert Name**:

Thank you for submitting your response to the above referenced solicitation. Your response did not include information that was required in the solicitation, and we are providing you an opportunity to correct this minor informality.

Reference the section of the bid or proposal and describe what was required.

*EXAMPLES (remove italicized formatting once you select the one that applies or you can customize to meet your specific scenario):*

- Section **XX** of the solicitation required signed copies of solicitation amendment acknowledgements.
- Section **XX** of the solicitation required submission of **description of missing information**.
- Section **XX** required the response to be signed by an authorized representative.
- Section **XX** required submission of a sample.

Please provide this information by **insert date and time**. If you do not meet this deadline, the State will reject your bid or proposal as being nonresponsive to the requirements of the solicitation.

If you have any questions, please feel free to contact me.

Sincerely,

**Insert name**  
Procurement Officer  
E-mail: **Insert email**  
Telephone: **Insert number**  
TTY Users call: 7-1-1

**NDDOT TRANSIT**  
**COST/PRICE ANALYSIS AND PRICE REASONABLENESS**

The procurement officer must perform a cost analysis before awarding a contract to determine if the bids provided are fair and reasonable. This analysis must be used in conjunction with the independent cost estimate created prior to the solicitation of price quotes for all types of procurements. The type (price or cost) and degree of analysis is dependent on the facts surrounding the particular procurement situation. In general the rule behind whether to do a PRICE or COST analysis is the following:

- Price analysis (which is comparing quotes to catalog or market prices, via previous contracts or comparison with other competitive proposals) may be performed for most procurements.

Sources of information that are available to conduct a price analysis include:

- Comparisons with other competitive proposals
  - Previous contracts
  - Catalog or market prices
  - Historical prices and trending
  - Independent cost estimates
- Cost analysis (which includes examining variance from the independent estimate as well as the differences between bids recorded, rather than assuming that open market pricing always equates to appropriate pricing) must be performed for procurements that:
    - Require the contractor to submit estimates for labor hours, overhead, and materials
    - Result in a situation where price competition is lacking
    - Consist of a sole source procurement.

Instructions

1. The format provided is intended to document cost/price analysis and price reasonableness for procurement of supplies or services. Provide sufficient documentation to support the case that the proposed awardee's offered prices on the instant contract are, in fact, *based on prices on currently existing contracts wherein such prices have previously been found to be "fair and reasonable."* Modify the Summary Matrix as appropriate to accommodate additional bidders and/or items.
2. For a sole source procurement, prepare a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits.
3. Refer to the NDDOT Transit Procurement Manual under the appropriate procurement level for guidance relevant to conducting price analysis and documenting price reasonableness. Price analysis must be conducted and price reasonableness determined prior to any contract award.
4. The analysis must be signed and dated by the individual conducting the analysis and determining the prospective awardee's price to be "fair and reasonable."
5. The Price Analysis and Price Reasonableness Determination and any supporting documentation must be filed in its appropriate place in the procurement file.

**NDDOT TRANSIT  
COST/PRICE ANALYSIS AND PRICE REASONABLENESS DETERMINATION**

Transit Agency Name:	
Procurement Officer Name:	
Contract/Solicitation Number:	
Item Description/Project Name:	
Delivery/Project Completion Date:	
Total Estimated Price/Cost:	
Date of Estimate:	

Original Procurement: Yes\_\_\_\_\_ No, option year; Year 1:\_\_\_\_\_, Year 2: \_\_\_\_\_, Year 3: \_\_\_\_\_, or Year 4: \_\_\_\_\_

I hereby determine that the prices offered by (supplier/vendor name) \_\_\_\_\_ for the purchase of these products or services to be fair and reasonable based on the following analysis:

**Check one or more which apply:**

- \_\_\_\_\_ Comparison of and based on current offers received for the same or similar services (**complete matrix below**).
- \_\_\_\_\_ Comparison of proposed pricing with pricing from recent purchases for the same or similar services, adjusted by the pertinent Consumer or Producer Price Index or Inflation Rate over the corresponding time period, if appropriate. This includes the same or similar services found on existing State or municipal contracts (**identify contract pricing sources and attach supporting documentation**).
- \_\_\_\_\_ Comparison of price components against current industry standards, such as labor rates, dollars per pound, dollars per square foot, etc., to justify the price reasonableness of the whole (**attach the analysis which supports the conclusions drawn**).
- \_\_\_\_\_ Comparison with published catalog prices or price lists, commercially advertised sales prices, or prices obtained through other market research (**e.g., Internet-based, trade journals, etc.**) for the same or similar item commercially available from competing suppliers (**complete the matrix below and attach supporting quotes, catalog pages, price lists, advertisements, etc.**).
- \_\_\_\_\_ Comparison of proposed pricing with an in-house independent cost estimate for the same or similar item (**complete the matrix below, attach the signed in-house estimate, and explain factors influencing any differences found**).

\_\_\_\_\_ The quoted price is from a regulated utility (identify the utility in the "Comments" section below).

\_\_\_\_\_ Other (e.g., verifiable sales information for the same or similar items sold to the supplier's other customers (discuss in the "Comments" section below and attach supplier's sales information)).

SUMMARY MATRIX

For multi-year contracts	Item	Proposed Pricing	Average Market Price	Offeror A	Offeror B	In-House Estimate	Other
Years 1&2							
Option Yr 1							
Option Yr 2							
Option Yr 3							

Reason for the selection:

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Supporting documents are attached. This analysis and determination will be filed in the procurement file.

\_\_\_\_\_  
Purchasing Agent (Print Name & Sign)

\_\_\_\_\_  
Date

**NDDOT TRANSIT  
INDEPENDENT COST ESTIMATE (ICE)**

“Independent cost estimate (ICE)” means an estimate of the anticipated cost or price to be paid for an item, service, or project that is developed by an entity or entities not associated with the item, service, or project to be procured.

To be considered “independent,” the estimate cannot be developed by any potential source, supplier, or provider of the item, service, or project. However, it is acceptable to have an “independent” third party develop the estimate for the purchasing activity as long as that party has no interest in bidding or offering on the procurement.

For more complex procurements, the ICE represents the documented result of a practical and unbiased analysis, assessment, and quantification of all costs and risks associated with a particular procurement.

The ICE must be based on the procurement’s technical specifications. Irrespective of the procurement’s complexity, the ICE serves as an essential tool for conducting the subsequent required cost or price analysis.

Instructions:

1. Use this template for developing independent cost estimates (ICE) for formal solicitations that meet the simplified acquisition threshold. Including contract modifications and change orders. The ICE is a tool to assist in determining the reasonableness of the bid or proposal being evaluated; that is to assist in performing the cost or price analysis. It is required for all procurements exceeding the simplified acquisition threshold. **The ICE must be completed prior to receipt of bids or proposals.** An ICE is also required for procurement action such as contract modifications and change orders.
2. The ICE and any supporting documentation must be filed in your agencies procurement file and included in the documentation in the BlackCat System.
3. Transit Agency Name – enter name
4. Procurement Officer Name – enter name of procurement officer completing this estimate.
5. Purchase Request/Solicitation Number – If applicable, insert number.
6. Item Description/Project Name – Enter a brief description of the item or service to be purchased.
7. Delivery/Completion Date – Enter the date that the item or service must be delivered or completed.
8. Signature – Sign if you are the developer of the ICE.
9. Total Estimated Price/Cost – Enter the procurement’s total anticipated price or cost. Include option years, if applicable.
10. Date of Estimate – Enter the date that the ICE was developed.



11. Method – Check all of the listed methods which were used in developing the current ICE and attach any supporting documents such as catalog or Internet-based search pages, etc.

**INDEPENDENT COST ESTIMATE**

Transit Agency Name:	
Procurement Officer Name:	
Purchase Request/Solicitation Number:	
Item Description/Project Name:	
Delivery/Project Completion Date:	
Total Estimated Price/Cost:	
Date of Estimate:	
Signature	

The above independent cost estimate and attached documentation has been developed as follows (check all that apply):

\_\_\_\_\_ Published catalog or price list (attach pertinent catalog or price list pages).  
 \_\_\_\_\_ Recent prices for the same or similar item/service (identify contracts, purchase orders, sources, and additional helpful information (e.g. dates of award), and attach any pertinent documents)  
 \_\_\_\_\_ Use appropriate inflation measures to arrive at a current estimated price:

\_\_\_\_\_

\_\_\_\_\_ In-house engineering or technical estimate (attach documentation).  
 \_\_\_\_\_ State contract number (attach documentation): \_\_\_\_\_

\_\_\_\_\_ Other (specify): \_\_\_\_\_

\_\_\_\_\_ If appropriate, the estimates/prices herein have been made current by adjusting for inflation using

\_\_\_\_\_ the following Producer or Consumer Price Index: \_\_\_\_\_

**NON-DISCLOSURE AGREEMENT - CONTRACTOR  
(March 2017)**

A non-disclosure agreement is a legal contract between two or more parties outlining confidential material or information. This information can be shared between these parties but access is restricted to third parties.

The following text can be copy/pasted into an email to notify a company of the non-disclosure agreement. Contact legal counsel if customizing.

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE ALL INSTRUCTIONS BEFORE PRINTING**

**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

The parties to this non-disclosure agreement are the state of North Dakota, acting through its [State Agency \(STATE\)](#), and [Name of Business](#) having its principal place of business at [Principal Business Address \(CONTRACTOR\)](#).

By virtue of this agreement, the parties may have access to information that is confidential to one another (“confidential information”). CONTRACTOR agrees not to disclose information which it receives from STATE and which STATE has identified as confidential or exempt from public disclosure except as may be necessary to carry out this agreement and as authorized in advance by STATE. STATE agrees not to disclose information received from CONTRACTOR which CONTRACTOR has identified as confidential and which STATE has determined, in its sole discretion, is protected from public disclosure under a specific exception to the North Dakota open records laws, pursuant to [N.D.C.C. § 44-04-18](#).

We agree to hold each other’s confidential information in confidence beyond the term of this agreement. Also, we agree to disclose confidential information only as may be necessary to carry out the purposes of this agreement and only to those employees or agents who are required to protect it against unauthorized disclosure. Nothing shall prevent either party from disclosing confidential information to a federal or state government entity as required by law or by judicial order.

This non-disclosure agreement is not effective until fully executed by both parties.

<b>CONTRACTOR</b>	<b>STATE OF NORTH DAKOTA</b>
<a href="#">Insert Contractor</a>	Acting through its <a href="#">Insert Agency</a>
BY:	BY:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:

**NOTICE OF INTENT TO MAKE A LIMITED COMPETITIVE OR A NONCOMPETITIVE PURCHASE  
(February 2020)**

Agencies will use this template to notify the public of their intent to make a limited or noncompetitive purchase \$10,000 and over. This notice is intended to attempt to identify alternative sources or determine that a limited competitive or noncompetitive purchase is appropriate. See [N.D.C.C. § 54-44.4-05](#), [N.D.A.C. § 4-12-09-05](#).

If agencies wish to make a limited or noncompetitive purchase \$10,000 and over, they must request approval from the State Procurement Office. The purchasing agency must prepare an [Alternate Procurement Request Form](#) (SFN 51403) to request approval. Alternate Procurement Requests must be reviewed and approved by the State Procurement Office (SPO). The Alternate Procurement Request Form must contain factual evidence. The purchasing agency will submit a completed Alternate Procurement Request Form to the State Procurement Office using the [SPO Work Request System](#). Agencies that do not have access to the SPO Work Request System should email the Alternate Procurement Request Form to [infospo@nd.gov](mailto:infospo@nd.gov).

The State Procurement Office will review the Alternate Procurement Request and may instruct the purchasing agency to issue a notice of intent to make a limited or noncompetitive purchase (notice). If the purchasing agency is asked to issue a notice, the agency will use this template. The purchasing agency may also choose to issue a notice prior to submitting an Alternate Procurement Request Form to the State Procurement Office.

The notice must be issued using the SPO online system to an appropriate bidders list for the commodity or service being purchased. Additional known bidders should be added to the bidders list. The intended vendor identified in the notice must also be added to the bidders list. The notice response deadline should be a minimum of seven (7) calendar days after the date issued for interested parties to submit a response to the notice. When posting on the SPO online system, it is not necessary to input a deadline for written questions.

If an interested party responds to the notice, the purchasing agency shall evaluate the response and determine the appropriate action in accordance with [N.D.A.C. § 4-12-09-05, Subsection 7](#). The purchasing agency may choose to consult the State Procurement Office for guidance if they receive a response to the notice.

If the purchasing agency does not receive a response to the notice by the response deadline, the agency will update the Alternate Procurement Request Form. Some suggested language that may be used to update the Alternate Procurement Form is provided below.

A notice of intent to make a (**Select One**: limited competitive **or** noncompetitive purchase), solicitation number **XXX**, was issued on **Insert Date** using the SPO online system to an appropriate bidders list. The notice closed on **Insert Date** and no responses were received.

The purchasing agency will resubmit the updated Alternate Procurement Request Form and include the following supporting documentation: 1) the notice; 2) bidders list; and 3) SPO online email notification. The State Procurement Office will review the updated request. Submit the updated request using the SPO Work Request System, or by email to the assigned SPO Procurement Officer.

If the Alternate Procurement Request is approved, the agency must issue the award notice utilizing the SPO online system. Archive the solicitation on the SPO online system after you have issued the award.

If the Alternate Procurement Request Form is declined, the notice will need to be canceled, and the agency will need to conduct the appropriate procurement process. Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance.

**NOTE: DELETE THESE INSTRUCTIONS BEFORE PRINTING**

**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**  
**NOTICE OF INTENT TO MAKE A**  
**SELECT OPTION LIMITED COMPETITIVE PURCHASE**  
**OR NONCOMPETITIVE PURCHASE**

Date

The State of North Dakota intends to make a purchase for which we believe there is (**Select One**: no competition **or** limited competition). The purpose of this notice is to determine if other sources are available and whether the procurement method is appropriate. An interested party who provides an alternative to the commodity or service is invited to submit a written response to the Procurement Officer by the response deadline.

PURCHASING AGENCY: [Insert name](#)

PURCHASE DESCRIPTION:

***Option 1 - Noncompetitive***

The State intends to make a noncompetitive purchase.

[Insert a detailed description of the commodity or service you intend to purchase or whether you are trying to find viable alternatives. If you are looking to make a purchase, insert details regarding quantity and whether you will be entering into a contract \(include period and any renewal/extension/renewal options.\) If necessary, the detailed specifications can be included as an attachment \(include a delivery location, if applicable\). Be sure to include the required delivery date, completion date or any other key milestone dates.](#)

***Option 2 - Limited***

The State intends to conduct a limited competitive purchase as follows: [Insert the description of how competition is being limited \(e.g. limiting to requiring a specific product brand that is sold through distributors, etc.\)](#)

[Insert a detailed description of the commodity or service you intend to purchase or whether you are trying to find viable alternatives. If you are looking to make a purchase, insert details regarding quantity and whether you will be entering into a contract \(include period and any renewal/extension/renewal options.\) If necessary, the detailed specifications can be included as an attachment \(include a delivery location, if applicable\). Be sure to include the required delivery date, completion date or any other key milestone dates.](#)

INTENDED SOURCE:

***Option 1 – Noncompetitive***

[Insert the name and address of the intended vendor](#)

***Option 2 – Limited***

[Insert the name of the specific product brand or service type](#)

PRICE:

***Option 1 – Noncompetitive***

[Insert the total price \(Commodity: entire amount of the purchase price including all shipping and handling and any other related charges, such as installation or maintenance agreements; Service: total price includes dollar value of the purchase, including the full term of the contract, including any possible extensions or renewals.\)](#)

***Option 2 – Limited***

[Insert the estimated price range](#)

JUSTIFICATION: [Insert description of why it is in the best interest of the state to make this limited or noncompetitive purchase. If noncompetitive, include details on why you selected this vendor.](#)

RESPONSE DEADLINE: [Insert date and time \(A minimum of seven calendar days after issue date.](#)

- [Example: Issued April 1. Response Deadline: April 8, 20XX at 5:00 PM CT](#)

Response Instructions: Vendors must respond to the Procurement Officer in writing and include a description of the commodity or service being offered as an alternative. Include pricing, including any applicable shipping and handling. A response can be submitted by in person, by mail, or email.

If you have any questions, please contact the Procurement Officer before the response deadline.

[Insert name](#)

Procurement Officer

E-mail: [Insert email](#)

Telephone: [Insert number](#)

TTY Users call: 7-1-1

**NOTICE OF INTENT TO AWARD  
(January 2019)**

After you have made an award decision in a formal sealed procurement process, you must issue Notice of the Intent to Award. Send this notice to each offeror or bidder that submitted a proposal or bid by the deadline, even if their proposal or bid was rejected.

This notice lists all the offerors or bidders that responded by the deadline, and announces the award decision. You may include an evaluation summary or instruct offerors or provide instructions for requesting this information.

Post this notice on the State Procurement Office Online System. You may also mail, fax, or email to bidders or offerors. State law establishes a seven calendar day protest period, so it is recommended that you wait until after the seven calendar day protest period before executing the contract. [N.D.C.C. § 54-44.4-12](#)

Example:

Notice of Award Issued:	February 1 <sup>st</sup>
Seven Day Protest Period:	February 2 <sup>nd</sup> -8 <sup>th</sup>
Award:	February 9 <sup>th</sup>

During the seven calendar day protest period, you may prepare the contract and conduct negotiations. Send a separate letter to the successful offeror or bidder if they are required to become registered, furnish proof of insurance, or a bond. See the State Procurement Office Website for a Contract Award Instruction Letter for Successful Offeror or Bidder.

References: [N.D.C.C. § 54-44.4-10](#), [N.D.C.C. § 54-44.4-12](#), [N.D.A.C § 4-12-08](#), [N.D.A.C. § 4-12-14](#).

Contact the State Procurement Office at 701-328-2740 or [info@spo.nd.gov](mailto:info@spo.nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE ALL INSTRUCTIONS BEFORE PRINTING**

**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

**NOTICE OF INTENT TO AWARD**

Date

Solicitation Number and Title: [Insert Solicitation Number, Title](#)

Opening Date and Time: [Insert date and time](#)

A response to the solicitation was submitted by:

[Insert name of bidder or offeror](#)

[Insert name of bidder or offeror](#)

Responses were evaluated according to the criteria stated in the solicitation. We announce our intent to award a contract to:

[Insert name\(s\) of bidder or offeror](#)

We would like to thank you for your time and efforts in preparing a response to this solicitation. We invite you to contact the Procurement Officer if you would like additional information or have any questions about the evaluation process.

[Option: You are invited to contact the Procurement Officer to schedule an evaluation debrief. The debrief will provide information about the evaluation process and proposal scores.](#)

You are reminded that any protests of this decision must be submitted to the Procurement Officer within seven (7) calendar days after the issuance of this notice. The protest must be in writing, clearly identify the solicitation number and title, and detail the nature of the protest.

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

We appreciate your interest in doing business with the State of North Dakota.

Sincerely,

[Insert name](#)

Procurement Officer

E-mail: [Insert email](#)

Telephone: [Insert number](#)

TTY Users call: 7-1-1



**RESCISSION OF AWARD  
(June 2018)**

If you need to rescind an award after the Notice of Intent to Award has been issued, send written notice to all bidders that received the original Notice of Intent to Award. Provide the reason the award has been rescinded.

Your contract award rescission notice will need to explain what will happen next in the procurement process. You may be awarding to a different vendor, re-evaluating, or rejecting all bids or proposals. If you are rejecting all bids or proposals, review [N.D.A.C. § 4-12-11-09](#). This rule requires the Procurement Officer to provide all bidders or offerors the reason all bids or proposals were rejected.

If you had already posted the award notice on the State Procurement Online System, contact the State Procurement Office at 701-328-2740 for assistance in making changes to the online award notice.

It is suggested that you brief vendors before issuing the Notice of Award Rescission, especially the vendor named in the original award notice.

If the solicitation is being cancelled, record retention is one year for Solicitations, Contracts, Leases, and Agreements not executed.

Contact the State Procurement Office at 701-328-2740 or [info@spo.nd.gov](mailto:info@spo.nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE ALL INSTRUCTIONS BEFORE PRINTING**

**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

**RESCISSION OF AWARD**

Date

Solicitation Number and Title: [Insert Solicitation Number, Title](#)

The [Insert name of agency or institution](#) issued a Notice of Intent to Award related to the above referenced solicitation on [Insert Date](#)

Notice is hereby given that the contract award has been rescinded as a result of [Insert reason \(e.g. a calculation mistake was discovered, or the State has decided not to award a contract, etc.\)](#).

[SELECT ONE OR CUSTOMIZE AS NEEDED.](#)

The solicitation is not being cancelled. Award will instead be made to [Insert name of new vendor](#).

The solicitation is not being cancelled. The agency will [Insert description of what will happen](#).

The solicitation is being cancelled. A new solicitation [will or will not](#) be issued.

[Option: The State has not determined whether a new solicitation will be issued.](#)

Please contact the Procurement Office in writing if you have any questions regarding this notice.

Sincerely,

[Insert name](#)

Procurement Officer

E-mail: [Insert email](#)

Telephone: [Insert number](#)

TTY Users call: 7-1-1

**ONLY ONE BID OR PROPOSAL RECEIVED  
(March 2017)**

If only one responsive bid or proposal is received in response to a solicitation, the procurement officer may:

1. Make an award to the vendor upon determination that the specifications were not restrictive in accordance with [N.D.A.C. § 4-12-06-02](#), other prospective bidders and offerors had a reasonable opportunity to respond, the bidder is responsible, and the price submitted is fair and reasonable.
2. Reject the bid or proposal and solicit new bids or proposals; or
3. Cancel the procurement.

See [N.D.A.C. § 4-12-11-08](#) (Only one responsive bid or proposal received)

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions.

**DELETE ALL INSTRUCTIONS BEFORE PRINTING**

**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

**ONLY ONE BID OR PROPOSAL RECEIVED**

Date

Solicitation Number and Title: [Insert](#)

Opening Date and Time: [Insert](#)

One vendor submitted a response to the above solicitation:

- [Insert Vendor Name, City, and State](#)

The Procurement Officer has determined that award is appropriate. Provide a brief justification that the specifications were not restrictive in accordance with [N.D.A.C. § 4-12-06-02](#). Provide verification that other prospective bidders and offerors had a reasonable opportunity to respond Explain how the price submitted was determined to be fair and reasonable.

Insert [name](#)

Procurement Officer

E-mail: [Insert email](#)

Telephone: [Insert number](#)

TTY Users call: 7-1-1

**Printing Specifications Template  
January 2016**

Use this template to prepare specifications for a printing job. Contact the State Printing Manager at 701-328-3494 or [csd@nd.gov](mailto:csd@nd.gov) for assistance. The State Printing Manager will solicit bids if the estimated price is over \$2,500. Please submit this form to State Procurement Office using the [Online Purchasing Work Request System](#).

Agency Contact Person:

Telephone Number:

Email Address:

1. Title of the Document:
2. Due date:
3. The number of originals:
4. The number of copies or sets:
5. Is the job printed 1-sided or 2-sided?
6. How many pages are 1-sided or 2-sided?
7. Paper size:
8. Finished size:
9. Paper weight.
10. Paper stock (cover stock or text stock).
11. Paper color.
12. Ink color (Use a PMS color number, if possible).
13. Are there inserts?
14. Is there a front cover?
15. Is there a back cover?
16. Does it need to be folded, stapled, or drilled?
17. Is there any special finishing required?
18. Does it need to be numbered?
19. Are color separations needed?
20. Will the agency provide the printer with a disc or electronic file?
21. What program was used to create the disc or electronic file?
22. Is there a sample that can be provided to printers?
23. Is there artwork?
24. Does the artwork need to be done by the printer?
25. Is the job camera-ready?
26. Is a proof required?
27. Is a press proof required?

Comments:

**NDDOT – TRANSIT SECTION  
MICRO PROCUREMENT FILE CHECKLIST**

Instructions for Use

See NDDOT Transit Procurement Manual for most current Federal and State requirements. If you are part of a local entity, their procurement requirements would also apply.

Use this checklist for ensuring that individual procurement files comply with appropriate Federal and local record-keeping requirements. COMPLETE IN CHRONOLOGICAL ORDER! The fields identified are not intended to be all inclusive and may not be required for all Micro Purchases. The recipient must determine which fields are appropriate for the procurement and may add fields to collect information required by local procedures. The checklist must be signed and dated by the individual compiling the procurement file.

NOTE: Your procurement may be deemed invalid by NDDOT if you do not allow the NDDOT Transit Section adequate time to review document throughout the procurement process.

