

STATE OF NORTH DAKOTA



**Information Technology Department
Telecommunications Division
600 E Boulevard Ave, Dept 112
Bismarck, ND 58505-0100**



Request For Proposal (RFP)

RFP Title: ND Health Care Research & Education Network Access

RFP Number: 112-1002
Pilot Project RFP Number: 01

Date of Issue: January 11, 2010

Purpose of RFP: The State of North Dakota is looking for
Ethernet Transport Services for ND Higher Education.

Procurement Officer: Brandy Peterson

TABLE OF CONTENTS

SECTION ONE - INTRODUCTION AND INSTRUCTIONS	4
1.01 Purpose of the RFP.....	4
1.02 Contact Person, Telephone, Fax, E-mail	4
1.03 RFP Schedule.....	4
1.04 Return Mailing Address and Deadline for Receipt of Proposals.....	5
1.05 Assistance to Offerors with a Disability	5
1.06 Deadline for Receipt of Questions and Objections	6
1.07 Bidders List Registration Requirements	6
1.08 Letter of Interest.....	6
1.09 Notice Provided.....	7
1.10 News Releases	7
SECTION TWO - BACKGROUND INFORMATION	8
SECTION THREE -SCOPE OF WORK	9
3.01 Scope of Work.....	9
3.02 Definitions	9
3.03 Information Technology Solution.....	9
3.04 Product Support and Customer Service Requirements.....	11
SECTION FOUR - GENERAL CONTRACT INFORMATION	12
4.01 Contract Term, Extension and Renewal Options.....	12
4.02 Contract Type.....	12
4.03 Standard Contract Provisions	12
4.04 Proposal as a Part of the Contract.....	12
4.05 Additional Terms and Conditions	12
4.06 Supplemental Terms and Conditions	12
4.07 Contract Approval.....	13
4.08 Contract Changes - Unanticipated Amendments	13
4.09 Indemnification and Insurance Requirements	13
4.10 Taxes and Taxpayer Identification	13
4.11 F.O.B. Point and Freight.....	14
4.12 Proposed Payment Procedures.....	14
4.13 Payment Terms	14
4.14 Right to Inspect Place of Business	14
4.15 Inspection & Modification - Reimbursement for Unacceptable Deliverables.....	15
4.16 Termination for Default	15
SECTION FIVE - EVALUATION CRITERIA AND CONTRACTOR SELECTION	16
5.01 Information Technology Solution.....	16
5.02 Product Support and Customer Service.....	16
5.03 Experience, Qualifications, and Financial Strength	16
5.04 Contract Cost	16
5.05 Demonstrations.....	16
5.06 Oral Presentations	16
5.07 Site Inspection of Offeror's Facility	17
SECTION SIX - PROPOSAL FORMAT AND CONTENT	18

6.01 Proposal Format and Content	18
6.02 Introduction	18
6.03 Information Technology Solution.....	18
6.04 Product Support and Customer Service.....	18
6.05 Experience and Qualifications.....	18
6.06 Financial Requirements	19
6.07 Cost Proposal.....	20
6.08 Required Enclosures	20
6.09 Offerors Checklist.....	20
SECTION SEVEN - STANDARD PROPOSAL INFORMATION.....	21
7.01 Authorized Signature.....	21
7.02 State Not Responsible for Preparation Costs	21
7.03 Conflict of Interest	21
7.04 Offeror's Certification	21
7.05 Offer Held firm.....	21
7.06 Amendments to Proposals and Withdrawals of Proposals	22
7.07 Alternate Proposals	22
7.08 Subcontractors	22
7.09 Joint Ventures	22
7.10 Disclosure of Proposal Contents and Compliance with State's Open Records Laws	22
7.11 Evaluation of Proposals	23
7.12 Right of Rejection	23
7.13 Clarification of Offers	24
7.14 Discussions and Best and Final Offers	24
7.15 Preference Laws	24
7.16 Contract Negotiation	24
7.17 Failure to Negotiate	25
7.18 Notice of Intent to Award	25
7.19 Protest and Appeal	25
SECTION EIGHT - ATTACHMENTS.....	26
8.01 Attachments	26

1. Proposal Evaluation Form
2. Contract Form

SECTION ONE - INTRODUCTION AND INSTRUCTIONS

1.01 Purpose of the RFP

This Request for Proposal (RFP) is issued by the State of North Dakota acting through its Information Technology Department (ITD) and Office of Management and Budget (hereinafter referred to as the State) is soliciting proposals for Ethernet transport service.

