

# **STATE OF NORTH DAKOTA**

North Dakota Department of Commerce  
Division of Community Services  
1600 E Century Ave  
PO Box 2057  
Bismarck, ND 58502-2057

## **REQUEST FOR PROPOSAL (RFP)**

**RFP Title:** Program Design and Implementor for the HOMES and HEEHRA programs

### **Programs Assistance**

**RFP Number:** 110.7-23-095

**Issued:** March 15, 2024

## TABLE OF CONTENTS

SECTION ONE – INSTRUCTIONS.....	4
1.1 PURPOSE OF RFP.....	4
1.2 COOPERATIVE PURCHASING.....	4
1.3 PROCUREMENT OFFICER CONTACT INFORMATION.....	4
1.4 DEFINITIONS.....	4
1.5 RFP SCHEDULE.....	5
1.6 ASSISTANCE TO INDIVIDUALS WITH A DISABILITY.....	5
1.7 SECRETARY OF STATE REGISTRATION REQUIREMENTS.....	5
1.8 BIDDERS LIST REGISTRATION.....	5
1.9 STATE PROCUREMENT WEBSITE (SPO ONLINE).....	6
1.10 AMENDMENTS TO THE RFP.....	6
1.11 DEADLINE FOR QUESTIONS AND OBJECTIONS.....	6
1.12 PREPROPOSAL CONFERENCE OR SITE INSPECTION.....	7
1.13 OFFER HELD FIRM.....	7
1.14 OFFEROR RESPONSIBLE FOR COSTS.....	7
1.15 TAXES.....	7
1.16 F.O.B. POINT AND FREIGHT.....	7
1.17 PROPOSAL RECEIPT DEADLINE – LATE PROPOSALS REJECTED.....	7
1.18 PROPOSAL OPENING.....	7
1.19 AMENDMENT AND WITHDRAWAL OF PROPOSALS.....	8
1.20 NEWS RELEASES.....	8
1.21 CONFLICT OF INTEREST.....	8
1.22 ATTEMPT TO INFLUENCE PROHIBITED.....	8
1.23 COLLUSION PROHIBITED.....	8
1.24 PROTEST AND APPEAL.....	8
1.25 SPECIFICATIONS PREPARED BY NON-STATE PERSONNEL.....	9
1.26 SUPPLIER REGISTRATION (PAYEE).....	9
SECTION TWO – BACKGROUND.....	10
2.1 BACKGROUND INFORMATION.....	10
2.2 BUDGET.....	10
SECTION THREE – SCOPE OF WORK.....	11
3.1 SCOPE OF WORK.....	11
3.2 APPLICABLE DIRECTIVES.....	11
3.3 SCOPE OF WORK AND DELIVERABLES.....	11
A. REQUIREMENTS.....	11
B. LOCATION OF WORK/TRAVEL.....	15
C. STATE-FURNISHED PROPERTY/SERVICES.....	15
D. RISK MANAGEMENT.....	15
E. TECHNICAL EXHIBITS.....	15
F. PROJECT MANAGEMENT PLAN.....	15
G. CONTRACT TERM, SCHEDULE, AND DELIVERABLES.....	16
3.4 EXPERIENCE AND QUALIFICATIONS.....	16
A. Minimum Qualifications.....	16
B. Experience.....	16
C. Background Check.....	16
SECTION FOUR – PROPOSAL INSTRUCTIONS.....	18
4.1 PROPOSAL PREPARATION.....	18
4.2 PROPOSAL SUBMISSION INSTRUCTIONS.....	18
4.3 PROPOSAL FORMAT.....	19
4.4 TECHNICAL PROPOSAL.....	19
4.5 COST PROPOSAL.....	22
SECTION FIVE – AWARD AND PROPOSAL EVALUATION.....	23
5.1 AWARD.....	23

5.2	RESPONSIVENESS .....	23
5.3	RESPONSIBILITY – SUPPLEMENTARY INVESTIGATION .....	23
5.4	EVALUATION CRITERIA .....	23
5.5	COST PROPOSAL EVALUATION .....	24
5.6	CLARIFICATIONS OF PROPOSALS – DISCUSSIONS .....	24
5.7	RIGHT OF REJECTION .....	24
5.8	PRESENTATIONS, DEMONSTRATIONS, AND SITE VISITS .....	24
5.9	THIRD-PARTY SECURITY QUESTIONNAIRE .....	24
5.10	BEST AND FINAL OFFERS .....	25
5.11	TIE PROPOSALS .....	25
5.12	NEGOTIATIONS .....	25
5.13	NOTICE OF INTENT TO AWARD.....	26
5.14	CONTRACT APPROVAL .....	26
5.15	EVALUATION DEBRIEFING .....	26
SECTION SIX – CONTRACT INFORMATION.....		27
6.1	NORTH DAKOTA CONTRACTUAL REQUIREMENTS – BACKGROUND .....	27
6.2	STATE CONTRACT TERMS AND CONDITIONS – OFFEROR’S PROPOSED CHANGES .....	27
6.3	CONTRACT PROVISIONS .....	27
6.4	CONTRACTUAL TERMS AND CONDITIONS – NO MATERIAL CHANGES .....	28
6.5	SCOPE OF WORK .....	30
6.6	CONTRACT TERM.....	30
6.7	RIGHT TO INSPECT PLACE OF BUSINESS .....	30

**ATTACHMENTS**

- Attachment 1 - Technical Proposal Evaluation Worksheet
- Attachment 2 - Contract
- Attachment 3 - Cost Proposal
- Attachment 4 – IT Application Questionnaire

**Commented [BBL1]:** Is this the IT contract? If not it should be.

**Commented [KCM2R1]:** Worked with Commerce legal and added IT Contract Terms and Conditions.

## SECTION ONE – INSTRUCTIONS

### 1.1 PURPOSE OF RFP

The State of North Dakota, acting through its Department of Commerce, Division of Community Services (the STATE) is soliciting proposals for a program design and implementation for the HOMES and HEEHRA programs.

### 1.2 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.

### 1.3 PROCUREMENT OFFICER CONTACT INFORMATION

The Procurement Officer is the point of contact for this RFP. Offerors shall direct all communications regarding this RFP to the Procurement Officer. Do not add the Procurement Officer to any marketing distribution lists.

PROCUREMENT OFFICER: Chad Keech

EMAIL: [ckeech@nd.gov](mailto:ckeech@nd.gov)

PHONE: 701-328-2767

TTY Users call: 7-1-1

A person or firm interested in submitting a proposal should ensure all communications related to the procurement are only with the designated point of contact. This section does not restrict communication with state officials or any member of the legislative assembly unless the state official or member of the legislative assembly is involved directly with the procurement for which the person is interested or has submitted a bid or proposal ([N.D.C.C. § 54-44.4-01.1](#)).

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

For the purposes of this RFP, the acronyms and defined terms are as follows:

Acronym or Term	Name or Definitions
API	Application Programming Interface
Contractor	Entity that has an approved contract with the State of North Dakota
CT	Central Time Zone
DOE	U.S. Department of Energy
HEEHR	Section 50122 of the IRA (High-Efficiency Electric Home Rebate Program), also known as Home Energy Rebate Program

HOMES	Section 50121 of the IRA (Home Energy Performance-Based, Whole-House Rebates), also referred to as home Efficiency Rebates.
IRA	Inflation Reduction Act
OMB	Office of Management and Budget
NDSEO	North Dakota State Energy Office
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

EVENT	DATE and TIME
RFP issued	March 15, 2024
Deadline for submission of Questions and Objections	March 28, 2024 @ 12:00 PM CT
Solicitation Amendment with responses to Questions issued approximately (if required)	April 3, 2024
Deadline for receipt of proposals (Solicitation Closing)	April 15, 2024
Demonstrations or presentations.	April 22-24, 2024
Proposal evaluation completed by approximately	April 26, 2024
Notice of intent to award issued approximately	May 28, 2024
Contract start approximately	June 1, 2024

### 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 SECRETARY OF STATE REGISTRATION REQUIREMENTS

The North Dakota Secretary of State has registration requirements for individuals and businesses transacting business in North Dakota. If the successful Offeror is determined to have a registration requirement with the North Dakota Secretary of State, they must be registered before the contract award and registration must remain active for the duration of the contract period ([N.D.C.C. § 54-44.4-09.1](#))

- See the OMB [Guidelines to Vendor Registry](#) for more information.

Visit the Secretary of State's [Vendor Registration](#) webpage for information on registration requirements and fees. Visit [FirstStop](#), the Secretary of State's business and licensing software, for online form options.