1. Written History of Procurement includes the reason and source of funding for the procurement including Grant number and ALI code.
2. An Independent Cost Estimate is required for Micro-Purchases to determine if the cost is fair and reasonable. Must be completed prior to soliciting bids. A date must clearly show on this document.
3. Insert any pertinent specifications, drawings, or technical documents.
4. Insert the Sole Source justification (if applicable). SFN 51403 Alternate Procurement (AP) Request must be completed and submitted to [transitnd@nd.gov](mailto:transitnd@nd.gov).
5. Insert any pertinent Wage Determinations. Required if purchase is over \$2,000 and includes labor.
6. Insert pertinent Market Research documents (if any).
7. Insert Bidders List.
8. Insert any supporting documents such as quotes received (telephone or email), hard-copy catalog or Internet-based search pages, price lists, etc., which are not already attached to #9. Cost or Price Analysis.
9. Insert Cost/Price Analysis.
10. Insert vendor responsibility determinations. Check OMB's list of debarred and suspended vendors and Secretary of State Vendor Registry. Documentation must be uploaded showing date checked.
11. Insert any negotiation memorandum (if applicable).
12. Insert the required NDDOT approvals. Failure to get approval before issuing a PO may result in NDDOT not reimbursing the procurement.
13. Insert a copy of the Board's approval for the procurement (if applicable).
14. Insert Federal Clauses and Certifications (use [ProcurementPRO \(nationalrtap.org\)](http://ProcurementPRO(nationalrtap.org)) ).
15. Insert any record of the "Notice to Proceed" (if applicable).
16. Insert any protests submitted and resolution.
17. Insert Purchase Order and any modifications to the Purchase Order.
18. Insert any applicable Invoices, Payment Vouchers, and Capital Reimbursement Request
19. Insert documentation that asset has been added to BlackCat Inventories for all assets greater than \$5,000.
20. Insert any pertinent correspondence between recipient and supplier.

**NDDOT – TRANSIT SECTION  
PROCUREMENT HISTORY FILE CHECKLIST  
(COMPLETE IN CHRONOLOGICAL ORDER)**

**Method of Procurement: MICRO – Less than \$10,000**

**FUNDING SOURCE: (Select all that apply)**

<b>5310</b>	<b>5311</b>	<b>5339</b>	<b>STATE AID</b>	<b>OTHER: (Describe)</b>

CONTRACT/PURCHASE ORDER NUMBER		SUPPLIER/VENDOR NAME				ORDER DATE	
COMMODITY CODE/BRIEF ITEM DESCRIPTION		AMOUNT \$				DELIVERY DATE	
NO.	ITEM	IN FILE	N/A	NO.	ITEM	IN FILE	N/A
1.	WRITTEN HISTORY OF PROCUREMENT			11.	NEGOTIATION MEMORANDUM		
2.	INDEPENDENT COST ESTIMATE			12.	REQUIRED APPROVAL (given by NDDOT)		
3.	SPECS, DRAWINGS, TECHNICAL DOCUMENTS			13.	BOARD APPROVALS (Submit copy of minutes if applicable)		
4.	SOLE SOURCE JUSTIFICATIONS (If Applicable)			14.	FEDERAL CLAUSES & CERTIFICATIONS		
5.	DEPARTMENT OF LABOR WAGE DETERMINATIONS (If Applicable)			15.	NOTICE TO PROCEED		
6.	MARKET RESEARCH			16.	PROTESTS		
7.	BIDDERS LIST			17.	PURCHASE ORDER AND MODIFICATIONS		
8.	ADDITIONAL DOCUMENTATION (Quotes - telephone quote, email or fax, catalog, price lists, website, etc.)			18.	INVOICES/VOUCHERS/CAPITAL REIMBURSEMENT REQUEST		
9.	COST OR PRICE ANALYSIS			19.	INVENTORY IN BLACKCAT (Assets greater than \$5,000)		
10.	VENDOR RESPONSIBILITY DETERMINATION (OMB List of Debarred & Suspended Vendors & ND Secretary of State Vendor Registration)			20.	GENERAL CORRESPONDENCE		

REMARKS:

BUYERS SIGNATURE:	DATE

**NDDOT – TRANSIT SECTION  
SMALL PROCUREMENT FILE CHECKLIST**

Instructions for Use

See NDDOT Transit Procurement Manual for most current Federal and State requirements. If you are part of a local entity, their procurement requirements would also apply.

Use this checklist for ensuring that individual procurement files comply with appropriate Federal and local record-keeping requirements. COMPLETE IN CHRONOLOGICAL ORDER! The field identified are not intended to be all inclusive and may not be required for all Small Purchases. The recipient must determine which fields are appropriate for the procurement and may add fields to collect information required by local procedures. The checklist must be signed and dated by the individual compiling the procurement file.

NOTE: Your procurement may be deemed invalid by NDDOT if you do not allow the NDDOT Transit Section adequate time to review document throughout the procurement process.

1. Written History of Procurement includes the reason and source of funding for the procurement including Grant number and ALI code.
2. An Independent Cost Estimate is required for Small Purchases to determine if the cost is fair and reasonable. Must be completed prior to soliciting bids. A date must clearly show on this document.
3. Insert any pertinent specifications, drawings, or technical documents.
4. Insert the Sole Source justification (if applicable). SFN 51403 Alternate Procurement (AP) must be completed and submitted to [transitnd@nd.gov](mailto:transitnd@nd.gov).
5. Insert any pertinent Wage Determinations. Required if purchase is \$2,000 and includes labor.
6. Insert pertinent Market Research documents (if any).
7. Insert Bidders List.
8. Insert any supporting documents such as quotes received (telephone or email), hard-copy catalog or Internet-based search pages, price lists, etc., which are not already attached to #9. Cost or Price Analysis.
9. Insert Cost/Price Analysis.
10. Insert notification of unresponsive bidders (if applicable).
11. Insert vendor responsibility determinations. Check OMB's list of debarred and suspended vendors and Secretary of State Vendor Registry. SAM's.gov must also be checked for all purchases over \$25,000. Documentation must be uploaded showing date checked.
12. Insert any negotiation memorandum (if applicable).
13. Insert the required NDDOT approvals. Failure to get approval before issuing a PO may result in NDDOT not reimbursing the procurement.
14. Insert a copy of the Board's approval for the procurement (if applicable).
15. Insert Federal Clauses and Certifications (use [ProcurementPRO \(nationalrtap.org\)](http://ProcurementPRO(nationalrtap.org)) ).
16. Insert any record of the "Notice to Proceed" or "Intent to Award" (if applicable).
17. Insert any protests submitted and resolution.
18. Insert Purchase Order/Contract and any modifications.
19. Insert any options exercised and related analysis documents (if applicable).
20. Insert any applicable Invoices, Payment Vouchers, and Capital Reimbursement Request
21. Insert documentation that asset has been added to BlackCat Inventories for all assets greater than \$5,000.
22. Insert any pertinent correspondence between recipient and supplier.



**NDDOT – TRANSIT SECTION  
 PROCUREMENT HISTORY FILE CHECKLIST  
 (COMPLETE IN CHRONOLOGICAL ORDER)**

**Method of Procurement: SMALL – At least \$10,000 but less than \$50,000**

**FUNDING SOURCE: (Select all that apply)**

<b>5310</b>	<b>5311</b>	<b>5339</b>	<b>STATE AID</b>	<b>OTHER: (Describe)</b>

CONTRACT/PURCHASE ORDER NUMBER		SUPPLIER/VENDOR NAME				ORDER DATE	
COMMODITY CODE/BRIEF ITEM DESCRIPTION		AMOUNT \$				DELIVERY DATE	
NO.	ITEM	IN FILE	N/A	NO.	ITEM	IN FILE	N/A
1.	WRITTEN HISTORY OF PROCUREMENT			12.	NEGOTIATION MEMORANDUM (If Applicable)		
2.	INDEPENDENT COST ESTIMATE			13.	REQUIRED APPROVAL (given by NDDOT)		
3.	SPECS, DRAWINGS, TECHNICAL DOCUMENTS			14.	BOARD APPROVALS (Submit copy of minutes if applicable)		
4.	SOLE SOURCE JUSTIFICATIONS (If Applicable)			15.	FEDERAL CLAUSES & CERTIFICATIONS		
5.	DEPARTMENT OF LABOR WAGE DETERMINATIONS (If Applicable)			16.	NOTICE TO PROCEED OR NOTICE OF INTENT TO AWARD		
6.	MARKET RESEARCH			17.	PROTESTS		
7.	BIDDERS LIST			18.	PURCHASE ORDER/CONTRACT AND MODIFICATIONS		
8.	ADDITIONAL DOCUMENTATION (Quotes - telephone quote, email or fax, catalog, price lists, website, etc.)			19.	OPTION EXERCISED & RELATED ANALYSIS DOCUMENTS (If Applicable)		
9.	COST OR PRICE ANALYSIS			20.	INVOICES/VOUCHERS/CAPITAL REIMBURSEMENT REQUEST		
10.	NOTIFICATION OF UNRESPONSIVE BIDDERS (If Applicable)			21.	ADDED TO INVENTORY IN BLACKCAT (Assets greater than \$5,000)		
11.	VENDOR RESPONSIBILITY DETERMINATION (OMB List of Debarred & Suspended Vendors, ND Secretary of State Vendor Registration, & SAM's.gov)			22.	GENERAL CORRESPONDENCE		

**REMARKS:**

BUYERS SIGNATURE:	DATE

**NDDOT – TRANSIT SECTION  
INFORMAL WRITTEN PURCHASE PROCUREMENT FILE CHECKLIST**

Instructions for Use

See NDDOT Transit Procurement Manual for most current Federal and State requirements. If you are part of a local entity, their procurement requirements would also apply.

Use this checklist for ensuring that individual procurement files comply with appropriate Federal and local record-keeping requirements. COMPLETE IN CHRONOLOGICAL ORDER! The field identified are not intended to be all inclusive and may not be required for all Informal Written Purchases. The recipient must determine which fields are appropriate for the procurement and may add fields to collect information required by local procedures. The checklist must be signed and dated by the individual compiling the procurement file.

NOTE: Your procurement may be deemed invalid by NDDOT if you do not allow the NDDOT Transit Section adequate time to review document throughout the procurement process.

1. Written History of Procurement includes the reason and source of funding for the procurement including Grant number and ALI code.
2. An Independent Cost Estimate is required for Informal Written Purchases to determine if the cost is fair and reasonable. Must be completed prior to soliciting bids. A date must clearly show on this document.
3. Insert any pertinent specifications, drawings, or technical documents.
1. Insert the Sole Source justification (if applicable). SFN 51403 Alternative Procurement (AP) must be completed and submitted to [transitnd@nd.gov](mailto:transitnd@nd.gov).
2. Insert pertinent Market Research documents (if any).
3. Insert any pertinent Wage Determinations. Required if purchase is over \$2,000 and includes labor.
4. Insert Bidders List.
5. Insert any supporting documents such as quotes received (telephone or email), hard-copy catalog or Internet-based search pages, price lists, etc., which are not already attached to #9. Cost or Price Analysis.
6. Insert Cost/Price Analysis.
7. Insert notification of unresponsive bidders (if applicable).
8. Insert vendor responsibility determinations. Check OMB's list of debarred and suspended vendors and Secretary of State Vendor Registry. SAM's.gov must also be checked for all purchases over \$25,000. Documentation must be uploaded showing date checked.
9. Insert any negotiation memorandum (if applicable).
10. Insert the required NDDOT approvals. Failure to get approval before issuing a PO may result in NDDOT not reimbursing the procurement.
11. Insert a copy of the Board's approval for the procurement (if applicable).
12. Insert Federal Clauses and Certifications (use [ProcurementPRO \(nationalrtap.org\)](http://ProcurementPRO(nationalrtap.org)) ).
13. Insert any record of the "Intent to Award".
14. Insert any protests submitted and resolution.
15. Insert Purchase Order/Contract and any modifications.
16. Insert any options exercised and related analysis documents (if applicable).
17. Insert any applicable Invoices, Payment Vouchers, and Capital Reimbursement Request
18. Insert documentation that asset has been added to BlackCat Inventories for all assets greater than \$5,000.
19. Insert any pertinent correspondence between recipient and supplier.
20. Insert contract close-out (if applicable).

**PROCUREMENT HISTORY FILE CHECKLIST**

**(COMPLETE IN CHRONOLOGICAL ORDER)**

**Method of Procurement: INFORMAL WRITTEN PURCHASE – At least \$50,000 but less than \$100,000**

**FUNDING SOURCE: (Select all that apply)**

<b>5310</b>	<b>5311</b>	<b>5339</b>	<b>STATE AID</b>	<b>OTHER: (Describe)</b>

CONTRACT/PURCHASE ORDER NUMBER		SUPPLIER/VENDOR NAME				ORDER DATE	
COMMODITY CODE/BRIEF ITEM DESCRIPTION		AMOUNT				DELIVERY DATE	
		\$					
NO.	ITEM	IN FILE	N/A	NO.	ITEM	IN FILE	N/A
1.	WRITTEN HISTORY OF PROCUREMENT			13.	REQUIRED APPROVAL (given by NDDOT)		
2.	INDEPENDENT COST ESTIMATE			14.	BOARD APPROVALS (Submit copy of minutes if applicable)		
3.	SPECS, DRAWINGS, TECHNICAL DOCUMENTS			15.	FEDERAL CLAUSES & CERTIFICATIONS		
4.	SOLE SOURCE JUSTIFICATIONS (If Applicable)			16.	NOTICE TO PROCEED OR NOTICE OF INTENT TO AWARD		
5.	MARKET RESEARCH			17.	PROTESTS (If Applicable)		
6.	DEPARTMENT OF LABOR WAGE DETERMINATIONS (If Applicable)			18.	PURCHASE ORDER AND MODIFICATIONS/CONTRACT/CONTRACT AMENDMENTS		
7.	BIDDERS LIST			19.	OPTION EXERCISES & RELATED ANALYSIS DOCUMENTS		
8.	ADDITIONAL DOCUMENTATION (Quotes - telephone quote, email or fax, catalog, price lists, website, proposals, etc.)			20.	INVOICES/VOUCHERS/CAPITAL REIMBURSEMENT REQUEST		
9.	COST OR PRICE ANALYSIS			21.	INVENTORY IN BLACKCAT (Assets greater than \$5,000)		
10.	NOTIFICATION OF UNRESPONSIVE BIDDERS (If Applicable)			22.	GENERAL CORRESPONDENCE		
11.	VENDOR RESPONSIBILITY DETERMINATION (OMB List of Debarred & Suspended Vendors, ND Secretary of State Vendor Registration, & SAM's.gov)			23.	CONTRACT CLOSE-OUT (If Applicable)		
12.	NEGOTIATION MEMORANDUM						

REMARKS:

BUYERS SIGNATURE:	DATE
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**NDDOT – TRANSIT SECTION  
FORMAL PURCHASE PROCUREMENT FILE CHECKLIST**

Instructions for Use

See NDDOT Transit Procurement Manual for most current Federal and State requirements. If you are part of a local entity, their procurement requirements would also apply.

Use this template for ensuring that individual procurement files comply with appropriate Federal and local record-keeping requirements. COMPLETE IN CHRONOLOGICAL ORDER! The field identified are not intended to be all inclusive and may not be required for all Formal Purchases. The recipient must determine which fields are appropriate for the procurement and may add fields to collect information required by local procedures. The template must be signed and dated by the individual compiling the procurement file.

NOTE: Your procurement may be deemed invalid by NDDOT if you do not allow the NDDOT Transit Section adequate time to review document throughout the procurement process.

1. Written History of Procurement includes the reason and source of funding for the procurement including Grant number and ALI code.
2. An Independent Cost Estimate is required for Formal Purchases to determine if the cost is fair and reasonable. Must be completed prior to soliciting bids. A date must clearly show on this document.
3. Insert any pertinent specifications, drawings, or technical documents.
4. Insert the Sole Source justification (if applicable). SFN 51403 Alternative Procurement (AP) must be completed and submitted to [transitnd@nd.gov](mailto:transitnd@nd.gov).
5. Insert pertinent Market Research documents (if any).
6. Insert any pertinent Wage Determinations. Required if purchase is over \$2,000 and includes labor.
7. Insert solicitation document and any amendments.
8. Insert NDOT approval. All documents must be submitted to NDDOT for approval prior to solicitation of bids.
9. Insert all documentation showing evidence of advertisement of the procurement. Print copies of all ads and on-line notification of the procurement. Insert any questions and answers asked during the question period.
10. Insert pre-bid conference notes and Questions & Answers (if applicable).
11. Insert bids & solicitation amendments acknowledgements.
12. Insert unresponsive bidder notification.
13. Insert Bidders List.
14. Insert documentation on public bid opening. Include technical evaluation sheets, member certifications, and membership list.
15. Insert Cost/Price Analysis.
16. Insert Single Bid Analysis (if applicable)
17. Insert vendor responsibility determinations. Check OMB's list of debarred and suspended vendors and Secretary of State Vendor Registry. SAM's.gov must also be checked for all purchases over \$25,000. Documentation must be uploaded showing date checked.
18. Insert any negotiation memorandum (if applicable).
19. Insert Federal Clauses and Certifications (use [ProcurementPRO \(nationalrtap.org\)](http://ProcurementPRO(nationalrtap.org)) ).
20. Insert the required NDDOT approvals. Failure to get approval before issuing a PO may result in NDDOT not reimbursing the procurement.
21. Insert a copy of the Board's approval for the procurement (if applicable).
22. Insert any record of the "Intent to Award".
23. Insert any protests submitted and resolution.
24. Insert Signed Contract and any amendments.
25. Insert any Change Orders and evaluation of Change Orders.
26. Insert any options exercised and related analysis documents (if applicable).

27. Insert any Complaint & Performance issues.
28. Insert any applicable Invoices, Payment Vouchers, and Capital Reimbursement Request
29. Insert documentation that asset has been added to BlackCat Inventories for all assets greater than \$5,000.
30. Insert any pertinent correspondence regarding the contract.
31. Insert contract close-out (if applicable).

**NDDOT – TRANSIT SECTION  
PROCUREMENT HISTORY FILE CHECKLIST  
(COMPLETE IN CHRONOLOGICAL ORDER)**

**Method of Procurement: FORMAL PURCHASE – \$100,000 and Over**

**FUNDING SOURCE: (Select all that apply)**

<b>5310</b>	<b>5311</b>	<b>5339</b>	<b>STATE AID</b>	<b>OTHER: (Describe)</b>

CONTRACT/PURCHASE ORDER NUMBER		SUPPLIER/VENDOR NAME				ORDER DATE	
COMMODITY CODE/BRIEF ITEM DESCRIPTION		AMOUNT				DELIVERY DATE	
		\$					
NO.	ITEM	IN FILE	N/A	NO.	ITEM	IN FILE	N/A
1.	WRITTEN HISTORY OF PROCUREMENT			17.	VENDOR RESPONSIBILITY DETERMINATION (OMB List of Debarred & Suspended Vendors, ND Secretary of State Vendor Registration, & SAM's.gov)		
2.	INDEPENDENT COST ESTIMATE			18.	NEGOTIATION MEMORANDUM (If Applicable)		
3.	SPECIFICATIONS, DRAWINGS, TECHNICAL DOCUMENTS			19.	SIGNED FEDERAL CLAUSES & CERTIFICATIONS		
4.	SOLE SOURCE JUSTIFICATION (If applicable)			20.	REQUIRED AWARD APPROVALS (given by NDDOT)		
5.	MARKET RESEARCH			21.	BOARD APPROVAL (Submit a copy of the minutes)		
6.	DEPARTMENT OF LABOR WAGE DETERMINATIONS (If Applicable)			22.	NOTICE OF INTENT TO AWARD		
7.	SOLICITATION & AMENDMENTS			23.	PROTESTS (If Applicable)		
8.	PRE-SOLICITATION APPROVALS (given by NDDOT)			24.	SIGNED CONTRACT		
9.	ADVERTISING			25.	CHANGE ORDER LIST		
10.	PRE-BID CONFERENCE NOTES & QUESTIONS & ANSWERS (If Applicable)			26.	OPTION EXERCISES & RELATED ANALYSIS DOCUMENTS		
11.	BIDS & SOLICITATION AMENDMENT ACKNOWLEDGEMENTS			27.	COMPLAINT & PERFORMANCE REPORTS		
12.	UNRESPONSIVE BIDDER NOTIFICATION			28.	INVOICES/VOUCHERS/CAPITAL REIMBURSEMENT REQUEST		
13.	BIDDER'S LIST			29.	INVENTORY IN BLACKCAT (Assets greater than \$5,000)		
14.	PUBLIC BID OPENING DOCUMENTATION			30.	CONTRACT CORRESPONDENCE		

15.	COST OR PRICE ANALYSIS			31.	CONTRACT CLOSE-OUT		
16.	SINGLE BID ANALYSIS (If Applicable)						

REMARKS:

BUYERS SIGNATURE:	DATE
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## PROCUREMENT PLAN ADOPTION & PROCUREMENT OFFICER DESIGNATION

\_\_\_\_\_, has been appointed  
(Name of appointed Procurement Officer)

as the Procurement Officer for \_\_\_\_\_.  
(Name of Transit Agency)

I certify that my transit agency is in compliance with the Third Parting Contracting requirements established by FTA and the State.

My agency has met the requirements by:

- Adopting the North Dakota Department of Transportation Transit Procurement Manual.
- Completing our own Procurement Manual and keeping it up-to-date. A copy has been provided to NDDOT Transit Section for approval.

We confirm that the Procurement Manual has been adopted by our board and is being implemented by our agency.

Signed,

\_\_\_\_\_  
Board President

\_\_\_\_\_  
Date

**PROTEST ACKNOWLEDGEMENT  
(March 2017)**

The following text can be copy/pasted into an email to acknowledge the receipt of a protest. You can also call the vendor to acknowledge receipt of the protest.

Here is an example of how to determine whether a protest was received in time:

Intent to Award Issue Date:	February 1 <sup>st</sup>
Seven Calendar Days:	February 2 <sup>nd</sup> - 8 <sup>th</sup>

The vendor must submit the protest to the state agency before midnight on February 8<sup>th</sup>.

Review [N.D.C.C. § 54-44.4-12](#) and [N.D.A.C. § 4-12-14](#). Consult your legal counsel and you may notify your assigned State Procurement Officer.

Contact the State Procurement Office at 701-328-2740 or [info@spo.nd.gov](mailto:info@spo.nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE ALL INSTRUCTIONS BEFORE PRINTING**

**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

Date

Business Name  
Contact Name  
Address  
City, State Zip

Subject: Protest Receipt – [Insert Solicitation Number and Title](#)

Dear [Insert Name](#):

This is to confirm that the protest you submitted in response to solicitation [Insert solicitation number and title](#) was received on [Insert date](#).

Select the option that applies to your solicitation. Delete the options that do not apply:

[Option 1 – Procurement Officer will review and prepare a response](#)

I will review the solicitation and procurement file with regard to your concern. If any further clarification is needed, I will contact you. When my review is complete, I will provide a written response to your protest.

[Option 2 – Procurement Officer will not review because not received on-time](#)

We will not be able to consider your protest because it was not received within seven calendar days after the notice of intent to award. The Notice of Intent to Award was issued on [Insert date](#). In making this decision we reviewed North Dakota Century Code 54-44.4-12 and North Dakota Administrative Code 4-12-14.

[Option 3 – Procurement Officer will not review because your company did not submit a bid or proposal](#)

I reviewed the procurement file and you did not respond to the solicitation. Under [N.D.A.C. § 4-12-14-01\(1\)](#), bidders who submitted a response to a solicitation may protest. Therefore, we are unable to consider your protest.

If you have any questions regarding this notification, please feel free to contact me.

Sincerely,

[Insert name](#)  
Procurement Officer  
E-mail: [Insert email](#)  
Telephone: [Insert number](#)  
TTY Users call: 7-1-1

## **PROTEST RESPONSE (March 2017)**

This letter is intended to be used by a procurement officer to respond to a protest received in response to a solicitation, notice of intent to award, or award.

If you receive a protest, review [N.D.C.C. § 54-44.4-12](#), and [N.D.A.C. § 4-12-14](#) and the protest and appeals tab in your State Procurement Manual.

It is recommended that you also have your agency's procurement liaison or your supervisor review the procurement file when a protest is received. An agency should involve its legal counsel before finalizing a protest response. You may also seek assistance of the State Procurement Officer assigned to your agency.

If you have already issued an award notice, notify the intended successful vendor that the award has been stayed until the protest is resolved. (See the Protest Stay of Award Template) on the OMB website.

You must respond to an offeror or bidder protesting within seven (7) calendar days after receiving the protest. If you need additional time, you may extend additional seven calendar days (See Protest Response Extension Template).

The following format is recommended for a protest response: 1) Define the Issue, 2) Cite the applicable laws, rules, and documents that apply, 3) Explain how the rules apply, 4) Reach a conclusion. The response should cover points in a clear and concise manner.

Your response must provide a written decision containing the basis for the decision and inform the protestor of their right to appeal.

The protest response letter must be sent by certified mail. You can also call the company to explain the decision and follow up with the certified letter. You can send the letter attached via e-mail, but also send a certified hard copy.

The vendor may appeal a denied protest to the OMB State Procurement Office, so please provide a copy of your protest response to the State Procurement Officer assigned to your agency through the State Procurement Work Request System.

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions regarding this template.

**NOTE: DELETE THESE INSTRUCTIONS BEFORE PRINTING**

**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

Date

Certified Mail [Insert number](#) Return Receipt Requested

[Business Name](#)  
[Contact Person](#)  
[Address](#)  
[City, State Zip](#)

Subject: [Insert solicitation number and title](#)

Dear [Insert name](#):

This is in response to your protest received on [Insert date protest received](#). In preparing this response, I read your letter carefully and examined the solicitation and contents of the procurement file. The findings are to [Insert](#) sustain [or](#) deny the protest for the reasons set out below.