This Request for Proposal may result in a multiple award of a State Term Contract, that will also be made available to entities authorized to participate in cooperative purchasing with the State under North Dakota Century Code section 54-44.4-13, including institutions under the jurisdiction of the State Board of Higher Education, K-12 schools, and local government entities. "Government entities" means counties, cities, townships, institutions under the jurisdiction of the State Board of Higher Education, public primary and secondary educational entities, governmental boards and commissions, and nonprofit entities established on behalf of public entities for the purpose of purchasing. This contract is an open-ended cooperative purchasing contract. "Open-ended" means that other government entities may participate in this contract, but participation by other governmental entities is not mandated or guaranteed.

Based on the constraints of the current Transport contract and geographic availability the State reserves the right to award to multiple vendors.

1.02 Contact Person, Telephone, Fax, E-mail

The procurement officer is the point of contact for this RFP. Vendors must direct all communications regarding this RFP to the procurement officer. Unauthorized contact regarding the RFP with other State employees may result in the State disqualifying the vendor. The State may also suspend or disbar vendor from the state bidders list.

PROCUREMENT OFFICER: Brandy Peterson
PHONE: 701-328-1002
FAX: 701-328-3000
TTY Users call: 1-800-366-6888
E-MAIL: blpeterson@nd.gov

1.03 RFP Schedule

This schedule of events represents the State's best estimate of the schedule for this RFP.

The approximate RFP schedule is as follows:

- RFP Issued January 11, 2010
- Questions, clarification requests, or objections due by 3pm Central Time January 19, 2010
- Responses to questions/RFP amendments (if required) January 21, 2010
- Proposals due by 3pm Central Time February 11, 2010
- Proposal evaluation completed by approximately February 19, 2010
- State issues Notice of Intent to Award a Contract approximately February 25, 2010

- State issues contract approximately
- Contract start approximately

March 4, 2010

May 1, 2010

1.04 Return Mailing Address and Deadline for Receipt of Proposals

Offerors must submit Five/5 of its proposal in a sealed envelope or package.

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

Offerors must submit cost proposals in a separate sealed envelope or package, clearly labeled "cost proposal."

Offerors must clearly address all envelopes or packages containing proposals as described below to ensure proper delivery and to avoid having the State open them before the deadline for receipt. Offerors must address all envelopes or packages as follows:

**North Dakota Information Technology Department
Telecommunications Division
Attn: Brandy Peterson
Request for Proposal (RFP): HECN Ethernet Transport Service
RFP Number: 112-1002
Pilot Project RFP Number: 01
1615 Capitol Way
Bismarck, ND 58501**

The State must receive proposals at the location specified no later than 3:00 P.M., Central Time on February 11, 2010. The State will not publicly read the proposals at the opening.

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

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

1.05 Assistance to Offerors with a Disability

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

1.06 Deadline for Receipt of Questions and Objections

Offerors must carefully review this solicitation, the contract (Attachment 2), and all attachments for defects, questionable, or objectionable material. All questions must be in writing submitted to the email address of the procurement officer, and cite the subject RFP number. The procurement officer must receive these written requests by the deadline specified in the RFP Schedule of Events to allow issuance of any necessary amendments.

This will also help prevent the opening of a defective solicitation and exposure of offeror's proposals upon which the State could not make an award. The State will disallow any protests based on the content of the solicitation, if the offeror does not bring these faults to the attention of the procurement officer, in writing, before the time indicated in the Schedule of Events.

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

1.07 Bidders List Registration Requirements

VENDORS MUST BE REGISTERED BEFORE CONTRACT AWARD

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

To become an approved vendor, offerors must: 1) be registered with the North Dakota Secretary of State (fees apply), and 2) submit a completed Bidders List Application to the North Dakota Vendor Registry Office. Prospective offerors may access the Procurement Vendor Database on-line to verify whether their firm is currently on the bidders list. The bidders list for this solicitation is commodity code(s) **915-79**.

The Procurement Vendor Database, registration instructions and forms are available on-line at: <http://www.nd.gov/spo/>. Contact the Vendor Registry Office at 701-328-2683 or SPOVendor@state.nd.us for assistance.