- Check the [Business Records](#) database to see if a business is registered.
- Contact Secretary of State's office by [email](#) or call 701-328-2900 (choose menu item 2, then option 1).
- If you need to register, fees apply.
- Vendors may need to obtain businesses licenses. See the [list of licenses required of businesses](#) in the State of North Dakota. The link includes information on who to contact, application fees, renewal dates, and the legal reference.

### 1.8 BIDDERS LIST REGISTRATION

Individuals or business entities desiring to be notified of bidding opportunities may apply to be placed on the Bidders List. ([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). Placement on the Bidders List does not guarantee a vendor will receive notice of every solicitation ([N.D.A.C. § 4-12-05-01](#)). There are no fees to register as a bidder. The online application form requests contact information for the receipt of solicitation notices. The Bidders List application and SPO Online system use commodity codes to identify categories of goods, services, and information technology.

The commodity codes used for this solicitation are: [Insert all applicable 5-digit commodity codes.](#)

Visit the OMB website for instructions and the online Bidders List Application:

### [Bidders List Registration Website](#)

For assistance with Bidders List Registration, contact State Procurement Help Desk at 701-328-1728 or [infospo@nd.gov](mailto:infospo@nd.gov).

#### **1.9 STATE PROCUREMENT WEBSITE (SPO ONLINE)**

This solicitation has not been posted to the State Procurement Office Online website. The Procurement Officer will contact all vendors solicited regarding any amendments to this solicitation and will provide any award notices.

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.

#### **1.10 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 their proposal any required acknowledgements of amendments to the RFP.

#### **1.11 DEADLINE FOR QUESTIONS AND OBJECTIONS**

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.

Commented [EHMK3]: Can we post this online? I am not sure we will hit all the contractors interested without having a public place

Commented [KCM4R3]: Yes, it will be posted on SPO online.

### 1.12 PREPROPOSAL CONFERENCE OR SITE INSPECTION

The STATE will not hold a preproposal conference or site inspection for this RFP.

### 1.13 OFFER HELD FIRM

Offerors must hold proposals firm for at least 180 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.

### 1.14 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.

### 1.15 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 request 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 Form 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 their 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 their website for more information.

### 1.16 F.O.B. POINT AND FREIGHT

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.

### 1.17 PROPOSAL RECEIPT DEADLINE – LATE PROPOSALS REJECTED

An Offeror is solely responsible for ensuring their 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 their proposal has been received. Proposals delivered late will be rejected pursuant to [N.D.A.C. § 4-12-08-13](#).

### 1.18 PROPOSAL OPENING

A public opening will not be held.

Commented [EHMK5]: How do we manage taxes associated with the purchase of appliances?

Commented [KCM6R5]: Taxes would be paid by the vendor and subs. Is this listed on the grant document?

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.

#### **1.19 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 their proposal and shall provide evidence that a substantial mistake has been made, at which point the STATE may permit withdrawal.

#### **1.20 NEWS RELEASES**

Offerors shall not make any news releases related to this RFP without prior approval of the STATE.

#### **1.21 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 official 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.

#### **1.22 ATTEMPT TO INFLUENCE PROHIBITED**

Offerors must not give or offer to give anything to a state employee or official that might influence or appear to influence procurement decisions. Suspected attempts to influence will be handled in accordance with [N.D.A.C. § 4-12-04-05](#).

#### **1.23 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](#).

#### **1.24 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, protests 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](#).



**1.25 SPECIFICATIONS PREPARED BY NON-STATE PERSONNEL**

When a purchasing agency has specifications prepared by someone other than a state employee or official on behalf of the STATE, that person or business entity must be excluded from submitting bids or proposals in accordance with [N.D.A.C. § 4-12-06-06](#).

**1.26 SUPPLIER REGISTRATION (PAYEE)**

The successful Offeror will be required to complete Supplier Registration, if not already registered as a Supplier. Any individual or business who will be receiving payment from a state agency or higher education institution must complete a registration process to collect important financial and taxpayer information. Payments are generally made by check or automatic clearing house (ACH), and taxpayer information must be collected in compliance with IRS requirements. The State and North Dakota University System (NDUS) have separate financial systems and vendor registration processes.

## SECTION TWO – BACKGROUND

### 2.1 BACKGROUND INFORMATION

The North Dakota Department of Commerce is the state's lead agency for image building, travel promotion, business development, job opportunity awareness and community development with the focus on leading efforts to attract, retain and expand wealth and talent.

Department of Commerce will be a liaison for the state agencies and provide guidance and developed marketing templates.

Sections 50121 and 50122 of the Inflation Reduction Act (IRA), Pub. L. 117-169 (August 16, 2022) authorize the U.S. Department of Energy (DOE) to administer the Home Energy Rebate Programs. These Home Energy Rebate Programs are designed to help American households save money on energy bills, upgrade to clean energy equipment and improve energy efficiency, and reduce indoor and outdoor air pollution. The U.S. Department of Energy (DOE) estimates that the home energy efficiency and electrification consumer rebates authorized will save households up to \$1 billion annually.

Home Efficiency Rebates (IRA Section 50121) will award grants to state energy offices to provide rebates that discount the price of energy-saving retrofits in single-family and multi-family buildings. The Home Electrification and Appliance Rebates (IRA Section 50122) will award grants to state energy offices and tribal entities to develop and implement a high-efficiency electric home rebate program. Together, these two programs comprise the Home Energy Rebate Programs authorized through the Inflation Reduction Act.

In accordance with federal law, funding is only available to States, U.S. Territories, and the District of Columbia. No other entity types may be considered for this federal funding. On behalf of the State of North Dakota, the North Dakota State Energy Office, acting as the state's federally designated State Energy Office, is preparing to apply for the two grant opportunities. The grant funding type will be formula funds to the state in the amount of \$74,459,530.00 (\$37,338,470.00 for Section 50121 and \$37,121,060.00 for Section 50122).

On March 23, 2023, DOE determined that a state may access a portion of the administrative funds (known as early administrative funding) from the IRA Sections 50121 and 50122 allocations to allow the state to begin to hire and conduct a minimum set of planning and administration activities to prepare for submitting Home Energy Rebate Programs.

On July 27, 2023, DOE released a full set of program requirements and application instructions for the Home Energy Rebate Programs. The full application requirements include the preparation and submission of several plans, including: Community Benefits Plan; Education and Outreach Strategy; Consumer Protection Plan; Utility Data Access Plan; Privacy and Security Risk Assessment; and Market Transformation Plan. Each of these plans comprise the State Implementation Blueprint and must be completed and submitted to DOE 60 days prior to program launch. The Market Transformation Plan must also be completed and submitted to DOE within 1 year of receiving the Rebate grant awards from DOE.

### 2.2 BUDGET

The funds for payment of this contract are already appropriated and identified.

**Commented [KCM7]:** Cameron- update with more Commerce resource information.

**Commented [LJ8]:** Perhaps add links to enrich the background information - such as the relevant page numbers of the Inflation Reduction Act book - <https://www.whitehouse.gov/wp-content/uploads/2022/12/Inflation-Reduction-Act-Guidebook.pdf>

Is there any ND legislation that should be added here for informational purpose?

**Commented [LJ9R8]:** How about "cheat sheets" to the sections? <https://www.naseo.org/Data/Sites/1/documents/tk-news/residential-programs-one-pager-updated.pdf>

## SECTION THREE – SCOPE OF WORK

### 3.1 SCOPE OF WORK

This scope of work consists of the following tasks, but North Dakota Office of Renewable Energy and Energy Efficiency also known as the North Dakota State Energy Office (NDSEO) can accept additional information the Offeror may believe pertinent to the successful execution of HOMES and HEEHRA programs. Please note, all work submitted must fall within the five activities as defined in the Administrative and Legal Requirement Document (ALRD) from DOE.

NDSEO seeks to contract services for comprehensive strategy for the design and implementation of Section 50121 and Section 50122 of the Inflation Reduction Act (IRA) (collectively referred to as the Home Energy Rebate Programs or Programs herein), which are approximately a combined \$74,459,530.00 million set of programs for the State of North Dakota. Payment for this contract will come from the 20% administrative allowance. The Home Energy Rebate Programs consist of two separate federal programs (the Home Efficiency Rebates and the Home Appliance Rebates) that will require separate federal application documents and reporting throughout the life of the program. NDSEO will develop and administer these programs jointly under a single contract with a third-party administrator. With guidance and coordination with NDSEO, the Offeror will develop and write comprehensive plans and implementation blueprints that meet federal program requirements, engage with relevant stakeholders and the public, in some cases provide contractors to complete the work required, administer rebates to eligible applicants until fund exhaustion, prepare all applicable compliance-related materials, and provide technical assistance.