**Note: The information contained in this section will vary depending on if the protest is sustained or denied. If a protest is sustained, some remedies include: amend the solicitation, cancel the solicitation, or cancel the award.**

**Issue:** [Insert description of basis of their protest \(Example: The award was protested on the basis that your company was not provided an opportunity to submit a best and final offer. Your company had the highest technical score, but was not awarded the contract.\)](#)

**References:** [Describe the relevant law, rule, directive, or section of the solicitation that pertains to their protest.](#)

**Basis for the Decision:** [Apply the law, rule, directive, or section of the solicitation to the issue being protested.](#)

[\(Example: RFP Section 2.12 provides that discussions and best & final offers “may” be held after the initial evaluation of proposals and before award. The State is not required to request best and final offers, so award can be made based upon the evaluations of proposals as submitted by offerors. In regards to your proposal evaluation scores, although your company received the highest technical scores, your cost proposal was not the lowest priced proposal received. You received a score of 15 out of 40 possible points for your cost proposal. Based upon the weighted cost and technical evaluation criteria as forth in the RFP Section 6, your proposal was determined not to be the most advantageous proposal.\)](#)

**Conclusion:** [State whether the actions taken were appropriate according to the applicable references.](#)

[\(Example: The State Procurement Office was not required to request best and final offers, and it was fair in its treatment of all vendors. Based upon these facts, your protest is denied.\)](#)

You may appeal this decision to the Office of Management and Budget (OMB) in accordance with [N.D.C.C. § 54-44.4-12](#) and [N.D.A.C § 4-12-14-03](#). Please address your appeal as follows:

State Procurement Manager  
OMB State Procurement Office  
600 East Boulevard Ave.  
14th Floor Capitol Tower  
Bismarck, ND 58505-0310  
Email: [infospo@nd.gov](mailto:infospo@nd.gov)

Your appeal must be written, state the basis for the appeal, and be received by the OMB State Procurement Office within seven calendar days after you received this decision. If you submit an appeal by email, please call the OMB State Procurement Office at 701-328-2740 to confirm receipt. The OMB State Procurement Office will respond to your appeal within seven calendar days after it receives your request for appeal.

Thank you for bringing your concerns to my attention. Please contact me if you have any questions.

Sincerely,

[Insert name](#)

Procurement Officer

E-mail: [Insert email](#)

Telephone: [Insert number](#)

TTY Users call: 7-1-1

cc: North Dakota State Procurement Office

## EXAMPLE

March 11, 2015

Certified Mail 111-0015 Return Receipt Requested

Acme Manufacturing  
Mr. Thomas Douting, President  
123 Invention Road  
Anywhere, TX 12345

Dear Mr. Douting:

This is in response to your protest regarding our agency's Request for Proposal (RFP) 110.7-15-01 for Procurement Management Software. In preparing this response, I read your letter carefully and examined the solicitation and contents of the procurement file. The findings are to deny the protest for the reasons set out below.

Issue: The award was protested on the basis that your company was not provided an opportunity to submit a best and final offer. Your company had the highest technical score, but was not awarded the contract.

References: North Dakota Century Code § 54-44.4-10; RFP 110.7-14-01, Section 2.12 Best and Final Offers.

Basis for the Decision: Section 2.12 provides that discussions and best & final offers "may" be held after the initial evaluation of proposals and before award. The State is not required to request best and final offers, so award can be made based upon the evaluations of proposals as submitted by offerors. In regards to your proposal evaluation scores, although your company received the highest technical scores, your cost proposal was not the lowest priced proposal received. You received a score of 15 out of 40 possible points for your cost proposal. Based upon the weighted cost and technical evaluation criteria as forth in the RFP Section 6, your proposal was determined not to be the most advantageous proposal.

Conclusion: The State Procurement Office was not required to request best and final offers, and it was fair in its treatment of all vendors. Based upon these facts, your protest is denied

You may appeal this decision to the Office of Management and Budget (OMB) in accordance with North Dakota Century Code § 54-44.4-12 and North Dakota Administrative Code 4-12-14-03. Please address your appeal as follows:

State Procurement Director  
OMB State Procurement Office  
600 East Boulevard Ave.  
14th Floor Capitol Tower  
Bismarck, ND 58505-0310  
Email: [infospo@nd.gov](mailto:infospo@nd.gov)

Your appeal must be written, state the basis for the appeal, and be received by the OMB State Procurement Office within seven calendar days after you received this decision. If you submit an appeal by email, please call the OMB State Procurement Office at 701-328-2740 to confirm receipt. The OMB State Procurement Office will respond to your appeal within seven calendar days after it receives your request for appeal.

Thank you for bringing your concerns to my attention. Please contact me if you have any questions.

Sincerely,

Faith Foley  
Procurement Officer  
Phone: 701-328-0000  
Email: ffoley@nd.gov

**NOTE: DELETE THIS EXAMPLE BEFORE PRINTING**



**PROTEST RESPONSE EXTENSION – AWARDED VENDOR  
(March 2018)**

Use this template to inform the *vendor named in the Notice of Intent to Award* that the protest response period has been extended.

If you receive a protest, review [N.D.C.C. § 54-44.4-12](#) and [N.D.A.C. § 4-12-14](#). Consult your legal counsel and your agency/institution lead procurement officer. You may also notify your assigned OMB State Procurement Officer. Procurement rules require the procurement officer to respond to a protest within seven calendar days.

[N.D.A.C. § 4-12-14-02\(4\)](#) gives authority for a procurement officer to extend the protest review period by no more than an additional seven calendar days by sending written notice to the protestor of the extension.

The following text can be copy/pasted into an email to notify the vendor named in the Notice of Intent to Award in writing that the protest review period has been extended. You may also call the vendor to inform them of the extension and follow up with the written communication.

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions regarding this template.

**NOTE: DELETE ALL INSTRUCTIONS BEFORE PRINTING**

**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

Date

Business Name  
Contact Person  
Address  
City, State Zip

Subject: Protest Period Extension – [Insert Solicitation Number, Title](#)

Dear [Insert Name](#),

We had previously notified you that your firm was name in a Notice of Intent to Award of [Insert solicitation number and title](#) on [Insert date](#).

We notified your firm on [Insert date](#) that a protest had been received, and notified you that the award had been stayed.

Additional time is needed to review the procurement file and prepare a response to the protest. Therefore, the protest review period is extended for an additional seven calendar days until [Insert date](#), pursuant to [N.D.A.C. § 4-12-14](#).

If you have any questions regarding this notification, please feel free to contact me.

Sincerely,

[Insert name](#)  
Procurement Officer  
E-mail: [Insert email](#)  
Telephone: [Insert number](#)  
TTY Users call: 7-1-1

**PROTEST RESPONSE EXTENSION - PROTESTOR  
(March 2018)**

Use this template to inform the *vendor who submitted the protest* that the protest response period has been extended.

If you receive a protest, review [N.D.C.C. § 54-44.4-12](#) and [N.D.A.C. § 4-12-14](#). Consult your legal counsel and your agency/institution lead procurement officer. You may also notify your assigned OMB State Procurement Officer. Procurement rules require the procurement officer to respond to a protest within seven calendar days.

[N.D.A.C. § 4-12-14-02\(4\)](#) gives authority for a procurement officer to extend the protest review period by no more than an additional seven calendar days by sending written notice to the protestor of the extension.

The following text can be copy/pasted into an email to notify a protestor in writing that the protest review period has been extended. You may also call the vendor to inform them of the extension and follow up with the written communication.

Remember to notify the vendor named in the Notice of Intent to Award that the protest response time was extended (use Protest Response Extension - Awarded Vendor template).

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions regarding this template.

**NOTE: DELETE ALL INSTRUCTIONS BEFORE PRINTING**

**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

Date

Business Name  
Contact Person  
Address  
City, State Zip

Subject: Protest Period Extension – [Insert Solicitation Number, Title](#)

Dear [Insert Name](#),

We received your protest of [Insert solicitation number and title](#) on [Insert date](#).

Additional time is needed to review the procurement file and prepare a response to your protest. Therefore, the protest review period is extended for an additional seven calendar days until [Insert date](#), pursuant to [N.D.A.C. § 4-12-14](#).

If you have any questions regarding this notification, please feel free to contact me.

Sincerely,

[Insert name](#)  
Procurement Officer  
E-mail: [Insert email](#)  
Telephone: [Insert number](#)  
TTY Users call: 7-1-1

**PROTEST RESPONSE – MUTUAL AGREEMENT OF RESOLUTION  
(March 2017)**

This letter is intended to be used by a procurement officer when a protest has been resolved by mutual agreement.

If you receive a protest, review [N.D.C.C. § 54-44.4-12](#), [N.D.A.C. § 4-12-14](#) and the protest and appeals tab in your State Procurement Manual.

It is recommended that you also have your agency's procurement liaison or your supervisor review the procurement file when a protest is received. An agency should involve its legal counsel before finalizing a protest response. You may also seek assistance of the State Procurement Officer assigned to your agency.

If you have already issued an award notice, notify the intended successful vendor that the award has been stayed until the protest is resolved. (See the Protest Stay of Award Template) on the OMB website.

You must respond to an offeror or bidder protesting within seven (7) calendar days after receiving the protest. If you need additional time, you may extend additional seven calendar days (See Protest Response Extension Template).

The following format is recommended for a protest response: 1) Define the Issue, 2) Cite the applicable laws, rules, and documents that apply, 3) Explain how the rules apply, 4) Reach a conclusion. The response should cover points in a clear and concise manner.

Your response must provide a written decision containing the basis for the decision and inform the protestor of their right to appeal.

The protest response letter must be sent by certified mail. You can also call the company to explain the decision and follow up with the certified letter. You can send the letter attached via e-mail, but also send a certified hard copy.

The vendor may appeal a denied protest to the OMB State Procurement Office, so please provide a copy of your protest response to the State Procurement Officer assigned to your agency through the State Procurement Work Request System.

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions regarding this template.

**NOTE: DELETE THESE INSTRUCTIONS BEFORE PRINTING**

**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

Date

Certified Mail [Insert number](#) Return Receipt Requested

Business Name  
Contact Person  
Address  
City, State Zip

Subject: [Insert solicitation number and title](#)

Dear [Insert name](#):

This letter confirms the resolution of the issues raised in the protest submitted by your firm which was received on [Insert date protest received](#).

During a conversation between [Inert names and organizations of person in the meeting or telephone call](#) which took place on [Insert date and time of the meeting or call](#) the parties discuss the issues raised in your protest. We also discussed information provided by the State to support the decisions made by the State.

[Insert a summary of the issues and resolution discussed. \(Example: Your protest indicated that the awarded vendor did not meet specifications. I provided documentation that demonstrates that the awarded vendor did meet the specifications.\)](#)

Therefore, the protest has been resolved by mutual agreement, in accordance with [N.D.C.C. § 54-44.4-12](#).

If you disagree with this conclusion that the protest has been resolved, you may appeal this decision to the Office of Management and Budget (OMB) in accordance with [N.D.C.C. § 54-44.4-12](#) and [N.D.A.C § 4-12-14-03](#). Please address your appeal as follows:

State Procurement Manager  
OMB State Procurement Office  
600 East Boulevard Ave.  
14th Floor Capitol Tower  
Bismarck, ND 58505-0310  
Email: [infospo@nd.gov](mailto:infospo@nd.gov)

Your appeal must be written, state the basis for the appeal, and be received within seven calendar days after you received this decision. You may contact the OMB State Procurement Office at 701-328-2740 to confirm receipt. The OMB State Procurement Office will respond to your appeal within seven calendar days after it receives your request for appeal.

Thank you for bringing your concerns to my attention. Please contact me if you have any questions.

Sincerely,

[Insert name](#)

Procurement Officer

E-mail: [Insert email](#)

Telephone: [Insert number](#)

TTY Users call: 7-1-1

cc: North Dakota State Procurement Office

## EXAMPLE

March 11, 2015

Certified Mail 111-0015 Return Receipt Requested

Acme Manufacturing  
Mr. Thomas Douting, President  
123 Invention Road  
Anywhere, TX 12345

Dear Mr. Douting:

This is in response to your protest regarding our agency's Request for Proposal (RFP) 110.7-15-01 for Procurement Management Software. In preparing this response, I read your letter carefully and examined the solicitation and contents of the procurement file. The findings are to deny the protest for the reasons set out below.

Issue: The award was protested on the basis that your company was not provided an opportunity to submit a best and final offer. Your company had the highest technical score, but was not awarded the contract.

References: North Dakota Century Code § 54-44.4-10; RFP 110.7-14-01, Section 2.12 Best and Final Offers.

Basis for the Decision: Section 2.12 provides that discussions and best & final offers "may" be held after the initial evaluation of proposals and before award. The State is not required to request best and final offers, so award can be made based upon the evaluations of proposals as submitted by offerors. In regards to your proposal evaluation scores, although your company received the highest technical scores, your cost proposal was not the lowest priced proposal received. You received a score of 15 out of 40 possible points for your cost proposal. Based upon the weighted cost and technical evaluation criteria as forth in the RFP Section 6, your proposal was determined not to be the most advantageous proposal.

Conclusion: The State Procurement Office was not required to request best and final offers, and it was fair in its treatment of all vendors. Based upon these facts, your protest is denied

You may appeal this decision to the Office of Management and Budget (OMB) in accordance with North Dakota Century Code § 54-44.4-12 and North Dakota Administrative Code 4-12-14-03. Please address your appeal as follows:

State Procurement Director  
OMB State Procurement Office  
600 East Boulevard Ave.  
14th Floor Capitol Tower  
Bismarck, ND 58505-0310  
Email: [infospo@nd.gov](mailto:infospo@nd.gov)



Your appeal must be written, state the basis for the appeal, and be received by the OMB State Procurement Office within seven calendar days after you received this decision. If you submit an appeal by email, please call the OMB State Procurement Office at 701-328-2740 to confirm receipt. The OMB State Procurement Office will respond to your appeal within seven calendar days after it receives your request for appeal.

Thank you for bringing your concerns to my attention. Please contact me if you have any questions.

Sincerely,

Faith Foley  
Procurement Officer  
Phone: 701-328-0000  
Email: ffoley@nd.gov

**NOTE: DELETE THIS EXAMPLE BEFORE PRINTING**

**PROTEST STAY OF AWARD  
(March 2017)**

Pursuant to [N.D.A.C. § 4-12-14-02\(3\)](#), during the time a protest of an award is being considered, the award will be stayed, unless a written determination is made that award without delay is necessary to protect the interest of the state. Written notice of the protest and stay of award will be send to the successful bidder or offeror.

The written notice can be sent by mail, email or fax. It is recommended that you confirm that the vendor has received the stay of award. You may call the vendor to explain why the award is being stayed, and follow up with the written communication.

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions regarding this template.

**NOTE: DELETE THESE INSTRUCTIONS BEFORE PRINTING**

**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

Date

Business Name  
Contact Person  
Address  
City, State Zip

Subject: Stay of Award - [Insert Solicitation Number and Title](#)

Dear [Insert name](#):

A protest was received on [Insert date](#) from [Insert offeror or bidder name](#). Until the protest is resolved, the award will be stayed.

You are instructed not to begin work, purchase materials, or enter into subcontracts related to the award until the protest has been resolved. I am not able to predict the date of the resolution of the protest; however, you can refer to [N.D.A.C. § 4-12-14](#) to view the procurement rules that govern the protest process.

Please contact me if you have any questions.

Sincerely,

[Insert name](#)  
Procurement Officer  
E-mail: [Insert email](#)  
Telephone: [Insert number](#)  
TTY Users call: 7-1-1

**RECEIPT OF BID OR PROPOSAL  
(March 2017)**

This template can be used to create a receipt of a bid or proposal.

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE THESE INSTRUCTIONS BEFORE PRINTING**

**RECEIPT OF BID OR PROPOSAL**

**SUBMITTING BIDDER**

Solicitation Number and Title	
Due Date	
Name of Bidder or Offeror	
Delivered By	

**RECEIVING AGENCY**

Purchasing Agency Name	
Accepted By	
Date and Time	
Telephone Number	

**GENERAL REFERENCE CHECK  
(June 2018)**

Conducting a reference check is an important part of the evaluation process of the Request for Proposal (RFP).

The attached reference check contains some sample questions. Customize the questions to fit your RFP and evaluation process.

Reference checks are normally conducted through a telephone call or email correspondence. You need to determine who will make the calls and how the information will be shared with the evaluation committee.

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE THESE INSTRUCTIONS BEFORE PRINTING**

## REFERENCE CHECK QUESTIONNAIRE

Solicitation # and Title	
Name of Offeror	
Reference	
Contact Person	
Email Address	
Telephone Number	
Date/Time of Call/Completed By	

1. What type of work did the offeror perform for your company?
2. What were the names of the individuals who performed the work?
3. How would you describe the expertise of the persons assigned to your project?
4. How satisfied were you with the work of the firm and final outcome?
5. Was the project completed on time and within budget?
6. What were the strengths of the offeror?
7. Was there anything the offeror could have improved?
8. Would you contract with the offeror to provide similar services again?
9. Do you have any other information you'd like to share about this firm or its employees?

Notes:

## REQUEST FOR INFORMATION (June 2018)

A Request for Information (RFI) is a document used to solicit information, data, comments, or reactions from possible vendors prior to issuing a solicitation. An RFI is a noncompetitive solicitation an agency may issue before a solicitation for bids, proposals, or multi-step solicitation to be used as a research tool. Information obtained as a result of a RFI is subject to the State open records laws. (See N.D.A.C. § 4-12-06-07).

This RFI template provides a sample format and content for an RFI and includes notes for an agency to consider throughout the template.

Customize this template by adding, modifying or deleting sections. Instructions and notes are in **blue bold italics** for an agency to consider. After you have read the instructions, please delete the text.

Word choices and information that needs to be inserted are indicated by **blue text**. For example: **will or will not**. Be sure to update and change any remaining **blue text** to black.

Don't forget to update the numbering after deleting or adding any sections or attachments to the RFI.

For assistance or suggestions related to this template, contact the State Procurement Office at 701-328-2740.

**Note: Delete instructions before finalizing the RFI**



**STATE OF NORTH DAKOTA  
NAME OF AGENCY OR INSTITUTION  
NAME OF DIVISION, SECTION, OR DISTRICT  
STREET AND MAILING ADDRESS**

*Note: A suggested format for the RFI number is the three-digit agency number and any applicable division number, followed by the two digit calendar year, and a three-digit sequential count of solicitations issued that year. For example: 110.7-0413-03.*

**Request For Information (RFI)**

Solicitation Number: *Insert number*

Date of Issue: *Insert day, month, year*

RFI Title: *Insert title*

Purpose of RFI: *Insert a brief statement that summaries the purpose of this RFI (e.g. who, what, where, when, why)*

**SECTION ONE  
INTRODUCTION AND INSTRUCTIONS**

**1.01 Purpose of the RFI**

*Note: Revise or delete as needed.*

The state of North Dakota, acting through its [Insert name of agency or institution, division/section/district](#) (STATE) is soliciting information from potential bidders for [Insert a brief description of the purpose of the RFI consistent with the cover page.](#)

The information, data, comments, or reactions obtained may be used as research for a future solicitation. This RFI does not constitute and Invitation for Bid, Request for Proposal, or Informal Request for Bid or Proposal and is not to be construed as a commitment by STATE.

STATE will review all responses received. If STATE decides to issue a solicitation for commodities or services, the procurement will be conducted in accordance with North Dakota State Procurement laws, rules and guidelines.

**1.02 Contact and Response Information**

The procurement officer is the point of contact for this RFI. Please submit responses to the procurement officer by the deadline specified in the RFI Schedule. Please reference the Solicitation Number and Title. You may submit your response in person, by mail, or by email to the procurement officer at:

Address:     [Insert Name of Agency or Institution](#)  
                  [Insert name of division, section or district](#)  
                  Attention: [Insert name of procurement officer](#)  
                  [Insert solicitation number and title](#)  
                  [Insert mailing address](#)  
                  [Insert city, state and zip code](#)

Email:         [Address](#)

**1.03 Assistance to Individuals with a Disability**

Contact the procurement officer, as soon as possible, if an individual with a disability needs assistance with the RFI, including any events in the RFI Schedule, so reasonable accommodations can be made.

**1.04 RFI Schedule**

*Note: Revise or delete as needed. Include dates of events during the RFI process. It is recommended to give at least seven (7) days between RFI issued date and Deadline for Submission of Questions and Requests for Clarification.*

EVENT	DATE
RFI issued	<a href="#">Insert date</a>
Deadline for Submission of Questions and Requests for Clarification by <a href="#">Insert time AM or PM, C.T.</a>	<a href="#">Insert date</a>

Amendment with Responses to Questions and Requests for Clarification issued approximately (if required)	Insert date
Deadline for Submission of Responses by Insert time AM or PM, C.T.	Insert date

**1.05 Questions and Requests for Clarification**

*Note: Revise or delete as needed. Select the appropriate option and delete other options. A questions and answer period is not required but may be helpful to coordinate answers.*

**Option One – Deadline for Questions and Requests for Clarifications**

Please submit any questions or requests for clarifications about this RFI in writing to the procurement officer by the deadline for submission of questions and requests for clarification identified in the RFI Schedule. Preferred method of submission is email.

Two types of questions generally arise. One type of question may be answered by directing the questioner to a specific section of the RFI, and the procurement officer may answer these questions over the telephone. The other type of question may be more complex and may require a written amendment to the RFI. The procurement officer will make that decision.

**Option Two – No deadline for Questions and Requests for Clarifications**

*Note: if you select this option modify the RFI schedule*

Please direct any questions or requests for clarification to the procurement officer by the deadline for submission of responses identified in the RFI Schedule.

**1.06 Notice Provided – State Procurement Website**

*Note: The RFI and all related amendments must be placed on the SPO online system. Use Agency E-services: <http://www.nd.gov/spo/agency/> and select “Issue New Solicitation.” The RFI and all related amendments must be issued to offerors on the Bidders List for the needed commodity or service, and may be sent to other known potential bidders.*

This RFI and any related amendment and notices will be posted on the North Dakota State Procurement Office website at: <http://www.nd.gov/spo/>

Notices related to this RFI will be sent to the Bidders List for the needed commodity or service and other known potential vendors.

Additionally, vendors may request to receive notices related to this RFI by contacting the procurement officer in writing with the following information: RFI title, business name, contact person, mailing address, telephone number, fax number, and email address.

**1.07 Respondents Responsible for All Preparation Costs**

Respondents are responsible for all costs associated with the preparation, submittal, and presentation of their response to this RFI.

**1.08 Secretary of State and Bidders List Registration**

Registration is not required to respond to this RFI.

If a formal competitive solicitation is issued, notice will be sent to approved bidders on the State Bidders List and other known potential bidders. Individuals and business entities interested in being placed on the State Bidders List must complete the registration process. For information

on becoming a registered bidder, see <https://www.nd.gov/omb/vendor/bidders-list-application-and-maintenance>.

### **1.09 Disclosure of Information and Compliance with North Dakota Open Records Laws**

The state of North Dakota has broad open records laws. All information submitted become the property of STATE and may be returned only at STATE's option. All information is subject to North Dakota Open Records Laws. Records are closed or confidential only if specifically stated in law.

Respondents may make a written request to hold confidential any trade secrets and other proprietary data contained in its response. Respondent must clearly identify the material considered confidential and explain why the material is confidential. See the North Dakota Office of the Attorney General website for additional information.

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

If STATE receives a request for public information, the procurement officer, in consultation with the Office of the Attorney General, shall determine whether the information is an exception to the North Dakota Open Records Laws, and the information shall be processed accordingly.

## SECTION TWO GOAL AND BACKGROUND INFORMATION

### 2.01 Goal and Background Information

*Note: Help the respondents understand the mission of your agency. Give the potential vendors a clear picture of the events or history leading up to the current situation. A detailed background will allow the respondent to provide a thorough response.*

The [Insert agency name](#), division of [Insert name](#), is requesting information to [describe goal](#).

The following background information is intended to help respondents understand the needs of the STATE. [Insert brief history leading up to the current situation](#); describe any applicable law, rules and regulations and pertinent background information specific to this RFI.

### 2.02 Information Requesting

*Note: You will want to list specifically what type of information you want respondents to provide in a response. This section is intended to help respondents understand what type of information STATE seeks.*

STATE is requesting information to [Insert a description of specifically the type of information needed](#).

## SECTION THREE RESPONSE FORMAT AND CONTENT

*This section contains information on how a respondent should prepare a response. The information provided in this section should help responders understand how they should structure a response.*

### 3.01 Response Preparation Instructions

*Note: Revise or delete as needed.*

Respondents are asked to provide a response in the following format:

#### A. Introduction

Please provide:

1. Contact name, phone number, and email
2. Business name, address, and phone number

#### B. Technical Response

Respondents are asked to provide the following information:

*Insert a list of the type of information you seek. Include a brief description so respondents understand what you seek.*

*Example:*

1. Description of equipment
2. Functionality
3. Maintenance
4. Consumables
5. Estimated schedule / timeframe
6. Vendor recommendations

#### C. Cost Estimate

*Note: COST IS OPTIONAL. If purchasing agency is seeking price or cost information insert details in this section of the RFI.*

Respondents are asked to provide estimated costs to help STATE understand acquisition and on-going costs.