The successful offeror must register and become approved within **60 CALENDAR DAYS** from the date of the Notice of Intent to Award. If an offeror fails to become an approved vendor by the time specified by the Procurement Officer, its proposal will be determined to be non-responsive, and the State will reject its proposal.

1.08 Letter of Interest

Vendors interested in receiving any notices related to this RFP are invited to submit a letter of interest to the procurement office at the following email address:

blpeterson@nd.gov

Include the name of the firm, contact person, mailing address, telephone number, fax number, and e-mail address. The sole purpose of the letter of interest is to provide the State with a contact person to receive any notices related to the RFP. Submission of a letter of interest is

not a requirement for submitting a proposal.

1.09 Notice Provided

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

The Request for Proposal and any amendments to the RFP will be posted on the following website: <http://www.nd.gov/spo/vendor/>

1.10 News Releases

A vendor shall not make any news releases related to this RFP without prior approval of the procurement officer or project manager designated by the State.

SECTION TWO - BACKGROUND INFORMATION

2.01 Background Information

In response to a call for proposals from the Federal Communication Commission for an initiative they called the Rural Health Care Pilot Program, WC Docket No. 02-06, the University of North Dakota School of Medicine and Health Sciences (UNDSMHS) proposed the construction of a high-speed data network for medical education and health care research. UNDSMHS's proposal, to construct a North Dakota Health Care Research and Education Network (NDHCREN), was accepted by the commission.

NDHCREN will be used for the distance education needs of the UNDSMHS medical doctoral program as well as its allied health programs and continuing medical education. The research component will utilize NDHCREN in an attempt to assess the most appropriate use of high-speed network technologies and Internet2 to improve health care delivery and health care education to rural and medically underserved areas.

With this assessment, it is hoped that the NDHCREN will be able to provide important information for rural health care providers on the amount of bandwidth they will need for the various electronic components that will become part of their deployment of a complete electronic medical record. In addition, we hope to test the potential that Internet2 holds for becoming an electronic health care information commons such as the FCC seemed to envision in their order.

In the construction of this network, UNDSMHS will utilize the services of North Dakota's Information Technology Department (ITD) to deploy the highest speed Internet connections locally available to six rural hospitals, to a research center affiliated with UNDSMHS and to the four UNDSMHS campus sites.

All of these sites will be connected to North Dakota's Statewide Technology Access for Government and Education network (STAGEnet). These connections will create a private higher education network segment in order to meet the requirements of the pilot program and will not provide access to the common internet (Internet 1).

STAGEnet was created by the 1999 legislative session to provide broadband connectivity, Internet access, video conferencing and other networking services to all North Dakota state agencies. Colleges, universities, local government, and K-12 are required by North Dakota state law to participate in STAGEnet.

ITD is responsible for all wide area network services planning, selection, and implementation for all North Dakota state agencies and manages STAGEnet.

2.04 Budget

Approval or continuation of a contract resulting from this solicitation is contingent upon continuing appropriation. The State may terminate or modify the contract by agreement of both parties in the event the State is unable to obtain funding and/or continue funding at sufficient levels from federal, state, or other sources.

SECTION THREE -SCOPE OF WORK

3.01 Scope of Work

The State is interested in connecting remote University of North Dakota sites for the ND Health Care Research & Education Network via an Ethernet solution of no less than 5Mbps.

3.02 Definitions

The following terms used herein shall have the following meanings:

- a) **"802.1q"** IEEE protocol to provide VLAN services within an Ethernet network.
- b) **"STAGEnet"** shall mean the shared enterprise infrastructure called Statewide Technology Access for Government and Education Network.

3.03 Information Technology Solution

A. REQUIREMENTS

The State requires a minimum 5Mbps native Ethernet 802.1q VLAN to STAGEnet from all of the locations listed below. The State will give preference for a 10Mbps service. Each location must be served as part of the proposed solution.

The offeror must provide conceptual diagrams outlining the following:

- Remote Office to State network
- End-to-end provisioning methodology

The offeror must outline all necessary connectivity options and detail, not limited to, duplexes, cabling, port speeds between the State backbone and the remote offices.

The offeror must provide all available Ethernet increments (5Mbps & above) and the all associated costs must be included in the pricing.