This statement of requirements follows the current federal program requirements and application instructions. DOE may continue to issue additional guidance and clarifications before finalizing the program design and state application. Should there be any discrepancy between this statement of requirements and the federal program requirements, please consult North Dakota State Energy Office for guidance.<sup>1</sup>

### 3.2 APPLICABLE DIRECTIVES

The Offeror is responsible for identifying and complying with all state and federal requirements that apply to the contract.

### 3.3 SCOPE OF WORK AND DELIVERABLES

#### A. REQUIREMENTS

##### Task A: Implementation and Development

The early administration funds released by DOE for the HOMES and HEEHRA programs must be distributed within ten years. The Offeror must be able to complete work within the allotted five years and maintain contact with NDSEO program staff to show key progress throughout the contract period.

In consultation with NDSEO, the Offeror shall develop all elements of the implementation strategy and prepare the written narratives for the Applications and State Implementation Blueprints. Iterative drafts shall be provided to NDSEO for review, feedback, and edits. NDSEO will serve as the final approver on the content of the program design and applications/blueprints. NDSEO will be responsible for submission to DOE and will serve as the Prime Applicant for the federal award, as required by DOE.

The Offeror will ensure that all aspects of the Application Checklist provided by DOE are met, in accordance with the federal requirements and guidance. In developing the process, the Offeror will recommend which portions, if any, should be deferred to the Implementation Blueprints. The final

Commented [LJ10]: In RFPs, we often call this "section" value-added and put it at the end, asking offerors to specify any value-added work they would bring to the contract.

Commented [LJ11]: Can we link to these programs in the RFP?

Commented [EHMK12]: Have we covered that they will be required to do the work in another section?

Commented [LJ13]: Specify what is meant by program design, if this is written and electronic public education elements. Ohio's RFP listed suggested resources for distribution - is that what's meant?

Commented [LJ14R13]: After reading again, I think we're looking for the five-year implementation strategy. Is that right?

<sup>1</sup> <https://www.energy.gov/scep/home-energy-rebate-programs-guidance>

decision to defer certain application elements will be decided by NDSEO after consultation with the Offeror. Funds available through September 2031.

Commented [LJ15]: Consider moving timeline to the end of the Task.

### **Task B: Implementation Plan**

The Offeror must submit a plan on how to implement both programs based on findings from previous work and create a plan as they work with NDSEO staff. This plan should highlight the efforts that will be made to attempt to meet the Justice 40 goals. The Offeror must submit an implementation plan where they will participate in the entire process. In consultation with NDSEO, the Offeror shall develop the Programs to achieve, at minimum, the goals and objectives consistent with programmatic guidelines. The Plans must comprehensively describe the concrete steps and milestones to achieve the goals and objectives. Willing to plan with either modeled, measured, or hybrid approach. Plan must include:

1. Community Benefits Plan
2. Education and Outreach Strategy
3. Consumer Protection Plan
4. Utility Data Access Plan
5. Privacy and Security Assessment
6. Market Transformation Plan
7. Workforce Development Plan

Following the approved Plans developed, the Offeror shall provide operational services and deliver the elements fully outlined in the approved Plans. To the extent possible, the Offeror shall develop process documents and standard operating procedures that document all necessary actions and steps for the successful operations of the program.

As may be necessary or prudent, the Offeror shall enter into subcontracts or partner with various entities to perform all necessary program functions in a timely and efficient manner. NDSEO shall be consulted, as appropriate, before subcontracts are executed that will require the use of program funds. NDSEO reserves the right to enter into related contracts or agreements with the same subcontractors for the delivery of program services and funds.

Commented [KCM16]: [Efranz, Hanson, Maida R](#) Do you feel this answers your question above or needs more detail?

Commented [EK17R16]: [Koch, Chad M](#) thanks - works for me.

The Offeror will provide NDSEO with the required deliverables for each tranche of the Rebate program for submission to the DOE.

Commented [LJ18]: For the purpose of the RFP, this should maybe be reworded asking them to disclose any subcontractors.

The Offeror shall provide all necessary information and documentation, in the form and manner as requested by NDSEO, to support the submission of compliance documentation to the DOE.

Timeline for HOMES and HEEHRA program implementation and the role of the Offeror within that plan. Timeline will address timeframe for strategic planning with CAP Agencies, Universities/Colleges, Trade Unions, Utilities and Sub-Contractors; training for contractors and milestone dates for deployment to intended recipients. Sub-Contractors must be licensed, and insured, and will be reviewed by implementor. Additionally, outreach with North Dakota Stakeholders during the entire Implementation Plan, in conjunction with NDSEO staff. NDSEO reserves the right to adjust Implementation Plan, as the programs evolve within the State, and will coordinate with Offeror on identifying additional Stakeholders within the State. Adjustments will be discussed during the forementioned weekly calls.

### **Task C: Distribution Strategy**

A primary and pressing need that NDSEO recognizes is the distribution of resources to North Dakota residents interested in the HOMES and HEEHRA programs. In preparation of the Plans, the Offeror shall work collaboratively with NDSEO on Marketing Research and Distribution Strategy.

#### **DELIVERABLES:**

1. Advertising Strategy

- a. Account director and staff who can provide day-to-day contact and are responsible for overall project management, project coordination, presentation of opportunities, strategy and budget oversight.
  - b. Provide creative services for the development of all advertising as needed, including art direction, copywriting, scripting and editing.
  - c. Provide creative services for promotional and printed materials.
  - d. Contract production services for materials necessary to complete advertising, including photography and videography.
  - e. Assistance with preparing presentations and graphics.
  - f. Monitor advertising efforts, including research and analytic reporting.
  - g. Collaborate with North Dakota Commerce staff and affiliate groups to ensure alignment with strategies and tactics.
  - h. Provide new insights into target markets.
2. Media Strategy
- a. Develop media buy budget(s); monitor and report appropriately with targets toward Justice 40 eligible applicants.
  - b. Plan and place media advertising.
  - c. Prepare and present media buy recommendations to include, but not limited to: television, radio, print, online/interactive, social media and out-of-home.
  - d. Monitor placement to ensure accuracy and completion of all paid media schedules.
  - e. Collaborate with Commerce team and groups to ensure alignment with strategies and tactics.
  - f. Provide new insights into target markets.
3. Public and Media Relations and Social Media
- a. Provide recommendations on public relations strategies with emphasis on targets including Justice 40 applicants.
  - b. Provide approach to strategy and creative development.
  - c. Provide talking points, speeches, presentations and press releases.
  - d. Provide speeches, presentations for potential community and town hall meetings.
  - e. Creation of press releases.
  - f. Create and manage editorial calendar with timelines.
  - g. Proactively contact media as it relates to strategies and goals.
  - h. Assist in the strategy and implementation of social media marketing, including maintaining social media presence, providing or publishing posts and monitoring feedback.
  - i. Provide reports on key performance indicators.

Commented [IC19]: Which groups?

Commented [KCM20]: Provide town hall meetings, speeches, presentations etc.. New deliverable

This task will require collaboration with NDSEO staff and include flexibility as the needs of North Dakota residents are recognized throughout the proposal period.

**TASK D: Distributing Funding and Reporting (Program Delivery Plan)**

NDSEO anticipates a large need for effective tracking of both funding and follow-up reports for both the 50121 and 50122 programs. The Offeror should submit plans on how to distribute funds and report effectively, equitably, and efficiently on results for North Dakota residents including but not limited to Justice 40 goals. The Offeror should outline their plans to distribute and create the following practices. The Offeror will only use funds from the programs.

Commented [IC21]: from or for

Tracking for Funding and Reporting:

1. Provide North Dakota portal, platform and API for North Dakota residents and eligibility for rebate programs. The portal, platform and API must always comply with DOE guidance.
2. Provide electronic tracking system accessible to Offeror and NDSEO to track funding.
3. Provide electronic tracking system accessible to Offeror and NDSEO to track reporting used for internal resources and DOE requirements.

Commented [IC22]: I think we should spell out API to "application programming interface" to avoid any confusion or add to a glossary,

I also think this may be too specific. Perhaps stating a web-based application such as an API creates a bit more flexibility here.

Commented [LJ23]: This gets tricky with ND IT if the API needs to integrate with any state systems.