Any cost estimates requested are for budgeting purposes only. Responders will not be held to price estimates provided as part of the RFI should STATE later decide to issue a competitive solicitation.

#### D. Enclosures

Respondents are asked to provide the following documentation list:

*Insert a list of the type of enclosures that may be needed*

*Examples:* Detailed specs, product literature, servicing dealers, price lists

**REQUEST FOR PROPOSAL (RFP) – LEVEL 2, 3 & 4  
(September 2021)**

Use this template when issuing a Request for Proposal (RFP) for products or services. The template is designed to help you plan the procurement and the resultant contract. Customize this template by adding, modifying or deleting sections or attachments to the RFP.

<b>Procurement Level</b>	<b>Notice Requirements</b>	<b>Receiving/Opening Proposals</b>
Level 2 At least \$10,000 but less than \$50,000	Solicit <u>informal proposals</u> from at least three (3) vendors or post to SPO Online with appropriate State Bidders List. May send to additional vendors.	Informal proposals may be received by mail, delivery service, email, fax, or electronic receipt. Proposals may be opened upon receipt.
Level 3 At least \$50,000 but less than \$100,000	Solicit <u>informal proposals</u> using SPO Online with the appropriate State Bidders List. May send to additional vendors.	Informal proposals may be received by mail, delivery service, email, fax, or electronic receipt. Proposals may be opened upon receipt unless utilizing the electronic receipt through SPO Online.
Level 4 \$100,000 and over	Solicit <u>formal sealed proposals</u> using SPO Online with the appropriate State Bidders List. May send to additional vendors.	Formal sealed proposals are required. Proposals can be received by mail, delivery service, or SPO Online secure electronic receipt.  Proposals cannot be submitted by email or fax, unless sent to a third party to place in a sealed envelope and deliver to the receiving address.

Do not use this template for Information Technology (IT) procurements. IT projects have special requirements. Visit the OMB website for IT procurement guidelines and Team ND Connect (Intranet) for [templates](#).

Agencies are encouraged to identify individuals with a vested interest in the procurement to help write the RFP and be on the RFP evaluation committee to review and evaluate proposals received.

The template includes instructions and notes in ***blue bold italics*** for an agency to consider. After you have read the instructions, please delete the text. Word choices and information that needs to be inserted are indicated by ***blue text***. For example: ***will or will not***. Be sure to update and change any remaining ***blue text*** to black.

Planning the evaluation is critical. Attempt to align the following:

**Scope of Work**

Work to be done, problem to be solved, what you need

**Proposal Format**

What the Offeror must provide to demonstrate they can do the work

**Evaluation Criteria**

Importance, how quality will be measured

The RFP must also include the contract that the successful vendor will be required to sign. Customize the Attorney General contract with terms and conditions that are appropriate for the project being contemplated.

If federal funds or other types of grants will be used for the procurement being contemplated, determine if the funding agency has any special requirements that must be included in this Request for Proposal.

Contact the State Procurement Office at 701.328.2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions.

**DELETE ALL INSTRUCTIONS BEFORE PRINTING**

**STATE OF NORTH DAKOTA**  
NAME OF AGENCY OR INSTITUTION  
NAME OF DIVISION, SECTION, OR DISTRICT  
STREET AND MAILING ADDRESS

**REQUEST FOR PROPOSAL (RFP)**

**RFP Title:** Insert title

*Note: A suggested format for the RFP number is the three-digit agency number and any applicable division number, followed by the two digit calendar year, and a three-digit sequential count of solicitations issued that year. For example: 110.7-21-003.*

**RFP Number:** Insert number

**Issued:** Insert month, day, year



**Note: This is an automatic table of contents.**

- **If you are adding a section (i.e., Section One – Instructions), you will need to use the format painter to copy the style being used or directly apply the style labeled Heading 1 from the ruler bar.**
- **If you are adding a subsection (i.e., Purpose of the RFP), you will need to use the format painter to copy the style being used or directly apply the style `_RFP_Lvl1` from the ruler bar.**

**IMPORTANT - Before finalizing the document, right click anywhere on Table of Contents below and choose the Update Field (update entire table if prompted) to update the table of contents. If you do that and any font differences show up, you will need to go to that specific section or subsection and try retyping the name with your Caps Lock active.**

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**ATTACHMENTS**

*List any attachments mentioned in the RFP. Visit Team ND Connect (Intranet) for [Templates](#).*

Insert number - Cost Proposal

*This is an optional attachment identified in Section 4, Proposal Instructions. Delete if not used.*

Insert number – Technical Proposal Evaluation Worksheet

*This is a required attachment identified in Section 5, Award and Proposal Evaluation. The evaluation criteria set forth in Section 5 of this RFP must match the evaluation criteria in the Technical Proposal Evaluation Worksheet.*

Insert number - Contract

***This is a required attachment identified throughout the RFP that includes contractual terms and conditions identified in Section 6, Contract Information.***

Insert number – Insert Description

***Include any other attachments mentioned in the RFP.***

## SECTION ONE – INSTRUCTIONS

### 1.1 PURPOSE OF RFP

The state of North Dakota, acting through its [insert name of agency or institution, division/section/district](#) (the STATE) is soliciting proposals for [insert a brief description](#).

**1.2 *OPTION: If the procurement is being conducted on behalf of two or more public entities, consult with your assigned State Procurement Officer for cooperative purchasing guidance and RFP language. [N.D.C.C. § 54-44.4-13]***

### 1.3 PROCUREMENT OFFICER CONTACT INFORMATION

***Only the Procurement Officer's contact information should be used to avoid confusion and ensure all Offerors receive the same information at the same time.***

The Procurement Officer is the point of contact for this RFP. Offerors shall direct all communications regarding this RFP to the Procurement Officer. Please do not add the Procurement Officer to any marketing distribution lists

PROCUREMENT OFFICER: [Insert Procurement Officer](#)

EMAIL: [Insert address](#)

PHONE: [Insert number](#)

TTY Users call: 7-1-1

Engaging in unauthorized communication or seeking to obtain information about an open solicitation with any state employee or official other than the responsible Procurement Officer or designee is sufficient grounds for suspension or debarment. [\[N.D.A.C. § 4-12-05-04\(7\)\]](#)

### 1.4 DEFINITIONS

***Revise or delete as needed. Add definitions for any project-specific acronyms and terms.***

For the purposes of this RFP, the acronyms and defined terms are as follows:

Acronym or Term	Name or Definitions
Contractor	Entity that has an approved contract with the State of North Dakota
CT	Central Time Zone
OMB	Office of Management and Budget
RFP	Request for Proposal
Solicitation Closing	Deadline for receipt of proposals listed in the RFP Schedule
SPO	Office of Management and Budget, State Procurement Office
SPO Online	State Procurement Office Online system

### 1.5 RFP SCHEDULE

***Include dates of events during the RFP process (e.g., preproposal conferences, site visits, demonstrations, etc.). For Level 2, 3, and 4 procurements, allow adequate time for vendors to review the RFP requirements, submit questions/clarifications, review answers to questions/clarifications and prepare a proposal, and submit to the Procurement Officer. For Level 4 procurements it is recommended that you allow at least 21 days between issuing the RFP and the Solicitation Closing date. An afternoon deadline for receipt of proposals is recommended to allow for mail and courier service deliveries. The protest period is seven calendar days, not including the day the notice of intent to award is issued. It is recommended that you do not sign the contract until after the protest period. [N.D.C.C. § 54-44.4-12]***

*The State Procurement Office discourages the use of mandatory “letters of intent” that require vendors to respond by a deadline of their intent to submit a proposal. These letters tend to unnecessarily limit competition.*

EVENT	DATE and TIME
RFP issued	Insert date
Deadline for submission of Questions and Objections	Insert date by Insert time AM or PM, C.T.
Solicitation Amendment with responses to Questions issued approximately (if required)	Insert date
Include any mandatory or optional preproposal conference or site inspections. <i>Delete if not used.</i>	Insert date
Deadline for Bidders List and Secretary of State Registration. <i>Delete if not used.</i>	<b>Prior to Contract Signing</b>
Deadline for receipt of proposals (Solicitation Closing)	Insert date by Insert time AM or PM, C.T.
Demonstrations or presentations. <i>Delete if not used.</i>	Insert dates
Proposal evaluation completed by approximately	Insert date
Contract Negotiations (See Section 5.10). <i>Delete if not used.</i>	Insert dates
Notice of intent to award issued approximately	Insert date
Contract start approximately	Insert date

#### **1.6 ASSISTANCE TO INDIVIDUALS WITH A DISABILITY**

Contact the Procurement Officer, as soon as possible, if an individual with a disability needs assistance with the RFP, including any events in the RFP schedule, so reasonable accommodations can be made.

#### **1.7 BIDDERS LIST AND SECRETARY OF STATE REGISTRATION REQUIREMENTS**

Offerors must comply with requirements related for OMB Bidders List application and Secretary of State registration [[N.D.C.C. § 54-44.4-09](#)]. Bidders Lists are used to notify vendors when solicitations are issued on SPO Online.

*See the [Vendor Registration Guidelines](#). Select the appropriate option. Contact the State Procurement Office at 701.328.2740 for assistance in selecting the appropriate option.*

##### ***Level 2 Procurement - if Secretary of State Registration is required.***

Offerors may complete the Bidders List application process if desired, but it is not required. Registration with the North Dakota Secretary of State is required before award.

##### ***Level 2 Procurement – if Secretary of State Registration is not required.***

Offerors may complete the Bidders List application process if desired, but it is not required. Registration with the North Dakota Secretary of State is not required.

***Levels 3 & 4 – If successful Offeror must be registered prior to contract signing. The Procurement Officer may specify a period of time than less than 60 days. At least 30 days is recommended for nonresident bidders to register.***

Proposals will be accepted from Offerors that are not on the Bidders List. The successful Offeror must complete the Bidders List application process and comply with Secretary of State registration requirements within 60 calendar days from the date a notice of intent to award is issued. If the successful Offeror does not register within this time, its proposal may be rejected.

***Levels 3 & 4 – If all Offerors must register by the deadline for receipt of proposals. It is recommended this option is used only if there is a well-established bidders list.***

Offerors are required to complete the Bidders List application process and comply with Secretary of State registration requirements prior to the Solicitation Closing deadline. Proposals received from Offerors that are not approved vendors on the Bidders List will be rejected.

***Levels 3 & 4 – If Bidders List and Secretary of State registration is not required. The Procurement Officer must prepare a written determination for the procurement file that registration with the Secretary of State and appointment of an agent for service of process is not required (N.D.C.C. § 54-44.4-09).***

Offerors may complete the Bidders List application process if desired, but it is not required. Registration with the North Dakota Secretary of State is not required.

### **Bidders List and Secretary of State Information**

1. Secretary of State Registration and Online Bidder Registration instructions are available online at [How to Bid | Office of Management and Budget, North Dakota](#).
2. Offeror should check the [Bidders List](#) to determine if Offeror is already registered.
3. An Offeror that needs to complete the registration process shall:
  - a. Register with the Secretary of State (fees apply) and obtain a “System ID” number.
  - b. Complete the [On-line Bidder Registration](#) including selecting [commodity codes](#). Notices related to this RFP will be sent to the Bidders List for the needed commodity or service and other known potential Offerors. The commodity codes used for this solicitation are:   
[Insert all applicable 5-digit commodity codes](#)
4. ***State Agencies Only – NDUS Institutions may customize or delete.*** The successful Offeror may be required to register as a new supplier to receive payment from the STATE. New vendors (suppliers and individuals) looking to receive payment from the STATE should use the online [Supplier Registration](#).

### **1.8 STATE PROCUREMENT WEBSITE (SPO ONLINE)**

***Level 2. You may post to using SPO Online but are not required to do so. Use this option if you are not using SPO Online.***

This solicitation has not been posted to the State Procurement website. The Procurement Officer will contact all vendors solicited regarding any amendments to this solicitation and award notices.

***Level 2, 3 and 4 using SPO Online: The RFP and all related amendments must be placed on SPO Online and issued to all Offerors listed for the applicable commodity codes and sub-classes in the State Bidders List. You may also send to any other known potential bidders. Check your agency’s internal procedures or requirements related to any grant funds received to determine whether additional public notice is required. Log onto SPO Online at <https://intranetapps.nd.gov/csd/spo/services/login.htm>***

This RFP and any related amendments and notices will be posted on the North Dakota OMB website using SPO Online. Offerors are responsible for checking this website to obtain all information and documents related to this RFP: <https://apps.nd.gov/csd/spo/services/bidder/main.htm>

Select “Recent Solicitations”. Recent Solicitations are listed by close date.

Notices related to this RFP will be sent to the Bidders List for the needed commodity or service and other known potential Offerors.

Offerors not having completed the Bidders List registration may request to receive notices related to this RFP by contacting the Procurement Officer in writing with the following information: RFP title, business name, contact person, mailing address, telephone number, and email address.

## 1.9 AMENDMENTS TO THE RFP

If an amendment to this RFP is issued, it will be provided to all Offerors on the Bidders List for the solicitation and to those prospective Offerors who have contacted the Procurement Officer to receive notices related to the RFP. An Offeror shall include in its proposal any required acknowledgements of amendments to the RFP.

## 1.10 DEADLINE FOR QUESTIONS AND OBJECTIONS

*Be sure all Offeror inquiries and questions are directed to the Procurement Officer. The Procurement Officer will determine whether amendments are necessary and will ensure all Offerors receive the same information at the same time. Use the Solicitation Amendment template on the [Team ND Connect \(Intranet\)](#) to provide responses to questions and requests for clarifications to all Offerors. Questions are commonly received from potential Offerors who are not on the Bidders List. Update the Bidders List on the SPO online to ensure all potential Offerors receive notice when amendments are issued.*

Offerors should carefully review the RFP including all Attachments. Offerors may ask questions to obtain clarification and request additional information, or object to material in the RFP. Questions and objections must be submitted to the Procurement Officer in writing by the deadline identified in the RFP Schedule. If no deadline is specified, questions or objections must be received at least seven days prior to the Solicitation Closing deadline. The Procurement Officer may elect to respond to questions received after the deadline.

Questions and objections should include a reference to the applicable RFP section or subsection. Email is the preferred method of submission with the RFP number and title cited in the email subject line.

Responses to questions will be distributed as a solicitation amendment unless the question can be answered by referring the Offeror to a specific section of the RFP.

## 1.11 PREPROPOSAL CONFERENCE OR SITE INSPECTION

*Select the appropriate option or delete this section if not needed. A preproposal conference or site inspection may only be made mandatory if the information provided at the conference is necessary to adequately prepare a proposal and cannot be otherwise provided to Offerors. See [N.D.A.C. § 4-12-08-10](#). Also consider the impact to potential Offerors who are not close to the purchasing agency's location.*

### *OPTION 1 – No preproposal conference or site inspection.*

The STATE will not hold a preproposal conference or site inspection for this RFP.

### *OPTION 2 – Non-mandatory preproposal conference or site inspection.*

The STATE will hold a [Insert preproposal conference site or site inspection](#) for the RFP. Participation is not mandatory. Questions and answers along with any changes made to the RFP will be disseminated as a solicitation amendment.

### *OPTION 3 – Mandatory preproposal conference of site inspection.*

The STATE will hold a [Insert preproposal conference site or site inspection](#) for the RFP. Participation is mandatory and only those Offerors in attendance are eligible to submit proposals, and proposals from Offerors not in attendance will be rejected. Questions and answers will be disseminated as a solicitation amendment to only those Offerors in attendance.

### *Delete for Option 1. Required with Options 2 & 3. Add to RFP Schedule*

The [Insert preproposal conference site or site inspection](#) will be held:

- Date: [Insert date](#)
- Time: [Insert time, AM/PM, C.T.](#)



- Location:       Insert place  
                  Insert floor, room number  
                  Insert street address  
                  Insert City, ND Zip Code

***OR Webinar or Conference Call***

Participation Instructions: [Insert webinar or conference call instructions](#)

**1.12 OFFER HELD FIRM**

***Specify the number of days offers must be held firm. Consider the time needed for evaluation and contract negotiations (e.g. 180 days).***

Offerors must hold proposals firm for at least **xx days** from the deadline for receipt of proposals (Solicitation Closing). The STATE may send a written request to all Offerors to hold their offer firm for a longer period of time.

**1.13 OFFEROR RESPONSIBLE FOR COSTS**

Offeror is responsible for all costs associated with the preparation, submittal, and evaluation of any proposal including any travel and per diem associated with demonstrations and presentations.

**1.14 TAXES**

The STATE is not responsible for and will not pay itemized local, state, or federal taxes. Purchases of tangible personal property made by a state government agency is exempt from sales tax. The state sales tax exemption number is E-2001, and certificates will be furnished upon requested by the purchasing agency. The contractor must provide a valid Vendor Tax Identification Number as a provision of the contract.

The purchasing agency will determine if services provided under this contract are 1099 reportable. The purchasing agency may require the contractor to submit an IRS Form W-9.

The state tax exemption number should not be used by contractors in the performance of a contract.

A contractor or service provider 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 materials, tangible personal property, 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 701.328.1246 or visit its website at <https://www.nd.gov/tax/tax-resources/> 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 701.328.1248 or visit its website for more information.

**1.15 F.O.B. POINT AND FREIGHT**

***Revise as needed. Delete if no goods are being procured.***

All commodities purchased through this contract will be Free on Board ("F.O.B.") final destination, freight prepaid. Unless specifically stated otherwise, all prices offered must include the delivery cost.



### **1.16 PROPOSAL RECEIPT DEADLINE – LATE PROPOSALS REJECTED**

An Offeror is solely responsible for ensuring its proposal is received by the STATE prior to the Solicitation Closing deadline identified in the RFP schedule regardless of the method of submission. A solicitation amendment will be issued if this deadline is changed. An Offeror may contact the Procurement Officer to inquire whether its proposal has been received. Proposals delivered late will be rejected pursuant to [N.D.A.C. § 4-12-08-13](#).

### **1.17 PROPOSAL OPENING**

***Level 2 and 3 Procurements (Level 2 - At least \$10,000 but less than \$50,000. Level 3 - At least \$50,000 but less than \$100,000).***

This is an informal Request for Proposal (RFP) process that does not require formal sealed proposals or a public opening. A public opening will not be held.

***Level 4 Procurements \$100,000 and over. A public opening is not required for a Level 4 Request for Proposal.***

A public opening *will or will not* be held.

This is a formal sealed Request for Proposal (RFP) process. Proposals will be secured and held unopened until the Solicitation Closing deadline. Per [N.D.A.C § 4-12-08-04](#), the openings may be made public at the discretion of the purchasing agency. If a public opening is held, only the names of Offerors that submitted proposals can be revealed at the opening, and each proposal will be opened in a manner to avoid disclosure of the contents to the competing Offerors.

***Revise or delete as needed. Choose either onsite or webinar/conference call.***

The proposal opening will be held:

#### ***OPTION 1:***

##### **Onsite**

- Date: [Insert date](#)
- Time: [Insert time, AM/PM, C.T.](#)
- Location: [Insert place](#)  
[Insert floor, room number](#)  
[Insert street address](#)  
[Insert City, ND Zip Code](#)

#### ***OPTION 2:***

##### **Webinar or Conference Call**

Participation Instructions: [Insert webinar or conference call instructions](#)

### **1.18 AMENDMENT AND WITHDRAWAL OF PROPOSALS**

Offeror may amend, supplement, or withdraw proposal prior to the Solicitation closing deadline. No changes will be accepted after the Solicitation closing deadline. After the Solicitation closing deadline, Offeror may make a written request to withdraw proposal and provide evidence that a substantial mistake has been made, and the STATE may permit withdrawal.

### **1.19 NEWS RELEASES**

Offerors shall not make any news releases related to this RFP without prior approval of the STATE.

### **1.20 CONFLICT OF INTEREST**

Under state laws and rules, a state employee or official shall not participate directly or indirectly in a procurement when the state employee or officials knows of a conflict of interest. Potential conflicts of

interest include state employees or their immediate family members employed by the firm, seeking employment with the firm, or with a financial interest in the firm. Potential conflicts of interest will be addressed in accordance with [N.D.A.C. § 4-12-04-04](#). [[N.D.C.C. § 12.1-13-03](#)]

Persons employed by the State of North Dakota, or within one year thereafter, may be prohibited from acquiring a pecuniary interest in a public contract or transaction. Offerors should review [N.D.C.C. § 12.1-13-02](#) to ensure compliance and avoid such conflict(s) of interest.

#### **1.21 ATTEMPT TO INFLUENCE PROHIBITED**

Offerors must not give or offer to give anything to a state employee or official anything that might influence or appear to influence procurement decisions. Suspected attempt to influence will be handled in accordance with [N.D.A.C. § 4-12-04-05](#).

#### **1.22 COLLUSION PROHIBITED**

Offerors must prepare proposals independently, without collusion. Suspected collusion will be handled in accordance with [N.D.A.C. § 4-12-04-06](#).

#### **1.23 PROTEST AND APPEAL**

An interested party may protest a solicitation pursuant to [N.D.C.C. § 54-44.4-12](#) and [N.D.A.C. § 4-12-14-01](#). When a solicitation contains a deadline for submission of questions and objections, protests of the solicitation will not be allowed if these faults have not been brought to the attention of the Procurement Officer before the specified deadline. If no deadline for questions is specified, protest based upon defects in the solicitation must be made at least seven calendar days before the deadline for receipt of proposals.

An Offeror that has submitted a response to a solicitation and is aggrieved may protest an award or notice of intent to award pursuant to [N.D.C.C. § 54-44.4-12](#) and [N.D.A.C. § 4-12-14-02](#). The protest must be submitted in writing to the Procurement Officer during the protest period, which is seven calendar days beginning the day after the notice of intent to award is issued.

The protestor may appeal the decision of the Procurement Officer to the Director of OMB or designee in writing within seven calendar days after receiving notice of the decision pursuant to [N.D.C.C. § 54-44.4-12](#) and [N.D.A.C. § 4-12-14-03](#).

## SECTION TWO – BACKGROUND

*This section should help Offerors understand why the solicitation is being conducted. Explain the events leading up to the current situation. This section should not contain any requirements.*

### 2.1 BACKGROUND INFORMATION

*You may include information about the agency, such as a high-level overview of the agency mission, staffing, organization, and program areas. You may also want to include an agency organization chart if it is important for the vendors to understand the size and structure of your agency.*

*Provide information about the specific project or required commodities or services that are the subject matter of this RFP. If the project or requirement is related to legislation or a grant, include references and a hyperlink.*

The mission of the [Insert agency name and division](#) is to describe mission.

Our agency is conducting this solicitation because [Insert pertinent background information specific to this RFP.](#)

### 2.2 BUDGET

*Revise or delete as needed. Carefully consider whether to disclose the budget. Disclosing the budget greatly increases the likelihood that cost will match the budgeted amount and may negatively impact cost negotiations. Not disclosing the budget may results in receiving proposals that exceed budgetary limits. Budget disclosure may be appropriate if funds are limited or it is difficult to estimate the project cost to ensure proposals received are within budget. If you disclose the budget, it is appropriate to lower the evaluation criteria weight for the cost evaluation. Select appropriate option.*

#### **OPTION 1**

The funds for payment of this contract are already appropriated and identified.

#### **OPTION 2**

The funds for payment of this contract are already appropriated and identified. The estimated budget for completion of this project is between [\\$Insert low range](#) and [\\$Insert high range](#). Proposals priced at more than [\\$Insert dollar amount](#) will be rejected.

#### **OPTION 3**

The funds for payment of this contract are contingent upon appropriation of funding. The STATE anticipates approval of funding in approximately [Insert time frame](#). Funds will be requested through [Insert funding source \(e.g. grant, legislative appropriation\)](#).

## SECTION THREE – SCOPE OF WORK

*This section informs the Offeror what is to be done, including the desired outcome. Be as specific and comprehensive as possible. Let the Offeror know exactly what is required. Do not presume that the Offeror will understand or provide something if you do not say it.*

### 3.1 SCOPE OF WORK

*This is an introductory section. Provide a brief description of what the STATE seeks, and what the contractor will be expected to provide.*

The Department of NAME, Division of NAME (STATE) is soliciting proposals for Insert a description of needed services, equipment, goods, solutions, outcomes, etc. (e.g. The Department wants assistance to do WHAT. The consultant will do WHAT. The goal of this project is to WHAT. The Department seeks a solution to do WHAT.)

### 3.2 APPLICABLE DIRECTIVES

*Revise or delete as needed. Describe any directives that apply to the contract being contemplated, such as federal laws and regulations, state laws and rules, agency/institution guidelines, etc. If federal funds or grant funds are being used, determine whether the funding is tied to specific requirements. Directives are normally too long to include in the RFP. Instead, reference the directive and provide hyperlinks to websites containing the applicable directives.*

This project is subject to the following: Insert references, including hyperlinks.

The contractor is responsible for identifying and complying with all state and federal requirements that apply to the contract.