B. CUSTOMER PREMISES EQUIPMENT (CPE)

The Offeror must provide the below CPE or equivalent in their proposal

- APC SC450RM1U 1U Rack Mount UPS
- Juniper SSG-140-SB Layer 3 Gateway/Security Appliance
- Juniper SVC-EXT-WAR-SSG140 Maintenance

This equipment is typically housed within a 19x24 inch wall mount rack with a category 5 cable extending to the offerors demark. It is permissible for the offeror to recommend co-location for the offerors equipment within the States housing if desired.

C. LOCATIONS

The following list reflects those sites that the State is requiring connectivity for, however this list is subject to change.

West River (Regional) Medical Center
1000 Highway 12
Hettinger, ND 58639
701-567-4561

St. Josephs Hospital
30 West Seventh Street
Dickinson, ND 58601
701-456-4000

Mercy Hospital
1301 15th Ave W
Williston, ND 58801
701-774-7400

Union Hospital
42 6th Ave SE
Mayville, ND
701-788-3800

Jamestown Hospital
419 5th Street NE
Jamestown, ND 58401
701-252-1050

Neuropsychiatric Research Institute
120 8th St S
Fargo, ND
701-293-1335

Mercy Hospital
1031 Seventh Street NE
Devils Lake, ND 58301-2798
701-662-2131

3.04 Product Support and Customer Service Requirements

Offeror must describe process for trouble reporting, billing, and requesting services.

Network Operations Center Requirements

The Offeror shall have an established Network Operations Center (NOC). This NOC will be staffed during normal State business hours, Monday through Friday from 8:00 a.m. to 5:00 p.m., Central Time for administrative business. The NOC must provide 24x7x365 support for monitoring, trouble reporting, and problem resolution. The NOC will provide direct support for all service related issues including, but not limited to network monitoring and trouble resolution. The NOC shall be fully described (equipment, personnel, features, etc.) in the Offeror's proposal.

To ensure a reliable network, the State believes that it must have the capability to automatically and continuously monitor all state network connections. The Offeror shall propose its method(s) of determining that all circuits are active and working. The Offeror must fully describe its monitoring and reporting features including copies of reports and how the operational integrity of the network will be maintained. At minimum, the State will require monthly performance reporting and root cause analysis reports for chronic troubles.

Maintenance Procedures

The Offeror must have established procedures for providing Maintenance service (to be approved by the State) that would include: 24-hour help desk, trouble reporting forms, trouble reporting procedures, toll free telephone numbers for voice and facsimile, e-mail addresses,

maintenance organizational chart (showing supervision and key personnel), and escalation procedures. All listed personnel contact information shall include office numbers and email addresses, as well as a 24 hour reach number in case of emergency.

Service Level Agreement

RFP Offerors should anticipate that Service Level Agreements will be required and specified by the State prior to final contract consummation. Offeror's are requested to propose their recommended Service Levels and describe the value to the State.

SECTION FOUR - GENERAL CONTRACT INFORMATION

4.01 Contract Term, Extension and Renewal Options

The State intends to enter into a contract with an effective date beginning May 1, 2010 and ending June 30, 2013.

Extension Option

This contract may be extended upon satisfactory completion of the initial contract term. The state reserves the right to execute up to three (3) options to renew this contract annually under the same terms and conditions for a period of twelve (12) months each. This contract will not automatically renew. The State will provide written notice to the contractor of its intent to not renew this contract at least thirty (30) days before the scheduled contract expiration date.

4.02 Contract Type

This contract is a *Fixed Firm Price* contract.

4.03 Standard Contract Provisions

The successful offeror will be required to sign and submit a contract substantially similar to the contract attached to this RFP (Attachment 2). The contractor must comply with the contract provisions set out in this attachment. Any objections to the contract provisions must be set out in the offeror's proposal. The State will not permit alteration of these provisions without prior written approval.

The State instructs offerors to contact the procurement officer in writing by the deadline set for questions with any concerns regarding the contract provisions.

4.04 Proposal as a Part of the Contract

The State may incorporate part or all of this RFP and the successful proposal into the contract.

4.05 Additional Terms and Conditions

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

4.06 Supplemental Terms and Conditions

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

- [a] if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and
- [b] if the result of the application of a supplemental term or condition included in the

proposal would diminish the State's rights, the supplemental term or condition will be considered null and void.