4. Work with North Dakota universities, Colleges Native American tribal entities, organizations that support Justice 40 goals, CAP Agencies and utility companies to distribute funds and implement projects, as well as oversee Energy Auditor Training.
5. Address Fraud, Waste, and Abuse
6. Standards and Guidelines: The proposed information technology solution is required to comply with the STATE's information technology standards and guidelines unless an exemption is obtained. Security standards are available upon request by contacting the Procurement Officer for this RFP. Information Technology Department (ITD) Enterprise Architecture Standards and Guidelines can be found at: <https://www.nd.gov/itd/standards>.
7. IT Application Questionnaire: Proposals must include a response to the IT Application Questionnaire – Attachment 4. The attachment contains technical questions for this solution. Provide answers to each question in the attachment.

Submit a work proposal on the required resources and needs for North Dakota residents. Create a detailed plan based on the current DOE guidance for the HOMES and HEEHRA programs with potential deliverables during the proposal period. Include an explanation on the contractor's ability to be flexible with changing guidelines as released by DOE. Offeror must plan to keep up to date on all program guidance.

#### **Task E: Program Evaluation and Collaboration with NDSEO Program Staff**

The Offeror will be expected to effectively communicate and collaborate with NDSEO program staff throughout the early administration of the programs process. Program plans are subject to change as more information is received from the DOE.

1. The Offeror shall meet with NDSEO staff within thirty (30) days of contract approval to discuss the project and walk through the federal requirements and necessary elements for the successful development of the Applications and Implementation Blueprints.
2. The Offeror shall provide a list of names and contact information for all of the Offeror's staff working on the project, including any Executives, high-level Management staff, and subcontractors.

Examples of proposal evaluation and collaboration with NDSEO program staff includes, but is not limited to:

1. Creation of a compliance roadmap based on program needs and DOE guidance.
2. Engagement with external stakeholders and agencies to determine needs for residents, manufacturers, distributors, and contractors.
3. Creation of timeline beyond the five-year work period assigned to the awarded Offeror.
4. Breakdown of requirements for HOMES and HEEHRA programs, NDSEO responsibilities, proposer(s) responsibilities, and must track DOE guidance as it is released.

The Offeror must submit a plan for collaboration with NDSEO program staff and how they may be adaptable in continuing program evaluations. As DOE releases more guidance on both the HOMES and HEEHRA programs, it is imperative that the Offeror remains flexible and up to date on all information to best implement the programs and advise NDSEO staff. Deliver a plan on application creation, breakdown of work, and potential additional support if full application funds are received.

#### **Task F: Reporting and Status Updates**

To ensure effective and efficient rollout of both the HOMES and HEEHRA programs, Offeror must submit a report/update that highlights key dates and measurable program milestones. With

information coming from DOE on a rolling basis, it is critical that the proposer can adjust the timeline as needed and work closely with NDSEO program staff to ensure work stays on track.

Throughout the project, the Offeror shall meet with NDSEO staff to ensure that the project is achieving intended objectives and to address key questions or concerns, including NDSEO's desire for flexibility and ability to respond to quick turnaround requests. The Offeror shall attend a weekly call (as needed) with NDSEO's Administrator to ensure that the project stays on time and on budget. Additionally, depending on the project needs, the Offeror shall, in consultation with NDSEO, make other team members available to attend meetings. These meeting may be conducted via online videoconferencing tools such Microsoft Teams or Zoom.

The Offeror shall submit monthly progress reports to NDSEO's Administrator no later than the 15th of the month following each reporting period. The Progress Reports shall include information on the following subjects in the order indicated, with appropriate explanation and discussion:

- a. Name of contractor
- b. Title of the project
- c. Agreement number
- d. Reporting period
- e. Project progress including a summary of progress, findings, data, analyses, and results from tasks carried out in the covered period.

#### B. LOCATION OF WORK/TRAVEL

Development of the plan can be performed within an office environment. Travel may be required for stakeholder engagement and other meetings, as well as possible conferences. Travel will also be necessary during program implementation for meetings and for monitoring the program elements. Travel and costs associated with travel will be part of the contract proposal.

#### C. STATE-FURNISHED PROPERTY/SERVICES

The STATE will not provide a workspace. It is up to the contractor to provide space for their employees.

The STATE will provide management support for the project.

#### D. RISK MANAGEMENT

The contractor will take appropriate measures to ensure the safety of their 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.

#### E. TECHNICAL EXHIBITS

Exhibit A

#### F. PROJECT MANAGEMENT PLAN

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.
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 the development of a Project Closeout Report to include feedback regarding the project implementation and any lessons learned.

## G. CONTRACT TERM, SCHEDULE, AND DELIVERABLES

### 1. Contract Term

This contract will be for a five (5) year period, with options five (5) one (1) year renewal options, and an option to extend for a 12 month period. See the attached contract.

### 2. Schedule and Deliverables

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, at 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: TBD after DOE Approval
- b. "Kick off" meeting/conference call: [Within two weeks of contract signing](#)
- c. First contractor work period: Initial Blueprint Planning- TBD after DOE Approval
- d. Contractor submits [First draft of Blueprint Plan: 90 Days after initial planning meeting to State](#)
- e. Review of report by STATE: 45 days
- f. STATE provides contractor with comments for revision as needed: [Monthly](#)
- g. Contractor submits [update report](#) to the STATE: monthly; weekly if requested
- h. Contract Closeout Plan: Submitted Plan to State Q1 of 2031

## 3.4 EXPERIENCE AND QUALIFICATIONS

### A. Minimum Qualifications

No specific minimum qualifications have been set for this RFP.

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 to the RFP and will be rejected.

### B. 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 meet the following minimums:

1. The Contractor shall have at least three (3) years of experience administering at least one (1) similar rebate and incentive programs.
2. The Contractor shall have at least three (3) years of experience managing federal funds and associated compliance and reporting requirements.

### C. Background Check

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,

Commented [KCM24]: Cameron please review.

Commented [EHMK25R24]: Items to include: Planning completion; 45 days for us to approve; distribution and implementation plan; 45 days for us to approve, implementation start, yearly full review of contract

Start with what our metrics are and work backward to assure we can clearly measure everything they are doing



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-a-criminal-history-record-check/>

## SECTION FOUR – PROPOSAL INSTRUCTIONS

### 4.1 PROPOSAL PREPARATION

The STATE discourages overly lengthy and costly proposals. An Offeror must prepare their 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 the 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

#### **UPLOAD RESPONSE THROUGH THE STATE PROCUREMENT ONLINE SYSTEM (SPO ONLINE):**

Offeror **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. We recommend uploading your 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 the 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 50 MB 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. 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**

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

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**

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 for Tasks A-F in the scope of work within the STATE's project schedule. Offeror's should outline their plans to research and distribute the following deliverables and any examples of similar successful projects in conjunction with the Marketing Team.
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 where fraud could occur and be related to the project and describe how those potential issues and problems will be avoided and if necessary, 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.

Commented [KCM26]: Check with section 4. Task C add examples for similar work.

#### **SECTION 4 –EXPERIENCE AND QUALIFICATIONS**

**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. Offeror must provide a designated executive level contact that will act as a point of contact for any issues that need escalation or to discuss the needs of the STATE. This point of contact will be required to participate in any requested demonstration or presentation requested during the RFP process. They will discuss how the contract will be supported and how the Offeror and STATE will work together to ensure a successful outcome;
4. If the Offeror has vacant positions, identify the job description and minimum qualifications for staff members to be recruited;
5. 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
6. 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 their rights and responsibilities.

#### **References**

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 provide the requested information in a timely fashion.

#### **SECTION 5 – CONTRACT PROVISIONS**

Offeror shall review the RFP Section 6 and the STATE's contract – Attachment 3

The proposal must 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. Offeror is 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 discretion. 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 their 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 at <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.

### **4.5 COST PROPOSAL**

**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 3or prepare a Cost Proposal following the same format.

Provide a brief narrative (not longer than two pages) in support of each Cost Proposal item. The narrative should be focused on clarifying how the proposed prices correspond directly to the Respondent's Technical Proposal.

**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.

## SECTION FIVE – AWARD AND PROPOSAL EVALUATION

### 5.1 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 the most advantageous in consideration of the RFP evaluation criteria.

### 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 within 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, 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

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: 80 Points

- A. Scope of Work Strategy- 10
- B. Task A- 10 Points
- C. Task B- 10 Points
- D. Task C- 5 Points
- E. Task D- 5 Points
- F. Task E- 5 Points
- G. Task F- 5 Points
- H. Experience and Qualifications – 30 Points

#### Cost Proposal Evaluation: 20 Points

Commented [BBL27]: It would be easier to have just a total of 80 points and not break it down. The way it is now there is no flexibility in scoring.

Preference Laws: Any applicable preference laws will be applied. For more information, refer to the [Guidelines to Preference Laws](#).

#### **5.5 COST PROPOSAL EVALUATION**

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 reciprocal preference law, N.D.C.C. § 44-08-01, was repealed effective August 1, 2023.