### 3.3 REQUIREMENTS

*Customize. This is one of the most important sections of the RFP. Describe exactly what is required and the expected results. Be specific and as comprehensive as possible (e.g., consulting, research, reports, training, customer service, supplies, equipment, etc.). Be sure to differentiate between what is required versus desired. If a vendor doesn't meet a mandatory requirement, their proposal must be rejected. Do not assume that the contractor will give more than is requested. Avoid dictating requirements that may add unnecessary costs to the contract. Indicate what is needed and allow the contractor to describe what it will furnish to achieve the intended results.*

#### A. DELIVERABLES

The contractor will be required to provide the following to achieve the objective of this project:

1. Insert detailed description of results-oriented tasks and any required services, supplies, equipment or materials the contractor must furnish.
2. Insert
3. Insert

#### B. LOCATION OF WORK/TRAVEL

*Revise or delete as needed. See the Travel section in the Contract template.*

##### **OPTION 1**

No on-site work is required.

##### **OPTION 2**

The work is to be performed, completed, and managed at the following locations: Insert City, State. The STATE shall/shall not provide workspace for the contractor.

##### **OPTION 3**

The contractor will be required to travel as follows: *Insert description of any required travel, City, State, dates, frequency/reason*

The contractor should include in its price proposal: transportation, lodging, and per diem costs sufficient for *NUMBER* trip(s) to *LOCATION*. Travel to other locations will not be required.

#### C. STATE-FURNISHED PROPERTY/SERVICES

***Revise or delete as needed. Describe what part your agency will play in the project. List any resources the STATE will provide for the project. The STATE will have Insert # of people working on this project. Describe the STATE resources and roles. This may also be provided as a technical exhibit.***

The STATE will provide *Insert description of workspace, equipment, network, and telephone access, etc.* to support the project.

The STATE will provide the following personnel to support the project: *Insert description of STATE personnel, position and intended role in the project.*

#### D. RISK MANAGEMENT

***Revise or delete as needed. Do a risk analysis of the contract being contemplated. If potential hazards are identified, describe the measures you will take or require the contractor to take to avoid those hazards.***

The contractor will take appropriate measures to ensure the safety of its employees, state employees, the public, and property. The contractor must identify any potential risks, issues and problems associated with the project and identify ways to mitigate those potential risks.

***OPTION:*** The contractor must additionally *Insert description of additional safety or risk management requirements.*

#### E. TECHNICAL EXHIBITS

***Revise or delete as needed. Enter appropriate information.***

*Include as an attachment to the RFP any documents or additional information too lengthy to describe in the text. If adding attachment(s)*

#### F. PROJECT MANAGEMENT PLAN

***Revise or delete as needed.***

The contractor will be expected to use appropriate project management to ensure the work is accomplished on time, within budget, and meets quantity and quality standards.

1. The contractor will be required to collaborate with the STATE to agree upon the contract schedule, including a work breakdown, schedule of tasks and activities, and progress milestones.
2. The contractor will be required to coordinate with the STATE to develop a communication plan. Any problems or unforeseen events must be communicated timely to the STATE project manager, and any changes must be agreed upon between the parties and set forth in a written amendment to the contract. If the STATE requires corrective action, the contractor will be notified in writing.

***Revise or delete as needed. A Contract Closeout Plan can help obtain any “lessons learned” and ensure a successful transition at the completion of the contract. Customize to include any requirements, such as return of records. Include this in the Contract Schedule, if applicable.***

3. Contract Closeout Plan

When the contract is completed, the STATE and contractor will communicate regarding the contract closeout, including transition of any records. A contract closeout debrief may be performed at the discretion of the Procurement Officer or project manager designated by the STATE. The debriefing time and location will be negotiated between the STATE and contractor. The contractor must collaborate in development a Project Closeout Report to include feedback regarding the project implementation and any lessons learned.

## G. CONTRACT TERM, SCHEDULE AND DELIVERABLES

### 1. Contract Term

#### ***OPTION 1: One-time Project.***

The length of this contract will be from the date of award, approximately **Insert Date**, for approximately **Insert number of days/months/years** until completion, approximately **Date**. See the attached Contract for extension provisions.

#### ***OPTION 2: Multiple Year Contract.***

This contract will be for a **Insert number of days/months/years** period, with options for **Insert number and duration** (e.g., three one year) renewal options, and an option to extend for a **Insert number of days/months/years** (e.g., six month) period. See the attached Contract.

### 2. Schedule and Deliverables

***Develop an estimated contract schedule describing any deliverables, milestones, review points, and an intended completion date, even though the exact dates will be negotiated with the successful vendor. You may optionally ask the Offeror to propose a schedule.***

***Contract “kick off” conferences or teleconferences are encouraged to ensure the purchasing agency and vendor have a mutual understanding of the requirements and establish clear lines of communication.***

***Create review periods to keep the project on track to ensure the work meets the agency’s needs (e.g., status updates, conference calls, progress reports, scheduled review of drafts or redrafts, etc.). Consider activities needed at the end of the contract, such as a Contract Closeout Briefing to discuss “lessons learned” or “transition.”***

The STATE has identified the following deliverables which are significant work products or milestones in the project. The STATE requires these deliverables to be addressed in the Contract Schedule, as a minimum. The contractor shall develop a schedule for accomplishing the Scope of Work, including these specific deliverables. The final schedule shall be agreed upon between the STATE and the successful Offeror and incorporated into the contract. The approximate schedule for this contract is as follows:

- a. Contract start: **DATE**
- b. “Kick off” meeting/conference call: **TIME FRAME** (e.g. Within two weeks of contract signing)
- c. **WHAT: TIME FRAME**
- d. **WHAT: TIME FRAME**
- e. First contractor work period: **TIME FRAME**
- f. Contractor submits **FIRST DRAFT/PROJECT PROGRESS** Report: **TIME FRAME**
- g. Review of report by STATE: **TIME FRAME**
- h. STATE provides contractor with comments for revision as needed: **TIME FRAME**
- i. Contractor submits **WHAT** to the STATE: **TIME FRAME**
- j. Contract Closeout Plan: **TIME FRAME**



### 3.4 EXPERIENCE AND QUALIFICATIONS

*Experience can be included as an evaluation criterion, whether prior experience is required. If applicable, determine what experience and qualifications an Offeror must possess to be minimally qualified to submit a proposal. Do not set the requirements so high that good potential candidates are disqualified. Offerors may be awarded more points if their experience and qualifications exceed the minimum requirement.*

#### A. Minimum Qualifications

*Revise or delete as appropriate. Describe any professional licenses or other requirements the Offeror must meet. For example, “The individuals performing the work must be Certified Public Accountants with at least three years of auditing experience. The firm and individuals working on the project may not have performed any accounting for the agency being audited.”*

##### **OPTION 1:**

No specific minimum qualifications have been set for this RFP.

##### **OPTION 2:**

Offerors must have the following minimum qualifications in order to be considered for contract award: *Insert any requirements for years of experience, prior proof of licensure, such as requiring a certified copy of the license to be included in the proposal.*

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 and rejected.

#### B. Experience

*Revise or delete as appropriate. Describe any professional licenses or other requirements the Offeror must meet. For example, “The firm must have completed three similar projects for public sector entities within the past five years.” Or “The firm and the individuals assigned to this project must have at least three years’ experience providing similar services.” Or “The individuals performing the work must be Certified Public Accountants with at least three years of auditing experience.”*

The Offeror must meet the following experience requirements to be considered for contract award. A proposal from the Offeror that does not meet minimum experience requirements will be rejected. The Offeror must have a minimum of *Insert (e.g., X years of experience, successful completion of at least X prior projects, etc.)*.

#### C. Background Check

*Revise or delete as appropriate. Consult your legal counsel prior to using.*

If STATE, including the state agency entering into this Contract on behalf of the STATE, has the necessary authority under [N.D.C.C. §12-60-24](#), STATE may require personnel that CONTRACTOR assigns to perform work under this Contract, including employees, contracted staff, subcontractors, or other individuals, to submit to a criminal history record check. STATE shall have the right to reject any individual CONTRACTOR assigns to perform work under this Contract if, in STATE’s sole discretion, it determines that the results of the criminal history record check make the individual unacceptable. CONTRACTOR agrees to be responsible for all costs associated with criminal history record checks carried out pursuant to this paragraph.

Forms and information regarding North Dakota Criminal History Record Checks are available on the following website: <https://attorneygeneral.nd.gov/public-safety/criminal-history-records/requesting-criminal-history-record-check>

## SECTION FOUR – PROPOSAL INSTRUCTIONS

*This section should help the Offerors understand how to structure their proposals. Consider what information you want Offerors to furnish that will help you evaluate their ability to perform the task or accomplish the mission.*

### 4.1 PROPOSAL PREPARATION

The STATE discourages overly lengthy and costly proposals. An Offeror must prepare its proposal using the prescribed proposal format and provide all the requested information; this will enable the proposal to be evaluated fairly and completely. If an Offeror submits more than one proposal, each proposal must be prepared in accordance with these instructions.

Each proposal will include a Technical Proposal and a Cost Proposal prepared in accordance with these instructions. The Technical Proposal and a Cost Proposal must be submitted as separate documents, clearly labeled with the name of the Offeror, and marked “Technical Proposal” and “Cost Proposal.” Costs must not be revealed in the Technical Proposal. Options may be discussed in the technical proposal, but all cost information must be in the Cost Proposal only. DO NOT submit documents that are embedded into proposal documents or that contain links to documents on an external website.

### 4.2 PROPOSAL SUBMISSION INSTRUCTIONS

*Customize as needed. Delete unused options.*

#### EMAIL

*Level 2 and 3 OPTION: Level 2 & 3 Procurements are informal, so the Procurement Officer may allow Offerors to submit proposals by email.*

Offerors may submit proposals by email to: [INSERT EMAIL](#)

The email subject line should contain the RFP number and title as indicated on the cover page. Offerors are encouraged to begin the process well in advance and to allow for sufficient time for transmission to meet the Solicitation Closing deadline. Offerors may contact the Procurement Officer to confirm receipt.

Email messages over 50 MB in size are rejected. An Offeror may split the response through multiple emails as needed and indicate the total number of messages intended (e.g., 1 of 3, 2 of 3, and 3 of 3). In addition, be aware that Offeror’s internet service provider may limit the size of attachments to outgoing emails. The STATE takes no responsibility for electronic submissions that are captured, blocked, filtered, quarantined, or otherwise prevented from reaching the proper destination server by any anti-virus or other security software. Encrypted documents or links to documents on an external server are not allowed without prior written approval from the STATE. DO NOT submit documents that are embedded (zip files), movies, wmp, encrypted, or mp3 files.

*Level 4 OPTION: A Level 4 Procurement requires a formal sealed submission of proposals; therefore, proposals cannot be emailed directly to the Procurement Officer.*

Sealed proposals are required; therefore, proposals cannot be submitted by email to the Procurement Officer.

*OPTION: Submit in person, by mail, or delivery service.*

#### SUBMIT IN PERSON, BY MAIL OR DELIVERY SERVICE

Offerors may submit proposals in person, by mail, or delivery service. Offerors may email proposals to a third party to place in a sealed envelope and deliver by the Solicitation Closing deadline.

Clearly address all envelopes or packages as follows:

RFP #: [INSERT RFP NUMBER](#)



RFP Title: **INSERT RFP TITLE**  
ATTN: **NAME OF PROCUREMENT OFFICER**  
**NAME OF AGENCY OR INSTITUTION**  
**NAME OF DIVISION, SECTION, OR DISTRICT**  
**MAILING ADDRESS**  
**CITY, STATE, ZIP CODE**

The STATE assumes no responsibility for delays caused by any delivery service. Postmarking by the Solicitation Closing deadline shall not substitute for actual proposal receipt by the STATE. The STATE's time of receipt will be used to determine timely receipt.

**OPTION: Update this section if allowing Offerors to submit in person, mail, or by delivery service.**

**COPIES OF TECHNICAL AND COST PROPOSAL**

Offeror shall submit **Insert #** copies of its Technical Proposal.

Offeror shall submit one (1) copy of the Cost Proposal in a separate, sealed envelope, clearly labeled "Cost Proposal."

**OPTION: Customize to specify the needed e-version format to be submitted. Delete if not used.**

Offeror shall also submit its proposal in an electronic version (examples: Microsoft Word, Excel or .pdf format) on a USB flash drive with the Technical Proposal and Cost Proposal saved as separate files.

**OPTION: Use if Electronic Submission is enabled on SPO Online.**

**UPLOAD RESPONSE THROUGH THE STATE PROCUREMENT ONLINE SYSTEM (SPO ONLINE):**

Offeror **Insert may or must** electronically submit proposals through the State Procurement Office Online system (SPO Online) by the Solicitation Closing deadline.

DO NOT WAIT UNTIL THE "LAST MINUTE" TO SUBMIT A RESPONSE. Recommend uploading response 24 hours prior to the Solicitation Closing deadline.

Offeror must begin the electronic submission process well in advance of the Solicitation Closing deadline to allow for transmission and resolution of any technical difficulties. Be advised that the STATE is not responsible for an Offeror's failure to timely submit a proposal due to any technical difficulties. If you experience any technical difficulties contact the Procurement Officer or the State Procurement Office at [infospo@nd.gov](mailto:infospo@nd.gov) or 701.328.2740.

If documents are in the process of being uploaded when the Solicitation Closing deadline occurs, the upload process will stop. The attempted submission will not be uploaded successfully and is ineligible for consideration. The STATE takes no responsibility for electronic submissions that are captured, blocked, filtered, quarantined, or otherwise prevented from uploading by any anti-virus or other security software.

1. This solicitation is posted on SPO Online at: <https://apps.nd.gov/csd/spo/services/bidder/main.htm>
2. Select "Recent Solicitations" and find this solicitation. Solicitations are listed by close date.
3. Use "Upload Response" to upload a maximum of five (5), clearly labeled documents before the Solicitation Closing deadline provided in the RFP Schedule.
4. Offeror must upload their Technical Proposal and Cost Proposal in separate files.
5. The maximum file size allowed is 50mb per file.
6. There is a 50 character file name limitation for the document being uploaded.
7. There is a 75 character limit in the TITLE field within SPO Online.

8. All SPO Online field entries must be alphanumeric. Dashes and underscores are allowed; however, the system DOES NOT accept other special characters such as apostrophe, & symbol, quotation marks, etc..
9. DO NOT submit documents that are embedded (zip files), movies, wmp, encrypted, or mp3 files.
10. Offeror will receive an email confirmation from [infospo@nd.gov](mailto:infospo@nd.gov) that the upload response was received including the “File Description” for the uploaded files. Review this email to ensure all files were successfully uploaded. If Offeror DOES NOT receive an email confirmation, the upload was NOT successful, and the files will need to be uploaded again. If Offeror does not receive an email confirmation after the reattempt, contact the Procurement Officer or the State Procurement Office at [infospo@nd.gov](mailto:infospo@nd.gov) or 701.328.2740.

Visit <https://www.omb.nd.gov/sites/www/files/documents/doing-business-with-the-state/procurement/spo-electronic-response-external-job-aid.pdf> for the SPO Electronic Response Job Aid which describes how to submit an electronic response.

#### **4.3 PROPOSAL FORMAT**

*Customize as needed to match the Scope of Work and Proposal Evaluation RFP sections.*

Prepare the Technical Proposal and Cost Proposal in accordance with these instructions.

Technical Proposal – Format the proposal with the following labeled sections:

- Section 1 – Cover Letter
- Section 2 – RFP Amendments
- Section 3 – Scope of Work Strategy
- Section 4 – Experience and Qualifications
- Section 5 – Contract Provisions
- Section 6 – Open Records and Confidentiality
- Section 7 – Financials (*Revise or delete as needed. Generally, financials are not required, except for extremely high dollar projects and information technology projects.*)

Cost Proposal – The Cost Proposal must be a separate document. Format the Cost Proposal following the RFP instructions.

#### **4.4 TECHNICAL PROPOSAL**

##### **SECTION 1 – COVER LETTER**

Proposals shall include a cover letter that includes the following:

1. The name of the Offeror, name of the person to contact regarding the proposal, email address, telephone number, and mailing address.
2. Offerors are instructed to review the “Conflict of Interest” provisions in RFP Section 1 “Instructions.” If the firm, its employees or subcontractors working on the contract have an apparent or actual conflict of interest, provide a statement disclosing the circumstances of the apparent or actual conflict of interest. Otherwise, provide a statement that your firm, employees and subcontractors do not have a conflict of interest.
3. The cover letter must be signed by an individual with authority to bind the Offeror. By signing the cover letter, an Offeror certifies that it complies with:
  - a. All the requirements, terms and conditions as set forth in this RFP.
  - b. The requirement that the Offeror’s proposal accurately describes the goods and services being offered to the STATE, and the proposal will be held firm for the period specified.

- c. All local, state, and federal laws, rules, code laws, rules, code, regulation, and policies, including those relating to nondiscrimination, accessibility, civil rights, and equal employment.
- d. The requirement that this proposal was prepared independently without collusion.

## **SECTION 2 – RFP AMENDMENTS**

Provide signed copies of all Solicitation Amendments issued by the STATE that were required to be acknowledged by Offerors.

## **SECTION 3 –SCOPE OF WORK STRATEGY**

*Revise this section to match RFP Scope of Work.*

Offeror must review the requirements and deliverables provided in RFP Section 3, Scope of Work.

1. **Applicable Directives.** The Offeror must identify any state and federal requirements that apply to the contract.
2. **Strategy for Scope of Work Requirements.** The Offeror must provide narrative statements to demonstrate their understanding of the scope of work requirements. Explain the proposed strategy to accomplish the scope of work, meet all requirements, and provide the deliverables described in the scope of work within the STATE's project schedule.
3. **Value-Added Options.** Offerors may include any optional services or goods that are not required by the STATE but are within the scope of work (e.g., an option for a higher level of service, equipment accessories, extended warranty options, etc.). Describe any value-added options being offered.
4. **Location of Work.** The proposal must respond to the STATE's Location of Work instructions within the RFP Scope of Work. Describe where the work will be performed and any proposed travel.
5. **State Furnished Property and Services.** Provide a detailed breakdown of the Offeror's expectations for STATE resources that will be needed for the project, including number of staff, qualifications, roles and responsibilities, and time requirements for the various phases of the project.
6. **Risk Management.** Offerors must describe measures to be taken to ensure the safety of its employees, state employees, the public and property. Offerors must also identify any pertinent issues and potential problems related to the project and describe how those potential issues and problems could be mitigated.
7. **Project Management Plan.** The proposal must describe how the contractor intends to manage the project to ensure the work is accomplished on time, within budget, and meet quantity and quality standards. Offerors may provide a narrative or organizational chart to illustrate the lines of authority and accountability.
8. **Proposed Schedule and Deliverables.** The proposal must provide a timeline for accomplishing the work, in consideration of the STATE's Contract Schedule within the RFP Scope of Work.

## **SECTION 4 –EXPERIENCE AND QUALIFICATIONS**

*Customize this section to request all information needed to evaluate.*

*Include if RFP has Offeror Experience and Qualification Mandatory Requirements.*

**Mandatory Requirements.** An Offeror must provide information to demonstrate meeting the Offeror Experience and Qualifications Requirement in RFP Section 3, Scope of Work, [Experience and Qualifications](#).

### **Experience and Qualifications of the Firm**

Provide a brief history and describe the organization of the firm. Describe the number of years the Offeror has provided the type of work requested in this RFP. Describe specific experience of their firm in completing similar projects. Provide a description of the project, approximate time frame of the project, and contact information for the customer. Offerors may provide letters of reference from customers.

### **Experience and Qualifications of the Project Team**

Provide a narrative or organizational chart that describes the organization of the proposed project team. Provide information for key project team members, including:

1. Description of anticipated work they will perform and approximate estimated hours;
2. Resume or description of the relevant education, training, experience, skills and qualifications;
3. If the Offeror has vacant positions, identify the job description and minimum qualifications for staff members to be recruited;
4. Subcontractors. 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. Provide a statement that the Offeror will ensure that the subcontractor has or will obtain any required licenses and registrations, including registration with the North Dakota Secretary of State; and
5. Joint Venture. If submitting a proposal as a joint venture, provide narrative statements that describe the roles and responsibilities of each party to the joint vendor. If available, submit a copy of the joint venture agreement that identifies the parties involved and its rights and responsibilities.

### **References**

***OPTION 1: You may ask for a list of references and contact information.***

Provide three (3) references for similar projects the Offeror has completed. Offerors must include the name of a contact person, address, email, and telephone number. Offerors are responsible for providing accurate reference contact information and are instructed to notify the reference that the STATE may be contacting them. Reference checks may begin within one (1) business day of the Solicitation Closing deadline. Evaluation may be impacted if the STATE is unable to contact the reference or the reference does not timely provide the requested information.

***OPTION 2: You may ask for reference letters that include contact information.***

Provide three (3) reference letters from clients for whom similar work was completed. The reference letter must include the name of a contact person, address, email, and telephone number. The STATE may contact references provided for verification and to obtain additional information. Evaluation may be impacted if the STATE is unable to contact the reference or the reference does not timely provide the requested information.

## **SECTION 5 – CONTRACT PROVISIONS**

Offeror shall review the RFP Section 6 and the STATE's Contract – Attachment [Insert number](#).

The proposal must include indicate whether the Offeror accepts the terms and conditions in the STATE's Contract.

An Offeror may state that they accept the STATE's Contract as written.

An Offeror may state any objections or propose changes or additions to the STATE's Contract. Describe the changes to the Contract being proposed or provide a red-line of the STATE's Contract. Offerors are not to submit their own contract or standard terms and conditions with their proposals. Offeror should address the specific language in the attached contract and submit any proposed changes.

North Dakota procurement statutes, rules, and policies allow some negotiation of the terms and conditions. No changes to the terms and conditions will be permitted without prior written approval from the STATE.

## **SECTION 6 – OPEN RECORDS AND CONFIDENTIALITY**

All proposals and other material submitted become the property of the State and may be returned only at the State's option. The State of North Dakota has broad open records laws. Proposals received are exempt from open record requirements until an award is made, in accordance with [N.D.C.C. § 54-44.4-10\(2\)](#). After award, proposals are subject to the North Dakota open records laws. Proposals or portions of proposals may be confidential only if specifically stated in law.

Offerors are instructed not to mark their entire proposal as "confidential."

Offeror must provide one of the following in their proposal:

- Provide a statement indicating that their proposal does not contain any confidential information, OR
- Make a written request to hold confidential any trade secrets and other proprietary data contained in its proposal. Offeror must clearly identify the material considered confidential and explain why the material is confidential. See the North Dakota Office of the Attorney General website for additional information. <https://www.legis.nd.gov/cencode/t44c04.pdf> and <https://attorneygeneral.nd.gov/open-records-meetings>

If the STATE receives a request for public information, the Procurement Officer, in consultation with the Office of the Attorney General, shall determine whether the information is an exception to the North Dakota open records laws, and the information shall be processed accordingly.

## **SECTION 7 – FINANCIALS**

***OPTIONAL – FINANCIAL EVALUATION. Financials are NOT normally required, but may be appropriate to consider for high dollar, long term, or higher risk contracts. If required, consider finding an accountant or other person who is qualified to evaluate financials. Financials may be evaluated as part of the technical score. Alternatively, financials may be reviewed to determine if the vendor is financially sound and therefore, a responsible Offeror. Delete if not used.***

### **Financials**

Offeror shall provide financial information in such a manner that the STATE can reasonably formulate a determination about the stability and financial strength of the organization. The STATE may request reports on financial stability from independent financial rating services in order to further substantiate stability

- A. Firm. Provide a narrative with the following information:
  1. Organization/date of incorporation;
  2. Ownership;
  3. Number of employees; and
  4. Revenues for the last fiscal year.

- B. Financials. Provide at least one of the following:
1. Audited financial statements for the most recent 3 years;
  2. An Annual Report as verification of financial status provided it contains at a minimum a Compiled Income Statement and Balance Sheet verified by a Certified Public Accounting firm (The STATE reserves the right to contact the accounting firm if questions arise); or
  3. Tax returns and financial statements including income statements and balance sheets for the most recent 3 years, and any available credit reports.

Financial information may be kept confidential if it falls under the definition of such found at [N.D.C.C. § 44-04-18.4\(2\) \(b\)](#). Offerors must contact the Procurement Officer with questions related to the confidentiality of financial documents.

Financials may be provided in a separate file or sealed envelope clearly labeled with the Offeror's name and "Financials."

- C. Disclosure. Disclose all judgments, pending or expected litigation, or other real potential financial reversals, which might materially affect the viability or stability of the Offeror's organization; or certify that no such condition is known to exist.

#### 4.5 COST PROPOSAL

*Customize this section to request all information needed to evaluate. You may also customize to provide an attached cost proposal Excel spreadsheet, form or Word for vendors to complete.*

**OPTION 1: Use if adding a Cost Proposal Template as an attachment to the RFP.**

**Cost Proposal Format.** Cost proposals must be prepared as a separate document from the technical proposal, clearly labeled, "Cost Proposal."

Offeror must complete the Cost Proposal Format - Attachment [Insert number](#) or prepare a Cost Proposal following the same format.

**Value-Added Options.** Offeror may include pricing for any value-added options that are described in the Offeror's proposal as options, but not included in the total cost. Any options must be within the scope of work. (e.g. an option for a higher level of service, equipment accessories, extended warranty options, etc.). Provide details related to initial cost, reoccurring costs, and options. The STATE shall not consider these costs as part of cost evaluation scoring.

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

Offeror should describe any discount terms for prompt payment. Discounts for prompt payment will not be considered in evaluating costs.