4.07 Contract Approval

This RFP does not, by itself, obligate the State. The State's obligation will commence when the State signs the contract. Upon written notice to the contractor, the State may set a different starting date for the contract. The State will not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the State.

4.08 Contract Changes - Unanticipated Amendments

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

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

4.09 Indemnification and Insurance Requirements

Offerors must review the attached Service Contract for indemnification and insurance requirements. The State will incorporate indemnification and insurance provisions into the final contract.

The offeror must submit objections to any of the provisions of the Indemnification and Insurance Requirements in writing to the attention of the procurement officer by the time and date set for receipt of questions. The State will not permit any alteration of these provisions without prior written approval from the purchasing agency in consultation with the North Dakota Risk Management Division.

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

4.10 Taxes and Taxpayer Identification

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

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

A contractor performing any contract, including service contracts, for the United States

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

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

4.11 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 costs to any location within the State of North Dakota. Title will pass to the State at destination, and the vendor will be responsible for any freight claims.

4.12 Proposed Payment Procedures

Negotiated Payment Schedule with Progress Payments

The State will make payments based on a negotiated payment schedule that is associated with progress toward mutually agreed deliverables and milestones.

Advance Payments

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

4.13 Payment Terms

The State will normally make payment for commodities and services received under contracts within 30 calendar days after receipt and acceptance by the State or after receipt of a correct invoice, whichever is later. The contractor must direct any payment inquiries to the purchasing agency.

The purchasing agency may take Prompt Payment Discount Terms offered by the contractor if the purchasing agency makes payment within the specified terms.

4.14 Right to Inspect Place of Business

At reasonable times, the State may inspect those areas of the contractor's place of business that relate to the performance of a contract. If the State makes an inspection, the contractor must provide reasonable assistance.

4.15 Inspection & Modification - Reimbursement for Unacceptable Deliverables

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

Failure of the contractor to timely perform the contract, including any corrections or modifications directed by the State, may cause the State to terminate the contract, for default by the contractor. In this event, the State may require the contractor to reimburse, within 30 days of State's notice to terminate, all payments made to contractor for the deficient work. State shall return deliverables and services which are deficient, and further has the option of returning all deliverables and services which State previously accepted, but which are affiliated with the deficient deliverables and which, without the deficient deliverables, are rendered incapable of performance or impractical for the State to retain. Contractor shall also, within 30 days thereafter of the State's notice to terminate, reimburse the State for payments made for such previously accepted but subsequently returned deliverables and services. This clause does not restrict the State's right to seek associated damages, for contractor's failure to timely perform its obligations, including corrections and modifications, under the contract.

4.16 Termination for Default

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

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

4.17 Informal Debriefing

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

SECTION FIVE - EVALUATION CRITERIA AND CONTRACTOR SELECTION

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

5.01 Information Technology Solution

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

5.02 Product Support and Customer Service

Fifteen Percent (15%) of the total possible evaluation points will be assigned to this criterion.

5.03 Experience, Qualifications, and Financial Strength

Fifteen Percent (15%) of the total possible points will be assigned to this criterion.

If the RFP required a minimum amount of experience or qualifications, the State will award no points for meeting the minimum. The State will award points for experience and qualifications that exceed the stated minimums.

5.04 Contract Cost

Forty Percent (40%) of the total possible evaluation points will be assigned to cost. The State will not consider any prompt payment discounts terms proposed by the offeror in evaluating cost. The cost amount used for evaluation may be affected by the application of North Dakota preference laws (N.D.C.C. § 44-08-01). The lowest cost proposal will receive the maximum number of points allocated to cost. The State will evaluate the point allocations for cost on the other proposals according to the method set forth in the Proposal Evaluation form attached to this RFP.

5.05 Demonstrations

After any discussions for clarifications and the initial evaluation of proposals received, offerors whose proposal receive the highest scores and are determined to be reasonably susceptible for award may be required to provide an on-site demonstration of the proposed solution for the evaluation committee. The State will factor information presented during demonstrations into the evaluation scoring.

Offerors will be responsible for all costs associated with the providing the demonstration.

5.06 Oral Presentations

After any discussions for clarifications and the initial evaluation of proposals received, offerors whose proposal receive the highest scores and are determined to be reasonably susceptible for award may be required to make an oral presentation of the proposed solution for the evaluation committee. The State will factor information presented during demonstrations into the evaluation scoring.