The cost amount used for evaluation may 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).

The lowest Cost Proposal will receive the maximum number of points allocated to cost. Cost proposals will be evaluated using the following formula.

##### **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**

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 maximum of 3 hour presentations 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 In person or Via Microsoft Teams Conference Call

Schedule: [Provide an approximate or actual date and time, CT. Update the RFP Schedule.](#)

##### **On-Site Visit.**

No on-site visit will be conducted by the evaluation committee.

#### **5.9 THIRD-PARTY SECURITY QUESTIONNAIRE**

The Third-Party Risk Management (TPRM) program helps to classify, evaluate, and monitor all third-party Vendors to provide reasonable assurance that inherent and overall risk associated with each third-party Vendor relationship is understood and aligned to the overall security objectives at the STATE.



The STATE will accept certification of the Offeror's solution (not the 3<sup>rd</sup> party hosting environment) via FedRAMP, HITRUST, or StateRAMP in lieu of completing the Third-Party Security Questionnaire (TPSQ). The STATE may have questions for these certified Offerors.

Offerors whose proposals receive the highest scores and are reasonably susceptible for award, and do not hold the certifications listed above, will be required to complete the TPSQ. The TPSQ is a series of questions, filled out by the Offeror and any related personnel. The TPSQ assesses the Offeror security controls to determine if they are sufficient or pose any risk to the STATE.

After review of the Offeror TPSQ response, the Procurement Officer will be notified of all risks identified during the review of the security survey.

Offerors may be given the opportunity to remediate identified risks. Any costs associated with the remediation may be included in the Offeror total proposed cost if the STATE requests a best and final offer and will become part of the cost evaluation.

If an Offeror will not or cannot remediate identified risks, the Agency Head or Designee may choose to accept ownership of the risk.

After award, the results of the TPSQ will be made available to the Offeror upon request and are otherwise a confidential document.

#### **5.10 BEST AND FINAL OFFERS**

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 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 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.

#### **5.11 TIE PROPOSALS**

In the event that two or more proposals contain identical pricing or receive identical evaluation scores, [N.D.C.C. § 54-44.4-05.1](#) requires preference must be given to a resident North Dakota bidder, seller, vendor, offeror, or contractor as defined in [N.D.C.C. § 44-08-02](#). In the event the tie is not resolved by application of this law, [N.D.A.C. § 4-12-11-05](#) will be applied.

#### **5.12 NEGOTIATIONS**

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 [Bismarck](#), 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 negotiations in a timely manner
- Fails to negotiate in good faith
- Is unable to successfully negotiate contract terms that are acceptable to the STATE
- Indicates that it cannot perform the contract within the budgeted funds

In accordance with [N.D.C.C. § 54-44.4-13.1](#), the STATE and contractor may negotiate payment terms for all commodities and services procured. If a date for payment is not specified in this contract, payment must be made pursuant to section [N.D.A.C § 13-01.1-01](#).

#### **5.13 NOTICE OF INTENT TO AWARD**

After proposals have been evaluated and the successful Offeror selected, a 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.

#### **5.14 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.

#### **5.15 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 2. 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

Contract Type.

The contract type will be as follows:

Firm Fixed Price with Adjustment. The contractor will be required to hold the price firm during the first year, 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 contractor 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. 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.

Commented [KCM28]: Probably something like this?

Commented [KCM29R28]: Monthly payments.

Commented [HC30R28]: Looks good

#### 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.

- The STATE will make payments based on a monthly invoicing. 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 the invoice.

Commented [KCM31]: Does this seem logical?

Commented [HC32R31]: Yes, that's logical

#### 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.

#### 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 the contractor with a written description of the additional work and request that the contractor submit proposal for accomplishing the scope of work. Contractor will not commence additional work until all parties agree in writing.

#### Purchasing Card

The 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 OMB and the Attorney General's Office, shall prepare 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 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 performs an inspection, the contractor must provide reasonable assistance.

**6.8 FLOW DOWN REQUIREMENTS**

The Recipient agrees to apply the terms and conditions of this Award, as applicable, including the Intellectual Property Provisions, to all subrecipients (and subcontractors, as appropriate), as required by 2 CFR 200.101, and to require their strict compliance therewith. Further, the Recipient must apply the Award terms as required by 2 CFR 200.327 to all subrecipients (and

subcontractors, as appropriate), and to require their strict compliance therewith.

## ATTACHMENT 1

### TECHNICAL PROPOSAL EVALUATION WORKSHEET

Proposals that are determined to be responsive to the requirements of the RFP will be evaluated by the Evaluation Committee using the evaluation criteria stated in the RFP. For assistance with RFP evaluations, contact the State Procurement Office at [infospo@nd.gov](mailto:infospo@nd.gov) or 701-328-2740.

- If a group evaluation is conducted, the Evaluation Committee will produce one worksheet that summarizes the comments and scores. If individual scores are being compiled, each member of the Evaluation Committee will prepare an evaluation worksheet with their comments and scores.
- Evaluation Committee members must read the Request for Proposal and have a clear understanding of the requirements and evaluation criteria before attempting to evaluate proposals.
- Evaluators should read all proposals twice. First, read all proposals for a general understanding without scoring. Next, read proposals with the intent to complete the evaluation worksheet which includes taking notes and documenting any questions/clarification needed.
- Each evaluation criterion is assigned a specific number of points. The questions under each evaluation criterion help Evaluators measure the quality of the Offeror's response. Do not assign points to individual questions, instead, award a total score for each evaluation criterion.
- Evaluators will assign an initial score for each evaluation criterion and provide comments which explain their scores.
- Evaluation documents become an open record upon award.

#### RATING SCALE FOR TECHNICAL PROPOSAL SCORING

The rating scale provided is intended to help Evaluators perform evaluations. Evaluators are exercising independent judgement so variation in scoring is normal. However, the Procurement Officer may question scoring that appears to be unsupported. Evaluators may assign any value for a given evaluation area from 0 to the maximum number of points allowed per evaluation criterion. A zero value typically constitutes no response or an inability of the Offeror to meet the criteria. In contrast, the maximum value should constitute a high standard of meeting the criteria. For example: "Experience and Qualifications" is an evaluation area weighted at 25% of the total possible points on a 100 Point Scale, so any value between 0 and 25 points can be awarded. An example of the rating scale is below:

Experience and Qualifications Rating Scale (25 Point Maximum)	
Point Value	Explanation
0-5	Poor. Not addressed or response of no value
6-10	Fair. Limited applicability
11-15	Good. Some applicability
16-20	Very Good. Substantial applicability
21-25	Excellent. Total applicability

#### COST PROPOSAL

Cost proposals are normally scored by the Procurement Officer or selected evaluators, and cost proposals are given to the Evaluation Committee after technical proposals have been evaluated. Prompt payment discounts are not considered in evaluating cost.

#### ADJUSTMENT OF INITIAL EVALUATION SCORES



After the initial scoring, the Evaluation Committee should meet to discuss proposals and identify areas where clarification or more information is needed. Evaluation scores may be adjusted 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.

**TECHNICAL PROPOSAL EVALUATION WORKSHEET**

Offeror Name \_\_\_\_\_

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

Evaluator Name \_\_\_\_\_

**Evaluator Certification.** I have reviewed the Request for Proposal Evaluators Guide, and I certify that neither I nor my immediate family members have a conflict of interest with regard to this offeror, in accordance with [N.D.A.C. § 4-12-04-04](#).

Evaluator Signature \_\_\_\_\_ Date \_\_\_\_\_

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

Technical Proposal Evaluation: 80 Points

- A. Scope of Work Strategy- 10
- B. Task A- 10 Points
- C. Task B- 10 Points
- D. Task C- 5 Points
- E. Task D- 5 Points
- F. Task E- 5 Points
- G. Task F- 5 Points
- H. Experience and Qualifications – 30 Points

Cost Proposal Evaluation: 20 Points

SCOPE OF WORK STRATEGY- RATING SCALE (10 Point Maximum)	
Point Value	Explanation
0 – 1	None. Not addressed or response of no value
2 – 3	Fair. Limited applicability
4 – 5	Good. Some applicability
6 – 7	Very Good. Substantial applicability

8 – 10	Excellent. Total applicability
--------	--------------------------------

How well has the Contractor followed the proposal preparation instructions? Does the proposal contain all the requested information?

**EVALUATOR NOTES**

Has the Contractor identified any additional directives that apply to the contract?

**EVALUATOR NOTES**

How well has the Contractor described their strategy for accomplishing the scope of work requirements? What are the strengths of the proposed strategy?