**OPTION 2: If not adding a Cost Proposal Template attachment, customize this section for this RFP.**

**Total Cost.** Cost proposals must provide the total proposed cost for completing the RFP requirements.

**Itemized Costs.** Include a detailed itemization of the Cost Proposal, including all direct and indirect costs:

- One time or startup costs
- Ongoing/Lifecycle Costs (For example, consumables, maintenance and support, etc.)
- Commodities/Equipment/Supplies
- Total labor, including a breakdown of the number of hours at the various hourly rates.
- Subcontractor costs
- Travel expenses
- Overhead



- Etc.

**Value-Added Options.** Offeror may include pricing for any value-added options that are described in the Offeror's proposal as options, but not included in the total cost. Any options must be within the scope of work. (e.g. an option for a higher level of service, equipment accessories, extended warranty options, etc.). Provide details related to initial cost, reoccurring costs, and options. The STATE shall not consider these costs as part of cost evaluation scoring.

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

Offeror should describe any discount terms for prompt payment. Discounts for prompt payment will not be considered in evaluating costs.

#### **4.6 SAMPLES**

*Revise or delete.*

Offeror must provide a sample of the [Insert description of the required sample](#) being proposed for the purpose of ensuring compliance with solicitation requirements and evaluation. The Offeror is responsible for all costs associated with furnishing the sample, including transportation. Label the sample with the name of the Offeror. The sample must be submitted by the proposal submission closing date in the RFP Schedule listed in Section 1 of the RFP. Such samples may be subject to examination and testing by the STATE. Samples offered by the successful Offeror may be retained for comparison to deliveries under contract.

Upon request of the Offeror, samples not destroyed by examination or testing will be returned at the expense of the Offeror. If the Offeror does not request return of the sample, the sample will become property of the STATE. ([N.D.A.C. § 4-12-08-11](#)).

#### **4.7 BONDS**

*Revise or delete.*

*If a bond will be required, see the OMB procurement [template webpage](#) for a "Bond Clauses" document with sample language for bid bonds and performance bonds.*

## SECTION FIVE – AWARD AND PROPOSAL EVALUATION

*Evaluation is an important step in developing your RFP. You must determine what is important to consider and develop a weighted scoring system for evaluating proposals. The evaluation criteria should align with the scope of work and proposal format.*

### 5.1 AWARD

*Select one option and delete the other.*

#### **OPTION 1 – Single Award**

The STATE intends to award a contract to the responsible Offeror whose proposal is determined to be responsive to the requirements of the solicitation and is determined to be most advantageous in consideration the RFP evaluation criteria.

#### **OPTION 2 – Multiple Award**

The STATE intends to award contracts to multiple Offerors, pursuant to [N.D.A.C. § 4-12-11-07](#). The STATE will make award to the highest scoring Offerors whose proposals are determined to be responsive to the requirements of the solicitation and are determined to be most advantageous in consideration the RFP evaluation criteria. *Insert any other award criteria, such as the number of contracts to be awarded, whether there will be primary/secondary contractors, etc.*

### 5.2 RESPONSIVENESS

All proposals will be evaluated to determine if they are responsive to the requirements of the solicitation. The STATE reserves the right to waive minor informalities in accordance with [N.D.A.C. chapter 4-12-10](#). Minor informalities are insignificant omissions or nonjudgmental mistakes that are matters of form rather than substance, evident from RFP document, with a negligible effect on price, quantity, quality, delivery, or contractual conditions that can be waived or corrected without prejudice to other Offerors. Responsive proposals will be evaluated by the Procurement Officer or evaluation committee using the evaluation criteria stated in the RFP.

### 5.3 RESPONSIBILITY – SUPPLEMENTARY INVESTIGATION

The STATE reserves the right to contact references, other customers, including state and local government agencies, regarding past experience with the Offeror. Prior experience of the state agency or institution with any prospective Offeror may also be taken into consideration during evaluation.

The STATE may, at any time, may make a supplementary investigation as to the responsibility of any Offeror in accordance with [N.D.A.C. § 4-12-11-04](#). This investigation may include, but is not limited to, financial responsibility, capacity to produce, sources of supply, performance record, or other matters related to the Offeror's probable ability to deliver if a contract is awarded to the Offeror. If it is determined that an Offeror appears not to be sufficiently responsible, the proposal will be rejected.

### 5.4 EVALUATION CRITERIA

*The evaluation criteria set forth in the RFP must match the evaluation criteria in the Technical Proposal Evaluation Worksheet. Visit the [OMB Procurement website](#) to obtain the Technical Proposal Evaluation Worksheet Template, and develop customized questions related to the Evaluation Criteria.*

*A good rule of thumb for the evaluation points assigned to cost is 40%. Cost may be weighted considerably lower if the budget is revealed. Agency should review the unique circumstances of the procurement to determine the appropriate weighting of cost.*

*Use the Evaluation Summary to compile the Evaluation Committee's technical scores and cost points for an RFP and calculate the total evaluation score for an RFP. Customize this template*



**to match the evaluation criteria set forth in your RFP and Technical Proposal Evaluation Worksheet.**

Proposals will be evaluated using a 100 point scale. The evaluation committee will award points based on the questions in the Technical Proposal Evaluation Worksheet – [Attachment Insert number](#). The Technical Proposal evaluation score and Cost Proposal evaluation score will be added together to determine the total evaluation score. After the initial evaluation, the evaluation committee may determine which proposals are reasonably susceptible for award and continue the evaluation process with only those Offerors. Offerors whose proposals are not selected for further evaluation may request a debrief from the Procurement Officer after an award notice is issued. The final evaluation score will consider information received by the STATE, including but not limited to, discussions with Offerors, demonstrations, presentations, site visits, reference checks, and best and final offers.

The evaluation criteria and relative weight is as follows:

Technical Proposal Evaluation: [Insert number, e.g., 60 Points](#)

- A. Scope of Work Strategy– [Insert number, e.g., 40 Points](#)
- B. Experience and Qualifications – [Insert number, e.g., 20 Points](#)

Cost Proposal Evaluation: [Insert number, e.g. 40 Points](#)

***OPTION: Minimum Technical Score. Delete if not used. The bottom of the “Good” Point Value range in the Technical Proposal Evaluation Worksheet may be used as a minimum score or select a minimum percentage.***

Minimum Technical Score: Technical proposals must receive at least [Insert number, \(e.g. 70 percent or 42 points\)](#) of the total points available for the Technical Score to be considered responsive to the RFP requirements.

### **5.5 COST PROPOSAL EVALUATION – RECIPROCAL PREFERENCE**

The STATE will calculate evaluation points awarded to Cost Proposals. Any prompt payment discount 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 in accordance with [N.D.C.C. § 44-08-01](#). The preference given to a resident Offeror will be equal to the preference given or required by the state of the nonresident Offeror (i.e., reciprocal preference). For more information, refer to [Guidelines to North Dakota Purchasing Preference Laws](#).

The cost amount used for evaluation may also be affected by the application of other costs required to implement the proposed solution to determine the total cost of the solution (i.e. cost for ITD to host a STATE hosted solution).

After applying any reciprocal preference, the lowest Cost Proposal will receive the maximum number of points allocated to cost. Cost proposals will be evaluated using the following formula.

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

### **5.6 CLARIFICATIONS OF PROPOSALS – DISCUSSIONS**

To determine if a proposal is reasonably susceptible for award, communications by the Procurement Officer or 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. Discussions will be limited to the specific section of the RFP or proposal indicated by the STATE. Discussions are generally conducted by telephone or internet-based conference.

In conducting discussions, there may be no disclosure of any information derived from proposals submitted by competing Offerors. Clarifications may not result in material or substantive change to the proposals. Evaluation scores may be adjusted based in consideration of information obtained through discussions.

## **5.7 RIGHT OF REJECTION**

The STATE reserves the right to reject any proposals, in whole or in part. Proposals received from suspended or debarred bidders will be rejected. Proposals determined to be nonresponsive to the requirements of the RFP will be rejected. The STATE reserves the right to reject the proposal of an Offeror determined to be not responsible. The STATE reserves the right to refrain from making an award if determined to be in its best interest.

## **5.8 PRESENTATIONS, DEMONSTRATIONS, AND SITE VISITS**

*Revise or delete as needed. Presentations and demonstrations help the evaluation committee have a better understanding of the strategy or solution being proposed. Describe what Offerors will be expected to present or demonstrate. Establish an actual or approximate schedule so Offerors can plan and prepare. Describe the amount of time allowed for the presentation or demonstration. Demonstrations may be conducted on-site or using on-line resources. This section can also be customized to create a more formal "Proof-of-Concept" exercise, which is a tool to demonstrate the solution's capabilities and fit with the requirements. A "Proof-of-Concept" can take significantly more time and added expense for Offerors.*

After the initial evaluation, the evaluation committee may determine which proposals are reasonably susceptible for award and continue the evaluation process with only those Offerors. These Offerors will be required to provide a [presentation or demonstration](#) for the evaluation committee. Offerors whose proposals are not selected for further evaluation may request a debrief from the Procurement Officer after an award notice is issued.

Location: [Insert information regarding physical location, telephone conference, or internet-based conference, or other means.](#)

Schedule: [Provide an approximate or actual date and time, CT. Update the RFP Schedule.](#)

*Option: On-site visit. Revise or delete as needed.*

### **On-Site Visit.**

No on-site visit will be conducted by the evaluation committee.

**OR**

The STATE may conduct an on-site visit to the Offeror's facility or facility of Offeror's customer where the Offeror is performing similar work to evaluate the Offeror's capacity to perform the contract. An Offeror must agree, at risk of being found nonresponsive and having its proposal rejected, to provide the STATE reasonable access to relevant portions of its work sites. Individuals designated by the STATE shall conduct the site inspection at the STATE's expense. The STATE will coordinate the date and time of the on-site visit with the Offeror.

## **5.9 BEST AND FINAL OFFERS**

*Use the Best and Final Offers Template on the SPO website to request best and final offers. The STATE may request more than one best and final offer, if desired.*

The STATE is not obligated to request best and final offers; therefore, Offerors should submit their best terms (technical and cost) in response to this RFP.

If the STATE determines there is a need for any additional information, substantial clarification or changes to the RFP or proposals, the STATE may request for best and final offers from Offerors that have submitted proposals determined to be reasonably susceptible for award. The best and final offer request will describe the additional information, clarification, or change being requested.

A date and time will be established for receipt of revised proposals. If an Offeror does not submit a best and final offer, the STATE shall consider its original proposal as its best and final offer. Best and final offers will be evaluated using the evaluation criteria stated in the RFP. The STATE may request more than one Best and Final Offer.

#### **5.10 NEGOTIATIONS**

*Contract negotiations usually take place after the Notice of Intent to Award is issued to the successful Offeror. It is also acceptable to conduct negotiations prior to finalization of scores with one or more Offerors determined to be reasonably susceptible for award. Pre-award negotiations are commonly conducted with Major IT procurements.*

Contract negotiations will be conducted in accordance with [N.D.A.C. § 4-12-12](#). The STATE may enter negotiations with one or more Offeror whose proposals received the highest scores and are reasonably susceptible for award. During negotiations, the STATE and Offeror may agree to alter or otherwise change the terms and conditions and price of the proposed contract. Negotiation, if held, will be within the scope of the RFP and limited to those items that would not have an effect on the ranking of proposals.

Each Offeror will be responsible for all costs it incurs as a result of negotiations, including any travel and per diem expenses. Contract negotiations will be conducted primarily by email, conference calls, or internet-based conference. Any on-site negotiation, if needed, will be held in [Insert City](#), North Dakota.

The STATE may terminate negotiations, reject a proposal as nonresponsive, and continue or commence negotiations with other Offerors reasonably susceptible for award, if the Offeror:

- fails to provide necessary information for negotiation in a timely manner,
- fails to negotiate in good faith,
- is unable to successfully negotiate contract terms that are acceptable to the STATE, or
- indicates that it cannot perform the contract within the budgeted funds.

#### **5.11 NOTICE OF INTENT TO AWARD**

*Use the Notice of Intent to Award Template on the OMB website.*

After proposals have been evaluated and the successful Offeror selected, notice of intent to award will be promptly issued to all Offerors that submitted proposals. Upon issuance of this notice, the procurement file becomes an open record. The successful Offeror named in the Notice of Intent to Award is advised not to begin work, purchase materials, or enter into subcontracts until the successful Offeror and the STATE sign the contract.

#### **5.12 CONTRACT APPROVAL**

This RFP does not, by itself, obligate the STATE. The STATE's obligation shall commence when the STATE signs the contract. Upon written notice to the contractor, the STATE may set a different starting date for the contract. The STATE shall 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.

#### **5.13 EVALUATION DEBRIEFING**

After the notice of intent to award is issued, Offerors may contact the Procurement Officer to schedule an evaluation debrief. The debrief will provide information about the evaluation process and proposal scores.

## SECTION SIX – CONTRACT INFORMATION

### 6.1 NORTH DAKOTA CONTRACTUAL REQUIREMENTS – BACKGROUND

As a public institution and government entity of the State of North Dakota (the STATE), there are a number of statutes, rules, and policies (Requirements) that may restrict or prevent the STATE from entering into certain types of contracts or certain contractual terms and conditions, some of these Requirements are non-negotiable.

While these Requirements occasionally make the process of negotiating a contract with the STATE more challenging than negotiating with a private industry business, these are not unique to any one agency of the State of North Dakota. These Requirements apply to all public institutions and government entities of the State of North Dakota. Although some are unique to North Dakota, the majority of these Requirements are common to public institutions and government entities throughout the United States.

### 6.2 STATE CONTRACT TERMS AND CONDITIONS – OFFEROR’S PROPOSED CHANGES

The STATE intends to execute a contract substantially similar to the Contract – Attachment [Insert number](#). The Offeror will be required to sign the Contract attached to this RFP and must comply with the terms and conditions. The STATE may deem any failure to object to a contract provision as the Offeror’s acceptance of that provision.

North Dakota procurement statutes, rules, and policies allow some negotiation of the terms and conditions. No changes to the terms and conditions will be permitted without prior written approval from the STATE.

Pursuant to [N.D.A.C. § 4-12-11-06](#), proposals subject to conditions imposed by the Offeror may be rejected as nonresponsive, as determined by the STATE. Proposed terms and conditions that conflict with those contained in the attached contract or that diminish the STATE’s rights under the contract shall be considered null and void. The terms and conditions in the attached contract shall prevail in the event a conflict arises between a term or condition in the proposal and a term or condition in the attached contract.

Part or all of this RFP and Offeror’s proposal may be incorporated into the attached contract. The STATE may deem any failure to object to a contract provision as the Offeror’s acceptance of that provision.

### 6.3 CONTRACT PROVISIONS

#### A. Contract Type.

The contract type will be as follows:

***Review the information to select the appropriate contract type. The type of contract used is likely to impact costs to the State. Customize as needed.***

***Firm Fixed Price Contracts are the most common and easiest to administer. Contractor is obligated to perform at a specified price. This clause is appropriate for simple, short term contracts when changes are not anticipated. Do not use in situations when price changes are outside the Offerors control (i.e., fuel costs, commodity prices, etc.) as Offerors will build “cushion” into their pricing to cover probably risk.***

**Firm Fixed Price.** The contractor will be required to hold the price firm for the contract period, except as otherwise provided in the contract.

***Fixed Price with Adjustment Contracts allow for price adjustments after a specified time period or upon occurrence of certain events. These types of contracts are useful for longer term contracts, situations when future prices are uncertain, or projects with higher risk of changes.***

**Firm Fixed Price with Adjustment.** The contractor will be required to hold the price firm during the ***Insert time period (e.g. first six months, first year, etc.)***, except as otherwise provided in the contract. During this period, no price increases will be allowed, and the contractor must notify the STATE immediately of any price decreases. After the completion of the firm fixed period, the contract may make a written request to the STATE for a price increase. The request must include the basis for the cost increase, such as evidence that the price increase applies to all customers. The STATE must approve, deny, or negotiate the requested price increase within 30 days. Any price changes will be set forth in a written amendment to the contract.

***Time and Materials Contracts have fixed labor rates and allow separate costs for materials used under the contract. Time and Materials contracts should be used only when it is not possible at the time and placing of the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. Time and materials provide no incentive for the contractor to control costs; therefore, the STATE must provide adequate monitoring of the contractor performance.***

**Time and Materials.** The contractor will invoice for work performed and materials actually used based upon the labor rates and materials pricing specified in the contract. The hourly rate must include wages, overhead, general and administrative expenses, and profit. Any work performed by subcontractors shall be subject to the specified labor rates. Materials must be invoiced based upon actual cost, which may include actual material shipping and handling costs.

***Other Contract Price Adjustment Types may be customized for the procurement being contemplated, including:***

- ***Fixed Price Incentive. A target price, ceiling price, and a profit formula are used in this type of contract. When the contractor performs below the costs stipulated in the target price, the contractor and the State share in the savings. If costs exceed those estimated, the contractor's profit margin declines and the price ceiling is followed. In these types of contracts, performance can be quantified in terms of costs and services and/or deliverables.***
- ***Cost Plus Fixed Fee. Under these contracts, contractors are paid for all allowable costs plus a predetermined fixed fee. These contracts have been found to be beneficial for research and development work.***
- ***Cost Plus Incentive Fee. Under this type of contract, a tentative fee based on estimated costs and a target price is established. If actual costs fall below estimated costs, the contractor and State share in the savings. The contractor can lose all or part of its fee, but it must be paid for all costs.***
- ***Cost Plus a Percentage of Cost. Under this type of contract, the contractor receives payment for costs of performance plus a specified percentage of actual costs as a fee. Cost plus a percentage of costs provide no incentive for efficient and economical contractor performance and are not recommended.***

## B. Payment Procedures

Compensation and payment terms will be set forth in the contract based upon the successful Offeror's proposal. The STATE will not make any advanced payments before performance by the contractor under this contract.

**Select compensation option, then delete the other options.**

- The STATE will make a single payment when all the deliverables are received, and the contract is completed and approved by the project manager designated by the STATE.  
**OR**
- The STATE will make payments based on a negotiated payment schedule. Each billing must consist of an invoice and progress report. No payment will be made until the progress report and the project director has approved invoice.  
**OR**
- The STATE will pay the entire contract amount in **NUMBER** equal payments. Each incremental payment will be made after **NAME SPECIFIC TASKS OR REPORTS** have been completed and approved by the project director. The final payment will not be made until the entire contract, including **NAME SPECIFIC TASKS OR REPORTS** are completed and approved by the project manager.

## C. Inspection & Modification

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 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 STATE determine that corrections or modifications are necessary to accomplish its intent, the STATE 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.

## D. Contract Changes – Unanticipated Amendments

During the course of the contract entered as a result of this solicitation, the contractor may be required to perform additional work due to a legitimate unforeseen circumstance. That work will be within the general scope of the initial contract. When additional work is required, the STATE shall provide contractor a written description of the additional work and request contractor to submit proposal for accomplishing the scope of work. CONTRACTOR will not commence additional work until all parties agree in writing.

## E. Purchasing Card

STATE may make payments under this contract using a state purchasing card. See the contract related to payments using the STATE purchasing card.

# 6.4 CONTRACTUAL TERMS AND CONDITIONS – NO MATERIAL CHANGES

## A. Indemnification and Insurance

[N.D.C.C. § 32-12.2-17](#) requires that the OMB establish guidelines for indemnification and insurance provisions in state contracts. The indemnification and insurance requirements contained in the attached contract are pursuant to those guidelines. The STATE shall not be deemed to have accepted any alteration of these provisions without prior written approval to Offeror from the STATE acting in consultation with the North Dakota Risk Management Division.



## **B. Indemnification**

Indemnification is a contractual clause by which one party to a contract asks the other party to defend it against any claims of third parties who might be injured as a result of something that occurs while the parties are performing their duties and obligations under the contract. Without specific authority to do so, the STATE agencies cannot enter into agreements indemnifying contractors, or any other entity, against third party claims.

Any clause that has the intent of seeking indemnification from the STATE, whether the clause contains the words "indemnity" or "indemnify," are not clauses to which the STATE may agree.

The STATE will also not agree to clauses to indemnify a contractor "to the extent permitted by law." This is because the STATE knows that the extent to which the law permits it to indemnify contractors is no extent whatsoever, and as a result would be disingenuous for the STATE to imply in a contract that there might be some set of circumstances under which the STATE would defend the contractor against a third party claim(s). Simply put, the STATE is not going to agree to something it knows it cannot do. In this circumstance an "extent" clause is merely an invitation to litigate the matter in the event a third party claim(s) arises, and the STATE does not enter into agreements that invite litigation. Do not ask the STATE to indemnify you against third party claims because it is a contractual obligation to which the STATE cannot agree.

While the STATE may limit the liability of a contractor in claims between the STATE and the contractor, the STATE does not have authority to limit a contractor's liability for claims brought by a third party. In the event a contract contains a limitation of liability clause, the contract's Indemnification clause and obligation of the contractor cannot be subject to that limitation of liability clause. See 6.4(D) for *Limitation of Liability*.

## **C. Insurance**

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 STATE, in consultation with the North Dakota Risk Management Division. The successful 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.

## **D. Limitation of Liability**

The STATE may negotiate Limitation of Liability pursuant to N.D.C.C. § 32-12.2-15 "Contracts limiting liability to the STATE".

Notwithstanding any provision in N.D.C.C. ch. 32-12.2 to the contrary, an agency may agree to limit the liability of a contractor to the STATE if:

1. the agency determines such services or products cannot be effectively obtained without such limitation; and
2. the limitation does not pose any significant risk of loss to the STATE; and
3. the limitation is in the best interests of the STATE.

The agency, in consultation with the OMB and the attorney general's office, shall prepare a written documentation before agreeing to any liability limitation.

An agency's authority to agree to a limitation of liability is limited to contracts for the purchase or lease of, or services related to, software, communication, electronic equipment, and economic forecasting.

1. An agency may limit its ability to recover indirect consequential damages.
2. If the extent of potential direct loss is unknown, an agency may agree to limit direct damages to a reasonably estimated amount commensurate with the foreseeable risk of loss to the STATE. The amount must be equal to twice the total value of the contract, unless all parties to the contract agree to an alternative amount. Any agreed upon amount that is less than twice the value of the contract must be approved by the director of the OMB. The liquidated damages and retainage provisions for delay, missed deadlines, and other breaches are not subject to a general limitation on direct or indirect damages authorized under N.D.C.C. § 32-12.2-15.
3. A contract under N.D.C.C. § 32-12.2-15 may not limit any loss to the STATE resulting from fraud or other intentional or willful misconduct, breach of confidentiality obligations, or loss resulting from tangible property damage or personal injury.

**E. Waivers of Jurisdiction and Venue; Alternative Dispute Resolution**

The North Dakota Attorney General is the STATE's attorney for all purposes, including management of litigation and claims against the state. The STATE may not usurp the Attorney General's authority by agreeing in advance to control the way litigation may be managed in the event of a dispute. The STATE cannot, without specific authority, agree to the jurisdiction or the laws of another state or federal courts, nor can it contractually agree to participate in any form of alternative dispute resolution.

Although the STATE cannot contractually agree to such terms, this does not mean that in the event of a dispute, the STATE would not agree to participate in alternative dispute resolution. It simply means that this is a decision that must be made by the Attorney General and is a decision that is made at the time a dispute arises.

**F. Confidentiality**

All state agencies of North Dakota are subject to North Dakota public records laws. The STATE cannot agree to contractual terms that attempt to prevent it from having to disclose records that are declared public records under applicable statutes. Although some confidentiality and exemptions are allowed under the public records laws, the STATE may not agree to more restrictive obligations concerning its records. Under North Dakota public records laws, contracts are records that are open to the public and may be reviewed at the request of the public.

**G. Unliquidated Expenses (i.e., attorney's fees, add-ons, cost increases)**

Because the STATE may only obligate those funds that have been appropriated to it by the Legislative Assembly and may only obligate those funds for the purposes for which the funds were appropriated, the STATE may not agree to clauses which may obligate it to pay for claims that might exceed its current funding appropriation. Certainly, this is one of numerous reasons why the STATE cannot indemnify a contractor against third party claims, but it may also be said for clauses that purport to obligate the STATE to pay a contractor's attorneys' fees, unknown cost increases during the life of the contract, add-ons that were not contemplated or priced in the contract.

**6.5 SCOPE OF WORK**

The Scope of Work agreed upon by the parties will be incorporated into the attached contract.

**6.6 CONTRACT TERM**

The contract term will be set forth in the contract, including any options for extension, renewal, and renegotiation.

**6.7 RIGHT TO INSPECT PLACE OF BUSINESS**

At reasonable times, the STATE may inspect those areas of the contractor's place of business that are related to the performance of a contract. If the STATE makes an inspection, the contractor must provide reasonable assistance.