Offerors will be responsible for all costs associated with the providing the presentation.

5.07 Site Inspection of Offeror's Facility

The State may conduct on-site visits to the offeror's firm or offeror's customer where the offeror is performing a comparable service to evaluate the offeror's capacity to perform the contract. An offeror must agree, at risk of being found non-responsive and having its proposal rejected, to provide the State reasonable access to relevant portions of its work sites. Individuals designated by the State will conduct the site inspection at the State's expense.

SECTION SIX - PROPOSAL FORMAT AND CONTENT

6.01 Proposal Format and Content

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

6.02 Introduction

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

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

A company officer empowered to bind the company must sign proposals. An offeror's failure to include these items in the proposals may cause the proposal to be determined to be non-responsive and the State may reject the proposal.

6.03 Information Technology Solution

Offerors must provide a comprehensive response to the Information Technology Solution specified in Section 3.03. Responses must be in the same sequence as they appear in Section 3.03. Offerors must provide supporting narrative and documentation when required in response to the requirements of this section.

6.04 Product Support and Customer Service

Offerors must provide a comprehensive response to the product support and customer service requirements specified in Section 3.04. Responses must be in the same sequence as they appear in Section 3.04. Offerors must provide supporting narrative and documentation when required in response to the product support requirements.

6.05 Experience and Qualifications

In order for offers to be considered responsive, Offerors must meet the minimum prior experience requirements. Any Offeror's failure to meet these minimum prior experience requirements will cause its proposal to be considered non-responsive and its proposal will be rejected. The minimum experience requirements are that the Offeror must be a reputable and financially stable company with at least three years of experience in the common carrier business for large telecommunications networks.

To be eligible, the Telecommunications Services in this RFP must be provided by a telecommunications carrier, that is, a company that offers telecommunications services on a common carriage basis.

A telecommunications service is “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public...” [47 U.S.C. 153(46)]. Telecommunications is defined as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received” [47 U.S.C. 153(43)].

All telecommunications carriers are required under FCC rules to be common carriers and to file FCC Form 499A (*Telecommunications Reporting Worksheet*).

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

[a] title;

[b] resume and;

[c] description of the type of work the individual will perform.

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

Offerors must provide **three (3)** reference names and phone numbers for similar projects the offeror’s firm has completed. The State reserves the right to contact any references provided by the offeror. The State invites offerors to provide letters of reference from previous clients.

6.06 Financial Requirements

- A.** The offeror shall provide financial information in such a manner that the State can reasonably formulate a determination about the stability and financial strength of the organization. This must include but not be limited to company size, organization, date of incorporation, ownership, number of employees, revenues for the last fiscal year, and, if available, audited financial statements for the most recent 3 years. A current Dun and Bradstreet Report that includes a financial analysis of the firm would fulfill this requirement. An offeror can use an Annual Report as verification of financial status provided it contains at a minimum a Compiled Income Statement and Balance Sheet verified by a Certified Public Accounting firm. The State reserves the right to contact the accounting firm if questions arise. As an alternative, for those offerors unable to provide audited financial statements or Dun and Bradstreet report, the offeror shall provide tax returns and financial statements including income statements and balance sheets for the most recent 3 years, and any available credit reports.
- B.** Disclose any and all judgments, pending or expected litigation, or other real potential financial reversals, which might materially affect the viability or stability of the offeror’s organization; or certify that no such condition is known to exist.
- C.** A confidentiality statement may be included if this portion is considered non-public information. The State may request reports on financial stability from independent financial rating services in order to further substantiate stability.

6.07 Cost Proposal

The offeror must state all costs associated with the contract in U.S. currency. The offeror must identify any commodities the offeror will import, and the price must include any applicable customs, brokerage agency fees, and duties.

The offeror must include any and all costs associated with the delivery of the service(s) outlined in the RFP.

The State will consider either postalized rates or individual site rates. The offeror may propose both rate models.

The offeror must submit cost proposals with consideration to the State's standard terms and conditions included in the attached sample contract.

Offerors should describe any discounts terms for prompt payment. The State will not consider discounts for prompt payment when evaluating cost.