**EVALUATOR NOTES**

Are there aspects of the proposed Scope of Work strategy of concern or that requires clarification or further information?

**EVALUATOR NOTES**

How well does the proposed timeline demonstrate the offeror's ability to meet the contract schedule and deliverables?

**EVALUATOR NOTES**

How well does the proposal address where the work will be performed and any travel?

**EVALUATOR NOTES**

How well has offeror described any expectations for State resources?

**EVALUATOR NOTES**

How well has the offeror addressed risk management? Did they identify any potential risks, issues or problems?

**EVALUATOR NOTES**

<b>SCOPE OF WORK STRATEGY- TASK A RATING SCALE (10 Point Maximum)</b>	
Point Value	Explanation
0 – 1	None. Not addressed or response of no value
2 – 3	Fair. Limited applicability
4 – 5	Good. Some applicability
6 – 7	Very Good. Substantial applicability
8 – 10	Excellent. Total applicability

Question? How well does the proposal show sufficient experience with state and Federal Program Design? Any examples?

**EVALUATOR NOTES**

Question? Does Cost Proposal Narrative align with objectives of Programs?

**EVALUATOR NOTES**

**INITIAL EVALUATION SCORE FOR SECTION TASK A:** \_\_\_\_\_

Additional/overall comments related to the offeror's proposed strategy for accomplishing the work.

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

\_\_\_\_\_

<b>SCOPE OF WORK STRATEGY- TASK B RATING SCALE (10 Point Maximum)</b>	
Point Value	Explanation
0 – 1	None. Not addressed or response of no value
2 – 3	Fair. Limited applicability
4 – 5	Good. Some applicability
6 – 7	Very Good. Substantial applicability
8 – 10	Excellent. Total applicability

Question? Does implementation plan show sufficient detail? Does it align with objectives of the programs?

**EVALUATOR NOTES**

Question? How well does Blueprint Implementation Plan satisfy demands of the programs?

**EVALUATOR NOTES**

**INITIAL EVALUATION SCORE FOR SECTION TASK B:** \_\_\_\_\_

Additional/overall comments related to the offeror's proposed strategy for accomplishing the work.

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

\_\_\_\_\_

SCOPE OF WORK STRATEGY- TASK C RATING SCALE (5 Point Maximum)	
Point Value	Explanation
1	None. Not addressed or response of no value
2	Fair. Limited applicability
3	Good. Some applicability
4	Very Good. Substantial applicability
5	Excellent. Total applicability

Question? Does proposal satisfy needs of Program's Plan to Distribute Resources?

**EVALUATOR NOTES**

Question? How well does Marketing Plan compliment DOC Marketing Division resources?

**EVALUATOR NOTES**

**INITIAL EVALUATION SCORE FOR SECTION TASK C: \_\_\_\_\_**

Additional/overall comments related to the offeror's proposed strategy for accomplishing the work.

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

\_\_\_\_\_

SCOPE OF WORK STRATEGY- TASK D RATING SCALE (5 Point Maximum)	
Point Value	Explanation
1	None. Not addressed or response of no value
2	Fair. Limited applicability
3	Good. Some applicability
4	Very Good. Substantial applicability
5	Excellent. Total applicability

Question? How well does Proposal plan satisfy demands of funding distribution and recording?

**EVALUATOR NOTES**

Question? Does Proposal outline fund distribution and recording platform?

**EVALUATOR NOTES**

**INITIAL EVALUATION SCORE FOR SECTION TASK D: \_\_\_\_\_**

Additional/overall comments related to the offeror's proposed strategy for accomplishing the work.

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

SCOPE OF WORK STRATEGY- TASK E RATING SCALE (5 Point Maximum)	
Point Value	Explanation
1	None. Not addressed or response of no value
2	Fair. Limited applicability
3	Good. Some applicability
4	Very Good. Substantial applicability
5	Excellent. Total applicability

Question? How well does Proposal align with NDSEO staff capabilities? How flexible is the Proposal with State needs?

**EVALUATOR NOTES**

Question? Does Proposal roadmap and timeline satisfy Program expectations? How detailed are the roadmap and timeline?

**EVALUATOR NOTES**

**INITIAL EVALUATION SCORE FOR SECTION TASK E:** \_\_\_\_\_

Additional/overall comments related to the offeror's proposed strategy for accomplishing the work.

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

SCOPE OF WORK STRATEGY- TASK F RATING SCALE (5 Point Maximum)	
Point Value	Explanation
1	None. Not addressed or response of no value
2	Fair. Limited applicability
3	Good. Some applicability
4	Very Good. Substantial applicability
5	Excellent. Total applicability

Question? Well does Proposal outline reporting capabilities. Does it align with frequency and detail required by the RFP?

**EVALUATOR NOTES**

Question? Does Proposal outline staffing and reporting commitments?

**EVALUATOR NOTES**

**INITIAL EVALUATION SCORE FOR SECTION TASK F:** \_\_\_\_\_

Additional/overall comments related to the offeror's proposed strategy for accomplishing the work.

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

\_\_\_\_\_

**INITIAL EVALUATION TOTAL FOR SCOPE OF WORK STRATEGY:** \_\_\_\_\_

Additional/overall comments related to the offeror's proposed strategy for accomplishing the work.

**EVALUATOR NOTES**

<b>EXPERIENCE AND QUALIFICATIONS <i>RATING</i> SCALE (30 Point Maximum)</b>	
Point Value	Point Value
0-6	0-6
7-12	7-12
13-18	13-18
19-24	19-24
25-30	25-30

**MINIMUM EXPERIENCE OR QUALIFICATIONS**

If the RFP required a minimum amount of experience or qualifications, has the offeror provided information to demonstrate meeting this requirements? Does the offeror exceed the minimum experience or qualifications?

**EVALUATOR NOTES**

**EXPERIENCE AND QUALIFICATIONS OF THE FIRM**

Has the Contractor provided historical information to demonstrate the firm is well established in this field?

**EVALUATOR NOTES**

How extensive is the firm's experience in this type of work? How well does the information about similar projects demonstrate the firm's experience work related to this RFP?

**EVALUATOR NOTES**

If the offeror provided letters of reference or the Evaluation Committee contacted the customer contacts, what information did the offeror's customers provide related to the offeror's past performance?

**EVALUATOR NOTES**

**EXPERIENCE AND QUALIFICATIONS OF THE PROJECT TEAM**

Has the offeror provided information about the organization of the project team and proposed work project team members will perform, and estimated hours? Does the proposed project team and work breakdown seem appropriate to accomplish the requirements of the RFP?

**EVALUATOR NOTES**

Are resumes complete and do they demonstrate education and experience that would be desirable for individuals engaged in the work the RFP requires?

**EVALUATOR NOTES**

How extensive is the experience of the project team members on similar projects?

**EVALUATOR NOTES**

If a subcontractor will perform work on the project or joint venture is proposed, has the offeror provided the requested information? How extensive is the experience and qualifications of the subcontractor or other party of the joint venture?

**EVALUATOR NOTES**

**REFERENCE CHECK RESULTS**

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

**EVALUATOR NOTES**

Did references identify any areas of concern?

**EVALUATOR NOTES**

Did references identify any particular strengths of the vendor?

**EVALUATOR NOTES**

Did the offeror provide any information related to judgements, litigation, or potential financial reversals?

**EVALUATOR NOTES**

**INITIAL EVALUATION SCORE FOR EXPERIENCE AND QUALIFICATIONS:** \_\_\_\_\_

Additional/overall comments related to the offeror's experience and qualifications.

**EVALUATOR NOTES**



## ATTACHMENT 2

### CONTRACT

**Instructions to Offerors:** Offeror should review SECTION SIX – CONTRACT INFORMATION for information related to STATE’s contracting requirements.

The copy of the Contract to be included in the proposal must be completed as follows:

1. State “**Agree**” or “**Propose Alternate Language**” for each section.
2. If proposing alternate language, include the proposed language through edits in the body of the section. Offerors may provide comments related to any proposed alternate language.

#### 1. PARTIES

The parties to this contract (Contract) are the State of North Dakota, acting through its *Department of Commerce* (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);

#### 2. DEFINITIONS

*Note: Update as required.*

- a) **Control Environment** - is the set of standards, processes, and structures that provide the basis for carrying out internal control across the organization.
- b) **Data** - means any information provided to, or collected, generated, stored, or processed by the system. Data includes user identification information and metadata which may contain Data or from which the STATE’s Data may be ascertainable.
- c) **Data Breach** - means any access, destruction, loss, theft, use, modification or disclosure of Data by an unauthorized party or that is in violation of Contract terms and/or applicable state or federal law.
- d) **Data Classification** - means the process of defining data into relevant categories so the information has the appropriate controls in place to protect confidentiality, integrity, and availability based on the type of information.
- e) **Personally Identifiable Information (PII)** - information about an individual maintained by an agency, including that 1) can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; or (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information.
- f) **Software as a Service (SaaS)**. Any software or infrastructure hosted outside the State of North Dakota’s environment.
- g) **Users** – means contractors, subcontractors, outsourcing vendors, consultants and others who have a need to use the software for the benefit of STATE.