## 6.8 LIQUIDATED DAMAGES

*Delete this section if a liquidated damages section is not included in the contract. Contracts may not include a penalty for nonperformance. [\[N.D.C.C. § 9-08-3\]](#). Contracts may not include a liquidated damages provision which fixes the amount of damages in the event of nonperformance unless certain circumstances exist. A liquidated damages clause should be used with the specific advice of the agency's assigned legal counsel. See the [Attorney General Contract Drafting and Review Manual](#).*

*STATE may suffer damages if CONTRACTOR fails to perform on schedule. Liquidated damages clauses assist STATE in being made whole if this occurs. While it is impracticable to compute—at the time of contracting—the exact damages caused by a future delay, the parties can agree on an amount that is a fair and reasonable estimate of damages due to STATE in the event of a delay by CONTRACTOR.*

The contract may include a clause setting forth an actual dollar amount designated as liquidated damages in order to make the STATE whole if it suffers damages due to a contractor's fault. The specific dollar amount for liquidated damages may be part of the negotiation process. The amount will be reasonable and not disproportionate to the damages to the STATE that are anticipated at the point of the contract and will not serve in any way as a penalty.

**ATTACHMENT INSERT NUMBER**

**TECHNICAL PROPOSAL EVALUATION WORKSHEET**

*Customize the technical proposal evaluation worksheet template:*

<https://ndgov.sharepoint.com/sites/TeamND/SitePages/Templates.aspx>

*The evaluation criteria set forth in Section 5 of this RFP must match the evaluation criteria in the Technical Proposal Evaluation Worksheet.*

*INSERT the RFP “Technical Proposal Evaluation Worksheet” attachment here or add as a separate attachment when using SPO Online.*

**ATTACHMENT INSERT NUMBER**

**CONTRACT**

*Choose appropriate Contract template and INSERT it here. (Customize as needed).*

1. *After reviewing Chapter 2 of the Office of the Attorney General's (AG) Contract Drafting and Review Manual, SELECT the contract that best fits your agency's needs and INSERT it here. Sample AG Contract available at <https://ndgov.sharepoint.com/sites/TeamND/SitePages/Templates.aspx>*

**OR**

2. *INSERT your agency's contract approved by legal counsel.*

**RFP EVALUATION COMMITTEE INTRODUCTION LETTER  
(January 2019)**

You may use this template to prepare an initial letter to your evaluation committee. Customize this template as needed.

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE ALL INSTRUCTIONS BEFORE PRINTING.**

**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

Date

To: Evaluation Committee

From: [Insert Name](#)  
[Insert Title](#)

Subject: Request for Proposal (RFP) #[Insert and Title](#)

Thank you for agreeing to participate on the RFP evaluation committee. The evaluation committee membership is as follows:

[Insert Name, Insert Title](#)  
[Insert Name, Insert Title](#)  
[Insert Name, Insert Title](#)

Please notify the Procurement Officer immediately if you feel you have a conflict of interest or have any schedule conflicts that may prevent you from fully participating in the evaluation process.

- A kick-off meeting for the evaluation committee will be held on [Insert Date, Time and Location](#).
- [If applicable and not included in the kick-off meeting \(delete this bullet if it does not apply\)](#): Rollout of proposals to the evaluation committee: [Insert Date, Time and Location](#)
- Evaluation committee review and scoring of proposals: [Insert Date Range](#)
- Initial technical evaluation scores to be completed and sent to the Procurement Officer: [Insert Date and Time](#)
- Vendor presentations/demonstrations are scheduled for: [Insert Date and Location](#).

The Procurement Officer will work with the purchasing agency to determine how proposals will be evaluated. Proposals will be evaluated by one of the following methods:

- Consolidation of Individual Scores
- Group Evaluation

The evaluation process is briefly outlined below:

1. The RFP closing date is [Insert date](#). Prior to that time, you will need to read the RFP, any amendments, and the Technical Proposal Evaluation Worksheet. All proposals must be evaluated using the criteria stated in the RFP. (See attached files)
2. The RFP Evaluation Guide is attached for your review. Please read through this document to help you understand the RFP evaluation process.

3. The Procurement Officer will complete the following tasks: conduct the opening of proposals, review proposals for compliance with any mandatory requirements and send rejection letters to offerors, if needed.
4. Responsive proposals will be provided to the evaluation committee members. Evaluators should read all the proposals one time without scoring. Evaluators should then read proposals a second time to take notes and determine appropriate scores. Evaluators should indicate any areas of concern, clarification needed, or additional information required to fully understand the proposals. Evaluators are required to add comments to support technical scores awarded.
5. If references were required, the Procurement Officer or designee will conduct reference checks and provide the results to the evaluators. The Procurement Officer or designee will also calculate cost proposal points, and determine if any clarifications are needed to understand the cost proposals. Points awarded for cost are not typically revealed to the evaluation committee until technical scores are finalized.
6. The evaluation committee will meet to discuss initial technical evaluation scores. The Procurement Officer and the evaluation committee will decide if further discussion is needed with any offerors before finalizing the initial technical scores. The Procurement Officer will combine initial technical scores with the cost proposal scores to determine the initial total evaluation scores. The evaluation committee will also discuss whether to short list the number of proposals being considered for the next stage of the evaluation process.
7. If discussions, demonstrations, presentations, or request for Best and Final Offers are conducted, evaluators will have the opportunity to adjust their technical scores. The Procurement Officer will provide evaluators with score adjustment sheets to document any adjustments to the technical scores. The Procurement Officer will update and compile all scores, including cost points.
8. After the final scoring, the Procurement Officer will collect all evaluation documents (unless collected earlier in the process) which will become open records after award. When the evaluation committee concludes the evaluation process and makes an award recommendation, the Procurement Officer will issue a Notice of Intent to Award.

If you have any questions, please contact me as soon as possible. If anyone contacts you about this RFP, please direct them to me as I am the point of contact for this RFP.

Thank you for your time and participation in the evaluation process.

Procurement Officer: [Insert Name](#)

Telephone: [Insert Telephone](#)

Email: [Insert Email](#)

## REQUEST FOR PROPOSAL (RFP) EVALUATOR'S GUIDE May 2019

### INTRODUCTION

This guide is intended to be used by Procurement Officers to provide instructions to the RFP Evaluation Committee to ensure evaluators understand the RFP process. The RFP process is subject to N.D.C.C. § 54-44.4-10 and N.D.A.C. Chapter 4-12-08 and the specifics of the Request for Proposal. If you have any questions regarding these guidelines, please contact the Office of Management and Budget, State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov).

### EVALUATORS

You have been selected to serve on the proposal evaluation committee for a Request for Proposal (RFP). The RFP process measures the quality and cost of proposals when purchasing goods and services, and it ensures fair treatment of vendors desiring to do business with the State. It's important for you as an evaluator to know what will be expected of you before committing to this duty. Being on an evaluation committee will require long hours of concentrated effort. Please let the Procurement Officer know if you have any reservations before you start.

### THE EVALUATION COMMITTEE

The Procurement Officer responsible for the procurement determines the number and makeup of the evaluation committee. Committees are usually comprised of three to five members, but they can be any size and an odd number is not required. The majority of members are usually State employees or public officials. The Procurement Officer may include a mixture of members from several departments of diverse backgrounds or include members who are not State employees or public officials.

- **Role of the Procurement Officer.** The Procurement Officer will be the evaluation committee chairman, and may or may not award points for proposals. The Procurement Officer has overall responsibility for all matters involving the procurement and its procedures, and they are responsible for seeing that applicable state laws, rules, and policies are followed.
- **Role of the Committee.** The role of the evaluation committee is to ensure thorough consideration and evaluation of proposals received. The evaluation committee remains actively engaged in the various stages of the RFP process until an award is made or the procurement is canceled.
- **Role of Committee Members.** You will be one of several evaluators on the evaluation committee. Your duty is to apply judgment in awarding points to the proposals considering only the evaluation criteria published in the RFP. You must be able to meet the time requirements to evaluate proposals, attend committee meetings, and vendor presentations or demonstrations.

### REPLACEMENT OF COMMITTEE MEMBERS

The Procurement Officer may replace any member on the committee or reconstitute the committee in any way the Procurement Officer deems appropriate. Any committee member may request to be replaced at any time. Replacement or removal may be suitable, for example, if an evaluator is unable to attend vendor demonstrations.

## **INITIAL MEETING OF THE EVALUATION COMMITTEE**

It is recommended that the Procurement Officer meet with the evaluation committee before distributing the copies of proposals received. The meeting will cover the proposal evaluation process to ensure each committee member has a clear understanding of scoring and how points will be assigned. The Procurement Officer should provide evaluators with a copy of the RFP, each proposal received, these guidelines, and the technical evaluation worksheet to be used when scoring proposals.

The Procurement Officer will develop a schedule for the evaluation process, based upon the tentative schedule laid out in the RFP. Remember, the committee members need to be given sufficient time to read and evaluate each proposal. Plan head for those members of the committee that need to travel to attend meetings; use telephone or video conferencing whenever practical.

**Determine the Evaluation Process:** The Procurement Officer will work with the purchasing agency to determine how proposals will be evaluated. Proposals will be evaluated by one of the following methods. Either method is acceptable, but your instructions to evaluators will vary depending upon the approach selected:

1. Consolidation of Individual Scores.
  - a. Each evaluation committee member reviews each responsive proposal and records their comments and scores on the evaluation worksheet.
  - b. The Procurement Officer compiles the resulting evaluations from all team members, resolves any factual oversights, makes sure the resulting team member notes are legible, and produces a summary that constitutes the evaluation committee's recommendation.
  
2. Group Evaluation.
  - a. Each evaluation committee member reviews each responsive proposal and makes notes about their observations and tentative scores on the technical evaluation worksheet.
  - b. The evaluation committee then meets as a group to review the individual proposals; the evaluation committee arrives at a group consensus as to the associated scoring and produces a summary that constitutes the evaluation committee's recommendation.

## **REQUEST FOR PROPOSAL**

It is very important that all evaluators read the RFP and any amendments issues to the RFP before attempting to evaluate proposals. The RFP describes all the requirements of the project, how proposals must be prepared, and how proposals will be evaluated.

## **CONFLICT OF INTEREST**

After proposals have been received and it is clear which companies are involved in the RFP, each evaluator must make sure that they do not have a potential conflict of interest. An example of a conflict of interest is a situation in which a state employee (or family member) owns a business that is competing for a state contract, and that state employee participates in the decision-making process to award that contract. It is important to avoid even the appearance of impropriety in the evaluation process. Disclose potential problems at the earliest possible time and make adjustments to keep the process fair to all competitors. Your



awareness of a potential conflict may not arise until you are well into the evaluation process. If there is any question about a potential conflict of interest, notify the Procurement Officer immediately and consult legal counsel. If a conflict of interest exists, that person cannot be a member of the evaluation committee.

The RFP Technical Evaluation Worksheet normally requires the evaluator to certify that they do not have a conflict of interest regarding the offeror being evaluated.

### **NONDISCRIMINATION**

Source selection may not be based upon discrimination because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation. [\[N.D.A.C. § 4-12-04-07\]](#)

### **RESPONSIVENESS**

The Procurement Officer must review all proposals for responsiveness before distributing them to the evaluation committee. This will prevent the evaluation committee from reviewing a proposal that can't be considered for award. An offeror, an individual or firm that submits a proposal, is considered "responsive" if their proposal has been prepared in full compliance with the requirements of the RFP. The evaluation committee cannot evaluate proposals deemed non-responsive. "Minor informalities" are insignificant omissions or nonjudgmental mistakes that can be waived without prejudice to other offerors (see [N.D.A.C. § 4-12-10-01](#)).

### **NO PROPOSALS OR ONLY ONE PROPOSAL RECEIVED**

If no proposals are received, the Evaluation Committee will need to consider why the competitive process failed. Consider contacting vendors on the bidders list to find out why they did not respond to the RFP. Consider whether the requirements were restrictive. Additional market research may be required to determine if the RFP requirements were appropriate and expand the bidders list. See the OMB website for templates for cancelling the solicitation.

If only one proposal is received, the evaluation committee should decide whether to proceed with the evaluation. See [N.D.A.C. § 4-12-11-08](#).

### **COST PROPOSALS NOT REVEALED UNTIL AFTER INITIAL TECHNICAL SCORING**

Usually the Procurement Officer calculates the points for cost evaluation. Having someone else review cost proposals is also recommended as a "double check." If there are questions about the cost proposal, the Procurement Officer may need to have clarification discussions. It is best practice that the evaluation committee not know the price until after it has compiled its initial technical scoring. In general this is done to avoid the possibility of the prices influencing the scoring when non-price criteria are being considered.

### **POINTS EARNED BEFORE EVALUATION COMMITTEE CONSIDERATION**

In some cases, proposals may be presented to you that have had some points awarded before you receive them. For example, the Procurement Officer determines the evaluation of price and adjustment for reciprocal preference prior to committee deliberations, or an accountant may review financials provided and provide financial stability scores. In these instances, such points are not subject to adjustment by the committee.

**TECHNICAL EVALUATION WORKSHEET**

A technical evaluation worksheet is used to guide the evaluation committee members in their review and evaluation of proposals. A technical evaluation worksheet provides a listing of individual evaluation criteria and the rating scale to be used when scoring the technical proposal. The resulting evaluation framework is very important because it:

- Provides a means for all evaluators to review and evaluate proposals in a consistent and objective manner;
- Helps the evaluators discuss differences in their initial review and, for those differences that are based on an incomplete or incorrect reading of the information presented, resolve them; and
- Documents the results of the evaluation committee's work and provides support for the final recommendations.

Evaluators MUST provide comments on the technical evaluation worksheet which explain or supports their scores for each evaluation criterion. Any notations made on the evaluation worksheet will become public record after contract award.

**RATING SCALE**

The rating scale establishes standards by which points are assigned to proposals, and it ensures that members of the evaluation committee scores each proposal with consistency. Here is an example:

<b>Experience and Qualifications RATING SCALE (20 Point Maximum)</b>	
<b>Point Value</b>	<b>Explanation</b>
0-4	None. Not addressed or response of no value
5-8	Fair. Limited applicability
9-12	Good. Some applicability
13-16	Very Good. Substantial applicability
17-20	Excellent. Total applicability

A zero value typically constitutes no response or an inability of the vendor to meet the criteria. In contrast, the maximum value should constitute a high standard of meeting the criterion. Each intermediate value should be set to cover some intermediate condition. Sometimes, you may have a criterion that can only be evaluated as “yes” or “no” (e.g., offeror can submit an electronic report in required format by noon Friday), then the rating scale would have only two possible values (i.e., the maximum points or a zero).

**NON- NUMERICAL SCORING SYSTEMS REQUIRE EXPLANATION**

If the RFP uses a non-numerical rating system, for the sake of fairness to the competitors, it is necessary for you to explain in writing how you came to rank the individual offers the way you did. The evaluation must be rational and consistently applied from competitor to competitor.

**COMMUNICATIONS WITH PROPOSER OUTSIDE COMMITTEE**

If the Procurement Officer has provided for the offerors to have communication with the evaluators, it will be normally be done while the committee is in session so all members can

benefit from the communication at the same time. Sometimes the Procurement Officer or designee may communicate directly with an offeror to obtain information to provide to the evaluation committee. It is not appropriate for an evaluation committee member to have direct communication with any of the offerors outside of the formal communications arranged by the Procurement Officer. Any attempt by one of the offerors to have direct or indirect communication with an evaluator outside of a committee session should be avoided and reported to the Procurement Officer.

### **INDEPENDENT JUDGMENT**

In evaluating proposals, you must exercise “independent judgment.” You have been entrusted with an essential part of an important public decision. Exercise your judgment in a manner that is not dependent on anyone else’s opinions or wishes. You can seek to increase your knowledge before you award points by asking questions and seeking appropriate information. Ensure, however, that you do not allow your actions to be influenced by another person’s wishes (i.e. a desire that you award more points to a particular offeror.)

It’s possible you will hear from other persons not on the evaluation committee (even if you don’t want to) about what you should do in awarding points to this or that proposal. For the most part these contacts by others will not rise to the level of serious concern unless you feel your independence is being compromised in some manner or your decisions are being influenced to the point of being dependent on another person’s desires. Report any attempts by others to improperly influence you to favor or disfavor a particular proposer to the Procurement Officer immediately.

The exercise of independent judgment applies not only to possible influences from outside the evaluation committee, but also to influences from within the committee. It’s normal and acceptable for there to be debate, even passionate debate, within the committee about how well a proposal meets the evaluation criteria. As an independent evaluator you may be swayed by debate in making your judgment about many points you wish to award, and that is perfectly OK. However, evaluators may not act in a concerted way to either favor or disfavor a particular proposal or group of proposals, as the evaluation would not be based upon the independent judgment of the individual evaluators.

Evaluators will have different scores because they are exercising independent judgements, so comments to support scoring decisions are important.

### **EVALUATING PROPOSALS**

We recommend that evaluation committee members read each proposal twice—the first time for understanding, without evaluating. Then, review and evaluate each proposal to measure the quality and degree of compliance with the evaluation criteria.

Evaluators **MUST** provide comments that lend insight regarding the scores awarded for an evaluation criteria. Remember, the evaluation worksheets become an open records after award, and offerors will read these comments to understand how their proposal was scored. Make notes and give initial ratings on the technical evaluation worksheet. Contact the Procurement Officer if you feel a proposal does not comply with a mandatory requirement (such as a minimum number or years’ experience or a required license, etc.) or if you have questions about the scoring process.

## **COMPARING OFFERS**

At first glance it may seem obvious that proposals should be compared to one another in order to select the best one. While it's true that a certain amount of comparison naturally occurs during the evaluation process, proposals must be evaluated or scored using the criteria set out in the RFP. Use the rating scale to help you score.

## **REFERENCE CHECKS – PAST EXPERIENCE**

Reference checks must be conducted if the RFP required offerors to provide references and those references were included as an evaluation criterion. At the initial meeting of the evaluation committee, decide who will be responsible for conducting reference checks. Reference checks may be conducted by a non-scoring staff person who reports the results to the evaluation committee. The reference checks must be conducted as soon as possible so the evaluation committee can consider the information received during the reference checks.

Commonly evaluators ask if they can consider their personal past experience with a vendor. For example, a proposal may be received from an incumbent. Relevant past experience may be considered, and should be documented on the evaluation score sheets.

## **EVALUATION COMMITTEE DISCUSSIONS**

After all evaluators have completed their initial proposal review and scoring, the evaluation committee should meet as a group to discuss the proposals and identify any areas needed for further clarification from an offeror. If aspects of a proposal need to be clarified, the Procurement Officer may communicate with an offeror to clarify uncertainties or eliminate confusion. This communication may not result in a material or substantial change to the proposal, but evaluators may modify their scores as a result of discussions and clarifications.

When the initial evaluation scores are finalized, the Procurement Officer will consolidate the individual scores and calculate the total score. If any scores appear unusual, the Procurement Officer should ask the evaluator to explain their scores, or reconsider if an error seems apparent. Evaluators should always have a reasonable, rational, and consistent basis for their scores, as the evaluator might be required to explain their scores in the event of a protest.

If a group evaluation is being conducted, the Procurement Officer will facilitate an evaluation committee meeting to make a group decision about the scores to be awarded for each evaluation criterion. The Procurement Officer must prepare a summary document that includes the comments regarding each proposal and scores awarded.

## **OFFERORS REASONABLY SUSCEPTIBLE FOR AWARD**

Proposals will be evaluated using a 100 point scale. The evaluation committee will award points based on the questions in the Technical Proposal Evaluation Worksheet. The technical proposal evaluation score and cost proposal evaluation score will be added together to determine the total evaluation score. After the initial evaluation, the evaluation committee may determine which proposals are reasonably susceptible for award and continue the evaluation process with only those offerors. These offerors may be required to provide a presentation or demonstration for the evaluation committee.

The final evaluation score will consider information received by the State, including but not limited to, discussions with offerors, demonstrations, presentations, site visits, reference checks, and best and final offers.

## **DISCUSSIONS WITH OFFERORS / DEMOS**

The Procurement Officer or evaluation committee normally conducts discussions or demos with offerors for the purpose of clarification and ensuring a good understanding of the proposal. The Procurement Officer and evaluation committee will determine the structure of the discussions or demos, and may limit these to specific sections of the proposals received or specific sections of the request for proposal.

Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion or demo and revision of proposals. The opportunity for discussions or demos, if held, must be extended to all offerors submitting proposals deemed reasonably susceptible for award. Do not use any “auction techniques” that reveal one offeror's price or technical information to another vendor.

## **BEST AND FINAL OFFER (BAFO)**

The best and final offer process is used to obtain additional information and invite offerors to revise their proposals. Sometimes, the evaluation committee may not be satisfied with the proposals or feel that the proposals could be improved upon. The evaluation committee may also decide that it is necessary to provide more information, disclose budget, or change some aspect of the RFP requirements. The Procurement Officer must invite offerors that are determined to be reasonably susceptible for award to submit best and final offers. The BAFO process is not initiated by an offeror's request for an opportunity to submit a best and final offer. Best and final offers are not necessary when the evaluation committee is satisfied with the proposals received.

Document which offerors will be notified and provided the opportunity to submit best and final offers. Customize the Request for Best and Final Offer template to describe the specific areas to be covered and the date and time in which the best and final offer must be returned. The technical proposals, terms and conditions, or price of the proposal may be altered or otherwise changed, provided the changes are within the scope of the request for proposals and instructions contained in the request for best and final offer. However, the BAFO process cannot be used to make material changes to the RFP requirements that potentially impact the competitive process, such as waiving of a mandatory requirement. Best and final offers are usually only requested once, but multiple requests for best and final offers are sometimes necessary.

If an offeror does not submit a best and final offer or a notice of withdrawal, the offeror's previous proposal is considered the offeror's best and final proposal, unless otherwise noted in the BAFO. After best and final offers are received, final evaluations will be conducted. BAFOs are normally evaluated as an adjustment to the scores already awarded by the evaluation committee.

## **ADJUSTMENT OF INITIAL EVALUATION SCORES**

Evaluators may make adjustments to their initial scores as a result of discussions with offerors, clarifications, demonstrations, presentations, reference check results, best and final offers, and further due diligence within the evaluation process. Use the RFP Adjustment of Initial Evaluation Score template to document the reasons for adjusting scores.

## **APPLYING PREFERENCE LAWS**

Before evaluating the cost proposal, the Procurement Officer must identify any proposals received from out-of-state offerors and apply North Dakota's preference law, as required by

N.D.C.C. § 44-08-01. Determine whether the state of the non-resident offeror has a preference law. Visit the OMB website for more information about applying reciprocal preference laws. Contact the State Procurement Office at 701-328-2740 for assistance.

N.D.C.C. § 44-08-02 defines a resident North Dakota bidder, seller, or contractor as “a bidder, seller, or contractor who has maintained a bona fide place of business within North Dakota for at least one year prior to the date on which a contract was awarded.”

**COST EVALUATION**

The Procurement Officer completes the evaluation of cost points and any adjustment for reciprocal preference. It is recommended that cost be double-checked by at least one other person (either someone else in the department or one of the evaluators after completing the initial technical evaluation). Cost is typically shared and discussed with the evaluation committee members after the initial technical evaluation has been completed.

Cost will be converted to points after making any adjustments for reciprocal preference,. The proposal with the lowest cost receives the maximum points allowed. All other proposals receive a percentage of the points available based on their cost relationship to the lowest cost proposal. Divide the lowest cost proposal received by the cost of the proposal being rated, and multiply the results by the maximum points. The result is the awarded points. This is determined by applying the following formula:

$$\frac{\text{Price of Lowest Cost Proposal}}{\text{Price of Proposal Being Rated}} \times \text{Maximum points available} = \text{Awarded Price Points}$$

Example: The total points available for cost in the RFP is forty (40) points. The cost of the lowest acceptable proposal is \$100,000. Therefore the lowest proposal cost of \$100,000 would be awarded forty (40) points. The second lowest acceptable proposal submitted a cost of \$125,000. The second lowest proposal cost of \$125,000 would be awarded thirty-two (32) points.

$$\frac{\$100,000}{\$125,000} = .80 \quad \times \quad 40 = 32 \text{ points}$$

The points awarded for cost are combined with the total points awarded for the technical proposal to determine the successful proposal.

On rare occasion, an RFP evaluation criteria will have a 0% weight on cost. This may be appropriate when the budget or compensation is fixed.

**AWARD DECISION**

Before making the award, the Procurement Officer must ensure the quality control of the evaluation process by checking any mathematic computations and ensuring only those criteria identified were considered. The integrity of the process and state procurement system is grounded upon the Procurement Officer and evaluation committee adhering to the procedures and evaluation requirements stated in the RFP.

**NOTICE OF INTENT TO AWARD**

After the successful proposal is selected, a notice of intent to award will be sent to all offerors and any other interested parties. The Notice of Intent to Award contains the following:

- Name of the purchasing agency



- Solicitation number and name
- Lists all vendors that submitted proposals
- Name of the successful vendor.
- Notice of the right to protest the award in writing to the Procurement Officer within seven days after the interested party knew or should have known about the award decision.
- Procurement Officer's contact information.

The Letter of Instruction for Successful Offeror provides the successful offeror(s) with notice about what is needed before a contract can be executed.

## **DEBRIEF**

The Notice of Intent to Award template invites offerors to contact the Procurement Officer if they have questions. Offering to debrief offerors is a best practice, and Procurement Officers are encouraged to offer debriefs. The Procurement Officer may proactively contact vendors who were not selected for award and offer to schedule a debrief. A debrief is simply an explanation of the evaluation process, and may include a discussion of proposal scores, summary of evaluators' notes, and a "thank you" for taking the time to submit a proposal in response to the State's RFP. Helping offerors understand the evaluation process and the score they received may lessen the likelihood of protests.