**Commented [LT33]:** We deleted the SaaS portion of the Contract, so we won’t need this definition. But I do wonder if it’s applicable? I know at our meeting today we clarified it was not a licensing situation - but the way it was described makes it sound like it may be a subscription situation - to give the Dept. access to the necessary dashboards. If so, we should add that clause of the contract back in)

### 3. SCOPE OF WORK

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, shall provide the services stated in Section 3 – Scope of Work of the RFP, and in compliance with the terms of the RFP.

---

#### Offeror Response:

**Agree or Propose Alternate Language/Comments**

### 4. COMPENSATION-PAYMENTS

#### a. Contractual Amount

STATE shall pay for the accepted services provided by CONTRACTOR under this Contract an amount **[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.

The Parties acknowledge the Department of Education (DOE) may continue to issue additional guidelines and clarifications for the contracted scope of work. The Parties further acknowledge the costs associated with conforming to these new guidelines and clarifications is already incorporated into the Contractual Amount.

Commented [KCM34]: Austin to update for changes that may result from DOE guidance.

#### 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.

#### c. Travel

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

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 or delivery 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 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.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**5. TERM OF CONTRACT**

This Contract term (Term or Initial Term) begins on *its Effective Date*, and ends on *July 1, 2027*

**a. No Automatic Renewal**

This Contract will not automatically renew.

**b. Renewal Option**

STATE may renew this Contract upon satisfactory completion of the Initial Term. STATE reserves the right to execute up to five (5) options to renew this Contract under the same terms and conditions for a period of 12 months each (Renewal Term).

**c. Extension Option**

STATE reserves the right to extend this Contract for an additional period, not to exceed twelve (12) months, beyond the current termination date of this Contract.

**d. Renegotiation Option**

Because it is unknown how long the solution and services will be used by STATE and ongoing maintenance and support are required for as long as the system is operational STATE and CONTRACTOR may renegotiate this Contract. After completion of the Initial Term, renewals, and extensions, STATE and CONTRACTOR may renegotiate the pricing and Term of this Contract. New pricing and Term shall be mutually agreed upon by the Parties and executed in writing.

If, during the Initial Term, any renewal, or extension STATE determines a realignment of the Term is needed (e.g. to align with STATE's fiscal biennium, SaaS period), the Parties may mutually agree, in writing, to a new Term with a termination date not to exceed the total available length of Contract including its Initial Term, renewals, and extensions.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**6. TIME IS OF THE ESSENCE**

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

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**7. 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 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 or continued at levels sufficient to allow for purchase of the services or goods in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services or goods 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 or goods required by this Contract within the time specified or any extension agreed to in writing 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.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**8. FORCE MAJEURE**

Neither Party shall be held responsible for delay or default caused by fire, riot, terrorism, pandemic (excluding COVID-19), acts of God, or war if the event was not foreseeable through the exercise of reasonable diligence by the affected Party, 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. If CONTRACTOR is the affected Party and does not resume performance within fifteen (15) days or another period agreed between the Parties, then STATE may seek all available remedies, up to and including termination of this Contract pursuant to its Termination Section, and STATE shall be entitled to a pro-rata refund of any amounts paid for which the full value has not been realized, including amounts paid toward software subscriptions, maintenance, or licenses.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**9. 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.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**10. 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 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.

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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.

**Offeror Response:**  
**Agree or Propose Alternate Language/Comments**

**11. 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.

**Offeror Response:**  
**Agree or Propose Alternate Language/Comments**

**12. 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.

**Offeror Response:**  
**Agree or Propose Alternate Language/Comments**

**13. NOTICE**

All notices or other communications required under this Contract must be given by email, 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>
<i>Email</i>	<i>Email</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.

**Offeror Response:**  
**Agree or Propose Alternate Language/Comments**

#### 14. 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.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

#### 15. 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.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

#### 16. THIRD-PARTY SECURITY

CONTRACTOR shall undergo the third-party security questionnaire on an annual basis at no cost to the STATE, unless CONTRACTOR has received FedRAMP, StateRAMP, or HiTrust certification. CONTRACTOR shall provide complete questionnaire within twenty-one (21) calendar days of receiving a written request. CONTRACTOR shall undergo the third-party security questionnaire when a breach has occurred.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

#### 17. INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION

- a. CONTRACTOR, at its own expense, shall defend and indemnify STATE against claims that products furnished under this Contract infringe a United States patent or copyright or misappropriate trade secrets protected under United States law.
- b. CONTRACTOR'S obligation shall not extend to a claim based on any alleged infringement arising from any: (a) additions, changes, or modifications to the services by or on behalf of STATE; (b) incorporation of the services or any component thereof into any other product or process; or (c) use of the services other than as permitted by this Contract.
- c. As to any product which is subject to a claim of infringement or misappropriation, CONTRACTOR may (a) obtain the right of continued use of the product for STATE or (b)



replace or modify the product to avoid the claim. If neither alternative is available on commercially reasonable terms then, at the request of CONTRACTOR, any applicable Software license and its charges will end, STATE will stop using the product, and will return the product to CONTRACTOR. Upon return of the product, CONTRACTOR will give STATE a credit for the price paid to CONTRACTOR, less a reasonable offset for use and obsolescence.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**18. TECHNOLOGY STANDARDS**

CONTRACTOR shall comply with applicable STATE enterprise architecture technology standards. These standards can be found on STATE's website at <https://www.ndit.nd.gov/standards>. If CONTRACTOR is unable to comply with any applicable standard, a Request for Exemption from Information Technology Standards or Statutory Policies (SFN 51687) must be submitted in coordination with STATE and CONTRACTOR for the North Dakota Information Technology Department's review and approval or disapproval.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**19. CYBER LIABILITY AND SECURITY INSURANCE**

In the event CONTRACTOR will host data, or provide for the hosting of data through a third-party entity, CONTRACTOR shall secure and maintain Cyber Liability and Security Insurance or equivalent insurance product(s), with minimum liability limits of not less than \$5,000,000 and first party limits of not less than \$1,000,000, that will provide, without cost to the CONTRACTOR or STATE, an immediate response in the event of a data breach, including meeting all notification obligations of CONTRACTOR and STATE and in the event the data breach involves personal information as defined by N.D.C.C. § 51-30-1(4), the insurance policy shall also make available free credit monitoring for any affected individual for a minimum period of one year. CONTRACTOR shall defend, indemnify, save and hold harmless, the STATE, its officers, agents and employees from liability of any nature or kind, including costs and expenses, on account of a data breach arising from CONTRACTOR hosting, transmission, or control of data, any and all suits, claims, or damages of any character whatsoever, resulting from injuries or damages sustained by any person or persons or property by virtue of performance of this Contract.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**20. PRODUCT CONFORMITY**

STATE has twelve (12) months following Final Acceptance of the product(s) delivered by CONTRACTOR pursuant to this Contract to verify that the product(s) conform to the requirements of this Contract and perform according to CONTRACTOR system design specifications. Upon recognition of an error, deficiency, or defect, by STATE, CONTRACTOR shall be notified by STATE citing any specific deficiency (deficiency being defined as CONTRACTOR having performed incorrectly with the information provided by STATE, not CONTRACTOR having to modify a previous action due to additional and/or corrected information from STATE). CONTRACTOR, at no additional charge to STATE, shall provide a correction or provide a mutually acceptable plan for correction within thirty (30) calendar days following the receipt of STATE's notice to

CONTRACTOR. If CONTRACTOR's correction is inadequate to correct the deficiency, or defect, or the error recurs, STATE may, at its option, act to correct the problem. CONTRACTOR shall be required to reimburse STATE for any such costs incurred or STATE may consider this to be cause for breach of contract.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

## 21. WARRANTY

CONTRACTOR shall provide a # day warranty upon Final Acceptance.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

## 22. DATA SECURITY

Remote access to Data from outside the continental United States, including remote access to Data by authorized support staff in identified support centers, is prohibited. If CONTRACTOR is unable to comply, a Request for Exemption from Information Technology Standards or Statutory Policies (SFN 51687) must be submitted in coordination with STATE and CONTRACTOR for the North Dakota Information Technology Department's review and approval or disapproval.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

## 23. DATA PROCESSING AND LOCATION:

- a) CONTRACTOR shall transmit, process, and store STATE Data within the continental United States.
- b) CONTRACTOR shall notify STATE at least 90 days prior to any relocation of STATE's Data to a different hosting facility. STATE reserves the right to terminate the Contract without penalty if STATE does not approve of the new hosting facility.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

## 24. SOFTWARE AUDIT

CONTRACTOR may, upon sixty (60) calendar days' notice to STATE, but not more frequently than once per year, either request a signed certification by an officer of STATE verifying that the software is being used in accordance with the terms of this Contract or audit STATE's use of the software to ensure compliance with the terms and conditions of this Contract. Any such audit shall be conducted at CONTRACTOR's expense during regular business hours at STATE's offices and shall not unreasonably interfere with STATE's business activities. CONTRACTOR shall provide documentation to STATE defining the scope of the audit not less than thirty (30) calendar days prior to the audit. STATE shall have sixty (60) calendar days to review CONTRACTOR's audit findings. If an audit reveals that STATE's use of the Software exceeds the use permitted hereunder, then CONTRACTOR may invoice STATE for the applicable additional amounts based on the price agreement between the Parties as of the date of completion of the audit.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**25. RIGHT TO WITHHOLD AMOUNTS OTHERWISE DUE IF THE CONTRACTOR IS IN BREACH**

If CONTRACTOR fails to deliver Deliverables or to provide Services which satisfy CONTRACTOR's obligations under this Contract, STATE shall have the right to withhold any and all payments due under this Contract. STATE may withhold any and all such payments due under this Contract to CONTRACTOR without penalty or work stoppage by CONTRACTOR, until such failure to perform is cured.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**26. RIGHT TO REMEDIES AND CUMULATION OF RIGHTS**

No remedy conferred by any of the specific provisions of this Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Contract, now or in the future existing at law or in equity or by statute or otherwise.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**27. 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.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**28. 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 in accordance with the Termination for Cause section of this Contract.

CONTRACTOR may enter 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.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**29. 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.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**30. MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS**

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 110.7-23-095\_\_\_\_\_ dated \_\_\_\_\_;
- c. STATE's Request for Proposal ("RFP") number 110.7-23-095\_\_\_\_\_, dated March 15, 2024\_;
- 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.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**31. 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.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**32. 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*.

**Offeror Response:**

Commented [KCM36]: Update with Date

**Agree or Propose Alternate Language/Comments**

**33. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

By entering 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.

**34. 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.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**35. 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 all licenses and permits required by law during the Term of this Contract all licenses and permits required by law.

CONTRACTOR is prohibited from boycotting Israel for the duration of this Contract. (See N.D.C.C § 54-44.4-15.) CONTRACTOR represents that it does not and will not engage in a boycotting Israel during the term of this Contract. If STATE receives evidence that CONTRACTOR boycotts Israel, STATE shall determine whether the company boycotts Israel. The foregoing does not apply to contracts with a total value of less than \$100,000 or if CONTRACTOR has fewer than ten full-time employees.

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.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**36. STATE AUDIT**

Pursuant to N.D.C.C. § 54-10-19, 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 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.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**37. COUNTERPARTS**

This Contract may be executed in multiple, identical counterparts, each of which is be deemed an original, and all of which taken together shall constitute one and the same contract.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

**38. 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>
<i>&lt;insert business&gt;</i>	Acting through its <i>&lt;insert agency&gt;</i>
BY: <i>&lt;Signature&gt;</i>	BY: <i>&lt;Signature&gt;</i>
<i>&lt;Printed Name&gt;</i>	<i>&lt;Printed Name&gt;</i>
<i>&lt;Title&gt;</i>	<i>&lt;Title&gt;</i>
Date:	Date:

**ATTACHMENT # 4**  
**IT APPLICATION QUESTIONNAIRE**

Offeror shall provide answers to each question.

No.	A. Enterprise IT Standards
1	<p>The proposed information technology (IT) solution is required to comply with the STATE's IT standards unless an exemption is obtained. The STATE IT Standards can be found at: <a href="https://it.nd.gov/standards">https://it.nd.gov/standards</a>.</p> <p>Offeror must describe their strategy to comply with the STATE IT Standards.</p> <p><i>Offeror Response:</i></p>
<b>B. Architecture</b>	
2	<p>Offeror must describe in detail the architecture of the proposed solution and supporting infrastructure.</p> <p>a. Include the technology stack, including the software products used to create the solution</p> <p>b. Include the network architecture, including security levels, connectivity points, and capacity</p> <p>c. Include the storage architecture, including security controls (i.e. encryption)</p> <p>d. Include related architectural diagrams</p> <p><i>Offeror Response:</i></p> <p><i>a.</i></p> <p><i>b.</i></p> <p><i>c.</i></p> <p><i>d.</i></p>
3	<p>Offeror must describe the solution's integration points with other applications or datasets, and other external dependencies.</p> <p><i>Offeror Response:</i></p>
4	<p>Offeror must describe the solution's scalability options to expand or contract based on requirements.</p> <p><i>Offeror Response:</i></p>
5	<p>Offeror must describe the solution's ability to provide high availability.</p>

	<i>Offeror Response:</i>
6	Offeror must describe the solution's ability to be enhanced to implement changing technical and business requirements. <i>Offeror Response:</i>
7	Offeror must describe the solution's ability or limitations for migrating solution elsewhere in the future with regard to either party terminating services. <i>Offeror Response:</i>
<b>C. Authentication</b>	
8	[IT Standard - State User Authentication] Offeror must describe in detail how the proposed solution supports authenticating State users by integrating with the STATE's Active Directory and/or Azure AD. <i>Offeror Response:</i>
9	[IT Standard - Public User Authentication] Offeror must describe in detail how the proposed solution supports authenticating external users by integrating with the STATE's Azure B2C federated identity provider service via OpenID Connect. <i>Offeror Response:</i>
<b>D. Data</b>	
10	Any DATA provided by the STATE must be made available to the STATE at any time in the means of an API, SQL Interface, Batch Export format, etc.  Offeror must describe the options available to export the data to another application or storage system, including file formats, ETL requirements, encryption, specific products required, etc. <i>Offeror Response:</i>
11	Offeror must describe the controls used to insure data is properly classified and how sensitive/confidential data is safeguarded. <i>Offeror Response:</i>
12	Offeror must describe the practices and procedures used to provide Electronic Discovery of specific records or data, and any legal positions regarding subpoenas, jurisdiction and potential confiscation of data. <i>Offeror Response:</i>
<b>E. Security</b>	



13	Offeror must describe if the proposed solution is FedRAMP, HITRUST, or StateRAMP certified. <i>Offeror Response:</i>
14	Offeror must describe the controls used to measure and meet regulatory requirements and certifications. Include any Application Scanning reports, Vulnerability Scanning reports, and Penetration Testing reports. Include schedules for recurring/updated reports. <i>Offeror Response:</i>
15	Offeror must describe the controls used to manage operational logs for troubleshooting and regulatory compliance. <i>Offeror Response:</i>
16	Offeror must describe the controls used to ensure that privileged users cannot perform unauthorized or unlawful activities. <i>Offeror Response:</i>
<b>F. Non-ITD / Non-State Hosted</b>	
17	Offeror must describe in detail:
	a. The hosting location
	b. If the hosting locations distributed geographically
	c. If hosted by a third party list the name of hosting party
	<i>Offeror Response:</i>
	<i>a.</i>
	<i>b.</i>
	<i>c.</i>
18	Offeror must describe the data center operational controls and policies, and provide any relevant audit reports, including Statement on Standards for Attestation Engagements (SSAE) Service Organization Control (SOC) 2 Type II audit or equivalent such as ISO 27001 for the primary vendor and any 3rd party providers/partners. Include any options for the STATE to access the vendor datacenter(s). Include any "Right to Audit" clauses available to the STATE. <i>Offeror Response:</i>
19	Offeror must describe the backup procedures, including off-site storage, encryption, and the frequency of restore testing. <i>Offeror Response:</i>

20	Offeror must describe the practices and procedures used to manage/monitor data retention schedules and the purging or archival of data when retention schedules are met.
	<i>Offeror Response:</i>
21	Offeror must describe any options for the STATE to run application security scanning software against the hosted solution.
	<i>Offeror Response:</i>
22	Offeror must describe the controls, tools, and procedures in place to handle natural disasters and maintain business continuity. Include the Recovery Point Objective (RPO) and Recovery Time Objective (RTO).
	<i>Offeror Response:</i>