## **REJECTION OF ALL PROPOSALS**

On occasion, a decision may be made to reject all proposals received. Reasons might include: none of the responses met the specifications, the prices received were not reasonable or exceeded the budgeted amount, or competition was insufficient (e.g. few proposals received). Provide a written justification whenever a decision is made to reject all proposals. Notify all vendors that responded to the solicitation and explain why all proposals were rejected. The solicitation process may be repeated or canceled altogether.

## **REQUESTS FOR PUBLIC INFORMATION**

After the Notice of Intent to Award is issued, the proposals and contents of the procurement file become subject to state open records laws. Procurement Officers will receive requests for copies of proposals and evaluation documents. Remember, information can only be confidential if determined to be so under state or federal law. Any requests for information received by an evaluator, should be directed to the Procurement Officer.

Offerors will very commonly mark their entire proposal as "confidential." Before releasing the proposal to the requestor, the Procurement Officer should contact the firm that submitted the proposal and inform them that a request for public information has been received. Inform the offeror that ND has an open records law, so information can only be kept confidential if it is determined to be so under North Dakota or federal law. If an offeror's entire proposal is marked "Confidential", ask the offeror to indicate specifically what information or sections they consider confidential. Requests for public information must be answered promptly, so give the offeror a deadline to respond to your request. You can also send the offeror the link to the Office of the Attorney General's open records guide: <https://attorneygeneral.nd.gov/open-records-meetings/manuals-and-guides>

If the request for public information includes the section that the offeror feels is confidential, contact your assistant attorney general to help determine whether or not that section can be made open or must be kept confidential.

## **PROTESTS, APPEALS, AND LAWSUITS**

Protests, appeals, and lawsuits are a part of procurement life. It is possible that one or more of these actions could occur over the procurement for which you serve as an evaluator. It is very common practice for a protesting offeror to review the scoring of individual evaluators. This is why it is essential that evaluators work hard to score the offers in a consistent and explainable manner. Protests are often the result of a lack of communication.

***Thank you for your participation in this RFP process!***



## **RFP PRESENTATION OR DEMONSTRATION INSTRUCTIONS (January 2019)**

Use this template as a guide when inviting offerors to make a presentation or demonstration to the evaluation committee. Customize this template as needed.

Indicate any information that you want the offerors to explain or present. Develop an agenda or format for the offeror presentations or demonstrations to help you consistently measure the quality of each proposal and the qualifications of the offeror.

Items to consider when scheduling the presentation or demonstration and developing the agenda are:

- Determine the location of the presentation or demonstration. The location of the demonstration can be established either at the onset of the RFP or after the selection of the offerors' to make presentations. Refer to the presentation/demonstration requirements established in the RFP.
- Provide the offeror an outline of any features, capabilities, processes, or scenarios that are to be demonstrated.
- The Procurement Officer may furnish the offeror with test data and a description of desired outputs.

The Procurement Officer should prepare the RFP Evaluation Score Adjustment template for the evaluators to use upon the completion of the demonstrations or presentations to make technical score adjustments as needed. The Procurement Officer will provide evaluators with a copy of the agenda so they can follow along during the demonstration or presentation.

The template includes instructions and notes in *blue bold italics* for an agency to consider. After you have read the instructions, please delete the text.

Word choices and information that needs to be inserted are indicated by *blue text*. For example: *will or will not*. Be sure to update and change any remaining *blue text* to black.

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE ALL INSTRUCTIONS BEFORE PRINTING**

## **Sample Email to Schedule Presentation or Demonstration**

The State would like to invite your firm to provide an [onsite or WebEx](#) demonstration. The State will provide a list of specific items to be covered during the demonstration by [INSERT DATE](#). The State requests that the demonstration be no more than [INSERT TIME](#) hours in length and concentrate solely on the solution being offered. The demonstration should be on a live or test system versus PowerPoint or screen shots.

The Offeror is not limited on the number of presenters. The State requests that you confirm how many individuals will be attending and provide their names and titles. The STATE will have [INSERT #](#) individuals attending the demonstration.

Demo Type: [Onsite or WebEx](#)  
When: [INSERT DATE\(S\) and TIME](#)

Please confirm your firm's availability to provide a demonstration on the selected date(s) and time. If you have any questions, please let me know.

## **Sample Email to Confirm a WebEx Demonstration**

This email confirms your firm is scheduled for a WebEx demonstration on [INSERT DATE AND TIME](#). The agenda is attached for your review. Please provide a WebEx or similar format and call in number for the demonstration.

A couple of reminders: [ADD OR DELETE REMINDERS AS NEEDED](#)

- The demonstration should be on a live or test system versus PowerPoint or screen shots.
- The Offeror is not limited on the number of presenters. The State requests that you confirm how many individuals will be attending and provide their names and titles. The STATE will have [INSERT #](#) individuals attending the demonstration.
- In the event of unforeseen circumstances on the day of the demonstration you can reach me at [INSERT PHONE NUMBER](#).

Please let me know if you have any questions.

## **Sample Email to Confirm an Onsite Demonstration**

This email confirms your firm is scheduled for an onsite demonstration on [INSERT DATE AND TIME](#). The agenda is attached for your review. The demonstration will be held at:

- [Insert location, including room number\(s\)](#)
- [Insert address and city](#)
- [Include any special instructions such as accessing the building via a specific door, any special security requirements, and how to get to the room](#)

A couple of reminders: [ADD OR DELETE REMINDERS AS NEEDED](#)

- The demonstration should be on a live or test system versus PowerPoint or screen shots.
- The Offeror is not limited on the number of presenters. The State requests that you confirm how many individuals will be attending and provide their names and titles. The STATE will have **INSERT #** individuals attending the demonstration.
- In the event of unforeseen circumstances on the day of the demonstration you can reach me at **INSERT PHONE NUMBER**.

Please let me know if you have any questions.

## **Sample Agenda**

Offeror: **INSERT OFFEROR NAME**

Demo Type: **Onsite or WebEx**

Time: **INSERT TIME CT**

Date: **INSERT DATE**

### **Purpose:**

The purpose of this demonstration is to gather additional information related to offeror's proposal submitted in response to RFP # **INSERT RFP#** for a **INSERT RFP TITLE**. The demonstration will provide the State with a better understanding of the proposed solutions key capabilities and functions.

### **Format:**

The State requests that the presentation / demonstration be no more than **INSERT TIME** hours in length, concentrate solely on the solution being offered, and cover the agenda items listed below as applicable to the solution being offered. The demonstration should be on a live or test system versus PowerPoint or screen shots.

The demonstration will be interactive and offeror's do not need to follow the specific order of items listed below; however, it is the State's preference. The State may ask questions during the demonstration for clarification about topics being covered. Offeror's are free to ask questions during the demonstration to help focus their presentation.

### **Agenda:**

1. Brief Introductions – 10 minutes max
2. Demonstration
  - a. List any pre-determined features or capabilities to be demonstrated
  - b. Any specific questions you want this offeror to address
  - c. Any scenarios / processes you want addressed
3. Question and Answer/Closing

**SAMPLE RETURN NOTICE  
(MARCH 2017)**

Instructions: Samples that are not destroyed during the evaluation process may be returned to submitting bidders. The following text can be copy/pasted into an email to provide vendors information regarding return shipping instructions of these samples.

Please provide an adequate amount of time for the bidders to make return shipping or pickup arrangements.

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE ALL INSTRUCTIONS BEFORE PRINTING**

**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

Date

Business Name  
Contact Person  
Address  
City, State Zip Code

Subject: Return of Sample for [Insert Solicitation Number, Title](#)

Dear [Insert Name](#),

Thank you for responding to the above State of North Dakota solicitation. Your company submitted [Insert the description](#) sample with your response. Thank you for providing this sample for our use during the evaluation process.

If you would like your sample returned, please contact me to coordinate a pick up at our location or to have it shipped to you directly. Your company is responsible for all costs associated with the return of this sample.

If you do not request return of the sample by [Insert date](#), the sample will become property of the State [N.D.A.C. § 4-12-08-11](#).

If you have any questions regarding this notification, please feel free to contact me.

Sincerely,

[Insert name](#)  
Procurement Officer  
E-mail: [Insert email](#)  
Telephone: [Insert number](#)  
TTY Users call: 7-1-1

## **SOLICITATION AMENDMENT (March 2017)**

A solicitation amendment is a document used to revise, delete or add information contained in the solicitation documents. Use a solicitation amendment to provide all potential offerors or bidders with the same information at the same time.

A solicitation amendment can be used to:

- Revise or delete solicitation information, requirements or terms and conditions.
- Respond to questions or requests for clarification that cannot be answered by directing an individual to a specific section in the solicitation.
- Provide information related to a Pre-Proposal Conference, Pre-Bid Conference or Site Inspections, such as questions and answers or recording of the event. If the conference was mandatory, you may limit the distribution to only those companies that were in attendance.

Distribute the solicitation amendment to all companies who received a copy of the original solicitation. Remember to update the bidders list with bidders not currently on the bidders list or contact information of the individual submitting the question.

You may require a company to acknowledge the receipt and compliance with the amendment when material changes are made to the requirements, such as specification or indemnification or insurance. A receipt acknowledgement is not needed for amendments to change deadlines or correct administrative errors. Failure to return a receipt acknowledgement may be waived as a minor informality. [N.D.A.C. § 4-12-10-01](#)

If the solicitation was posted to the State Procurement Online System, the solicitation amendment must also be posted to the State Procurement Online System.

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE ALL INSTRUCTIONS BEFORE PRINTING**

**STATE OF NORTH DAKOTA**  
**AGENCY OR INSTITUTION NAME**  
**ADDRESS**  
**CITY, STATE ZIP**

**SOLICITATION AMENDMENT *Insert #***

Date

Solicitation Number: *Insert number*

Title: *Insert title*

Deadline for Receipt of *Insert Bids or Proposals*: *Insert date, time, A.M. or P.M., CT or MT*

Solicitation Issued: *Insert date issued on SPO*

Note: Select option or options; revise or delete as needed

Option 1 - Revise or delete solicitation information, requirements or terms and conditions

This solicitation is amended as follows:

*Insert # and Title of Section or Subsection* is amended as follows: *Insert amendment details.*

EXAMPLE: 1.05 Prior Experience Requirement is amended as follows: Delete the first sentence in its entirety and replace with, "A minimum of three years' experience in providing management consulting services is required."

Option 2 - Respond to questions or requests for clarification. It is recommend that you organize questions received in the order of the solicitation sections.

*Insert # and Title of Section or Subsection* established a Deadline for Submission of Questions and Requests for Clarification. The responses, including any necessary amendments, are as follows:

Questions related to Section *Insert Section number and title*: *Insert name of document and # and Title of Section or Subsection*

1. Question: *Insert question*

Response: *Insert response*

No amendment necessary.

2. Question: *Insert question*

Response: *Insert response*

Amendment: *Insert # and Title of Section or Subsection* is amended as follows: *Insert amendment details OR No amendment necessary if nothing is changing*

EXAMPLE: Questions related to Section 3.04 Prior Experience

1. Question: Can the years of experience be reduced from 5 years to 3 years?

Response: Yes, after review of required prior experience, the RFP will be amended.

Amendment: 3.04 Prior Experience Requirement is amended as follows: Delete the first sentence in its entirety and replace with, "A minimum of three years' experience in providing management consulting services is required."

Option 3 - Provide information related to a Pre-proposal Conference, Pre-Bid Conference or Site Inspections

Insert # and Title of Section or Subsection established a Insert Pre-proposal, Pre-Bid, or Site Inspection held at Insert time, date and location details. Insert details of how to obtain the information from the Pre-Proposal, Pre-Bid, or Site Inspection.

EXAMPLE: RFP Section 1.08 Pre-proposal Conference established a Pre-proposal Conference held at 10:00 A.M., Central Time, on Thursday, November 14, 20xx, in the Peace Garden Room on the ground floor of the State Capitol building in Bismarck, North Dakota. The questions and answers addressed in the conference, along with changes made to the solicitation, are as follows: Insert question, response and amendment or no amendment necessary or are included in the audio recording of the proposal conference available at: Insert link

Optional: Bidders are instructed to acknowledge receipt of and compliance with this amendment by signing below and returning the Solicitation Amendment Acknowledgement page with your solicitation response.

Questions regarding this amendment must be submitted in writing to the Procurement Officer.

Insert name

Procurement Officer

E-mail: Insert email

Telephone: Insert number

TTY Users call: 7-1-1



Note: Delete this page if not requiring acknowledgement or receipt of amendment

**AMENDMENT ACKNOWLEDGEMENT**

Solicitation Number: [Insert number](#)

Title: [Insert title](#)

Solicitation Amendment Number: [Insert number](#)

By my signature below, I hereby acknowledge receipt of and compliance with this amendment.

<b>COMPANY NAME</b>
<b>SIGNATURE</b>
<b>PRINTED NAME</b>
<b>TITLE</b>
<b>DATE</b>

**SOLICITATION CANCELLATION  
(March 2017)**

Use this template to reject all bids or proposals and cancel the solicitation.

Review [N.D.A.C. § 4-12-11-09](#). This rule requires the Procurement Officer to provide all bidders or offerors the reason all bids or proposals were rejected.

The records retention schedule for solicitations not executed is one year.

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE ALL INSTRUCTIONS BEFORE PRINTING**

**STATE OF NORTH DAKOTA**  
**INSERT AGENCY**  
**INSERT ADDRESS**  
**CITY, STATE ZIP**

**SOLICITATION CANCELLATION**

Date

Solicitation Number and Title: [Insert Solicitation Number and Title](#)  
Closing Date: [Insert Month, Date, Year Time \(A.M. /P.M.\)](#), CT  
Issued: [Insert Date Issued](#)

It has been determined to be in the best interest of the State to reject all responses received and cancel the solicitation for the following reason ([Insert Explanation Below](#))

- [The State has determined that insufficient funds are available,](#)
- [The solicitation contained defective specifications](#)

Option:

[A new solicitation will/will not be issued.](#)

OR

[The State has not determined whether a new solicitation will be issued.](#)

We appreciate the time and efforts of each bidder that responded to this solicitation. We invite all bidders to participate in future bidding opportunities for the State of North Dakota. If you have any questions, please feel free to contact me.

[Insert name](#)

Procurement Officer

E-mail: [Insert email](#)

Telephone: [Insert number](#)

TTY Users call: 7-1-1



**INFORMAL BID - TELEPHONE QUOTE**  
 OFFICE OF MANAGEMENT AND BUDGET  
 CENTRAL SERVICES - STATE PROCUREMENT OFFICE  
 SFN 2706 (07-2017)

Agency Name		Procurement Officer		Required Delivery Date	
Ship To Address (F.O.B.)			City	State	ZIP Code

Item Number	Quantity	Item	Specifications

**BIDDER 1****BIDDER 2****BIDDER 3**

BIDDER 1			BIDDER 2			BIDDER 3		
Company			Company			Company		
Contact		State	Contact		State	Contact		State
Telephone Number	Email Address		Telephone Number	Email Address		Telephone Number	Email Address	
Quote Date	Delivery Date		Quote Date	Delivery Date		Quote Date	Delivery Date	
Product Quoted	Unit Price	Total Price	Product Quoted	Unit Price	Total Price	Product Quoted	Unit Price	Total Price
TOTAL PRICE			TOTAL PRICE			TOTAL PRICE		
Reciprocal Preference			Reciprocal Preference			Reciprocal Preference		
Purchase Order/P-Card			Purchase Order/P-Card			Purchase Order/P-Card		

**WORK ACTIVITY CENTER DETERMINATION  
(March 2017)**

Use this template to document the written determination to make a direct purchase of commodities or services from a Work Activity Center In accordance with [N.D.C.C. § 25-16.2](#) and [N.D.A.C. § 4-12-09-06](#).

This written determination must be retained in the procurement file.

Contact the State Procurement Office at 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance or to provide suggestions.

**NOTE: DELETE ALL INSTRUCTIONS BEFORE PRINTING**

To: Procurement File

From: [Insert name](#), Procurement Officer

Date: [Insert date](#)

Subject: Determination to Award to a Work Activity Center for [Insert commodity or service](#)

The award of a direct purchase made to [Insert name of work activity center](#) is based on the determination of the following:

- a. The work activity center is licensed by the Department of Human Services, located in North Dakota, and operated by a nonprofit corporation in accordance with [N.D.C.C. § 25-16.2](#);
- b. The commodities or services are acceptable; and
- c. The commodities or services are offered at a fair market price.

## WORK ACTIVITY CENTERS

Facility Name	Goods	Services	Contact Person	e-Mail	Telephone	Address
4th Corporation	Sports stakes, memorial crosses, cleaning rags, decorative wreaths, outdoor spinner décor, infant & toddler tutu	Janitorial services	Kodi Keller	<a href="mailto:kodik@4thcorporation.com">kodik@4thcorporation.com</a>	(701) 947-2147	120 - 11th Street North New Rockford, ND 58356
ABLE, Inc.		Janitorial services, sewing (Bowman), recycling, packaging	Mary Anderson	<a href="mailto:manderson@ableinc.net">manderson@ableinc.net</a>	(701) 456-3000	653 -19th Street West Dickinson, ND 58601
Agassiz Enterprises		Recycling clothes into work rags	James Breidenbach	<a href="mailto:jbreidenbach@agassizenterprises.org">jbreidenbach@agassizenterprises.org</a>	(701) 775-2566	2105 Gateway Drive Grand Forks, ND 58201
Alpha Opportunities, Inc.	Custom bungee cords, centerpieces for events, Ezimate handles	Janitorial services, assembly, collating, mailings, recycling, lawn/yard maintenance, newsletters, billings	Laurie Podoll	<a href="mailto:aolpodoll@daktel.com">aolpodoll@daktel.com</a>	(701) 252-0162	P.O. Box 824 Jamestown, ND 58402
CHI Friendship		Janitorial/Cleaning, laundry, mailing newsletters, office work, lawn service, car washes, popcorn, jewelry making, baking	Dori Leslie	<a href="mailto:dorilesie@catholichealth.net">dorilesie@catholichealth.net</a>	(701) 235-8217	801 Page Drive Fargo, ND 58103
Community Living Services, Inc.		Janitorial services, Recycling	Jeff Anderson	<a href="mailto:vocdirector@communitylivingservices.org">vocdirector@communitylivingservices.org</a>	(701) 232-3133	111 North University Fargo, ND 58102
Dacotah Foundation			Doreen Eichele, Chief Operations Officer	<a href="mailto:doreene@dacotahfoundation.org">doreene@dacotahfoundation.org</a>	(701) 223-4517	600 South 2nd Street Suite 308 Bismarck, ND 58504
Dakota East (Developmental Center Community Services - Grafton)*	Engraved signs for businesses, safety, and customized signage for individual customers, name tags, restroom signs, identification and desk plates, surveying stakes, buttons, laminating and fire starters	Janitorial, stocking for retail stores, shredding, lawn/yard service, firewood, aluminum can recycling, contract work, mailings, labeling and food service	Susan Foerster	<a href="mailto:sfoerster@nd.gov">sfoerster@nd.gov</a>	(701) 352-4260	701 West 6th Street Grafton, ND 58237
Development Homes Inc.		Janitorial services, assembly, shredding	Sandi Marshall	<a href="mailto:smarshall@developmenthomes.org">smarshall@developmenthomes.org</a>	(701) 335-4000	3880 South Columbia Rd Grand Forks, ND 58201
Enable, Inc.			Jon Larson	<a href="mailto:jlanson@enablend.org">jlanson@enablend.org</a>	(701) 255-2851	1836 Raven Drive Bismarck, ND 58501
Fraser, Ltd			Sandra Leyland	<a href="mailto:sleyland@frasertld.org">sleyland@frasertld.org</a>	(701) 232-3301	2902 S University Dr Fargo, ND 58103
HAV-IT Services	Safety flags, safety vests, bags (material), clothing (material)	Janitorial services, sewing, collating, sorting, woodworking, shredding, recycling, assembly	Gerald Wilcox	<a href="mailto:geraldw@hav-it.org">geraldw@hav-it.org</a>	(701) 324-4636	409 West Brewster St Harvey, ND 58341
HIT, Inc.	Box lunches, Fresh fruit trays, Fresh veggie trays, Veggie pizza, Fruit pizza, Snack mixes, Cookies, Catering, Fire hydrant markers, Wooden gift crates (rough hewn w/ or w/out buffalo or ND brand), Wrap-It games (aka Norwegian golf)	Janitorial services, lawn care, yard work, painting (fire hydrants and more), laundry services (rags, towels, etc.), collating and preparing pieces for mailing; packaging, assembly	Laura Kourajian	<a href="mailto:mremboldt@hitinc.org">mremboldt@hitinc.org</a>	(701) 667-8612	2640 Sunset Drive NW Mandan, ND 58554
KALIX (formerly Minot Vocational Adjustment Workshop)	Cookies	Laundry, collating, recycling	Jodi Johnson	<a href="mailto:jjohnson@kalixnd.org">jjohnson@kalixnd.org</a>	(701) 852-1014	605 27th St. SE PO Box 1030 Minot, ND 58701-1030
Lake Region Corporation		Janitorial services, housekeeping, recycling, packaging, wrapping, simple assembly, collating, shredding, mailings, grounds cleaning	Deb Johnson	<a href="mailto:djohnson@lakeregioncorp.com">djohnson@lakeregioncorp.com</a>	(701) 662-8681	224 - 3rd Street SW Devils Lake, ND 58301
Open Door Center	Poly bags for Navy/govt, downspout caddies, cut rags, new & used books, Pride of Dakota products, Thrift store (Lisbon)	Janitorial services, lawn care, snow removal, laundry services, collating, packaging	Mary Simonson	<a href="mailto:msimonson@odcvc.com">msimonson@odcvc.com</a>	(701) 845-1124	209 - 2nd Street SE Valley City, ND 58072
Opportunity Foundation	Cotton rags, firestarts, custom-made buttons	Car wash, recycling, daycare, collating, stuff envelopes, shredding, household cleaning	LuAnn Casler	<a href="mailto:lcasler_2000@yahoo.com">lcasler_2000@yahoo.com</a>	(701) 774-8593 x.116	P.O. Box 1627 Williston, ND 58802
Prairie Harvest Mental Health			Debra Johnson	<a href="mailto:deb@prairieharvest.net">deb@prairieharvest.net</a>	(701) 795-9143	930 North 3rd St Grand Forks ND 58203

Facility Name	Goods	Services	Contact Person	e-Mail	Telephone	Address
Pride, Inc.	Custom buttons	Janitorial services, book binding, collating, packaging, file preparation for microfilming, shredding, mailings (personnel are certified by USPS Mail Piece Quality Control Program), envelope stuffing, labeling, shrink wrapping, assembly, lawn services, linen stamping, raffle ticket booklets, inter-office mail delivery	Lori Sitter	<a href="mailto:loris@prideinc.org">loris@prideinc.org</a>	(701) 258-7838	PO Box 4086 Bismarck, ND58502
Progress Enterprises			Jeff Paiement	<a href="mailto:jeff4@csicable.net">jeff4@csicable.net</a>	(701) 252-6994	1601 Hwy 20 N Jamestown, ND 58402
Red River Human Services Foundation	Badges, Buttons, Emblems, ID cards, Convention badges & name tags (adhesive / non-adhesive), Presentation folders, Tests/answer sheets/scoring keys (for EDP systems), Decals (screen printed), Recycled decals and stamps, Recycled rags, shop towels, and wiping cloths, Recycled textiles, fibers, household linens, and piece goods, Coupon books, Sales books, Recycled tickets, coupon books, sales books, and strip books	Janitorial services, design and implementation of electronic document management systems, document conversion and litigation support services, copying/printing, wide format (blueprints/floor plans) copying/printing, scanning, shredding, secure document destruction services, envelope stuffing, paper storage, web doc hosting, document QC	Wendy Kahler	<a href="mailto:wkahler@rrhsf.org">wkahler@rrhsf.org</a>	(701) 235-0971	701 6th Street S. Wahpeton, ND 58075
Rehab Services, Inc.		Janitorial services, design and implementation of electronic document management systems, document conversion and litigation support services, copying/printing, wide format (blueprints / floor plans) copying/printing, scanning, shredding, secure document destruction services, envelope stuffing, paper storage, web doc hosting, document QC			(701) 839-4240	112 2nd Ave. SW Minot, ND 58701
Tri-City CARES, Inc.	Rags, pin-on buttons, garbage can holders, wishing wells, headbands, booklets	Shredding paper, crushing pop cans, copying & collating	Cheryl Evensvold	<a href="mailto:execdir@midstatetel.com">execdir@midstatetel.com</a>	(701) 628-2990	PO Box 423 Stanley, ND 58784
Vocational Training Center	Stakes & lathe	Mailings, envelope stuffing, labeling, collating, stapling, filing, hot-glue & taping, banding items together, laminating tags, rolling calendars into turbes, sorting, packaging, assembling multistep projects such as bags/folders for conferences, refurbishing TV remote controls, counting items to a package, assembly of boxes and filling with requested items, shredding, stuff door hanger packets	Steve Pederson	<a href="mailto:steve@fargovtc.org">steve@fargovtc.org</a>	(701) 241-4858	424 9th Ave South Fargo, ND 58103