6.08 Required Enclosures

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

6.09 Offerors Checklist

CHECKLIST FOR OFFERORS

- Submit any questions, comments, or requests for clarification to the procurement officer by the deadline for submission of questions.
- Review the Service Contract in Attachment 2. State any objections to any of the provisions in the Contract Form or Indemnification and Insurance Requirements by the deadline for submission of questions.
- Be sure an individual authorized to bind the offeror to the provisions of the RFP signs the proposal.
- Comply with the North Dakota Secretary of State and the North Dakota State Procurement Office Registration requirements by the deadline stated in the RFP.
- Comply with minimum requirements for experience.
- Comply with professional licensing requirements, and provide copies of certifications, if required.
- Provide the information about the qualifications of the firm and individuals that will be working on the project.
- Provide the required number of references.
- Provide all documents or materials that must be submitted with the RFP.
- Identify and label and sections of the proposal you feel contain confidential information.

SECTION SEVEN - STANDARD PROPOSAL INFORMATION

7.01 Authorized Signature

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

7.02 State Not Responsible for Preparation Costs

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

7.03 Conflict of Interest

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

7.04 Offeror's Certification

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

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

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

7.05 Offer Held firm

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

7.06 Amendments to Proposals and Withdrawals of Proposals

Offerors may amend or withdraw proposals prior to the deadline set for receipt of proposals. The State will not accept amendments after the deadline unless they are in response to the State's request. After the deadline, offerors may make a written request to withdraw proposals and provide evidence that they made a substantial mistake. The procurement officer may permit withdrawal of the proposal upon verifying that the offeror made a substantial mistake, and the State may retain the offeror's bid bond or other bid type of bid security, if one was required.

7.07 Alternate Proposals

Offerors may submit **only one** proposal for evaluation.

Alternate proposals (proposals that offer something different than what the State requested) will be **rejected**.

7.08 Subcontractors

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

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

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

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

7.09 Joint Ventures

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

7.10 Disclosure of Proposal Contents and Compliance with State's Open Records Laws

All proposals and other material submitted become the property of the State and the State may

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

Offerors may make a written request to hold confidential any trade secrets and other proprietary data contained in proposals. The offeror must clearly identify the material considered confidential, and the offeror must include a brief statement that sets out the reasons for confidentiality. See the North Dakota Office of the Attorney General website for additional information. <http://www.ag.nd.gov/OpenRecords/ORM.htm>

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

7.11 Evaluation of Proposals

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

7.12 Right of Rejection

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

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

The procurement officer may waive minor informalities that:

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

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

7.13 Clarification of Offers

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

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

7.14 Discussions and Best and Final Offers

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

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

7.15 Preference Laws

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

7.16 Contract Negotiation

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

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

7.17 Failure to Negotiate

If the selected offeror:

- fails to provide the information required to begin negotiations in a timely manner;
- fails to negotiate in good faith;
- indicates it cannot perform the contract within the budgeted funds available for the project; or

If the offeror and the State, after a good faith effort, cannot come to terms, the State may terminate negotiations with the offeror initially selected and commence negotiations with the next highest ranked offeror.

7.18 Notice of Intent to Award

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

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

7.19 Protest and Appeal

North Dakota law provides that an interested party may protest a solicitation.

If an interested party wishes to protest the content of this RFP, the procurement office must receive, in writing, the protest at least seven calendar days before the deadline for receipt of proposals.

An interested party may protest the award or proposed award of a contract.

If an offeror wishes to protest the award of a contract or proposed award of a contract, the procurement office must receive the protest, in writing, within seven calendar days after the date the State issues the Notice of Intent to Award.

SECTION EIGHT - ATTACHMENTS

8.01 Attachments

Attachments

1. Proposal Evaluation Form
2. Contract Form

ATTACHMENT 1 PROPOSAL EVALUATION FORM

The State will review all proposals for responsiveness and then evaluate using the criteria set out herein.

INSTRUCTIONS FOR EVALUATORS

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

RATING SCALE FOR ASSESSING VENDOR RESPONSES

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

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

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

COST PROPOSAL

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

Not all members of the evaluation need to evaluate the cost proposal. Selected members of the evaluation committee can evaluate the cost proposals, the group can review the scores, and then record the scores on the evaluation summary sheets.

You should not take any prompt payment discounts terms offered by the vendor into consideration when evaluating cost. However, you may need to adjust the cost proposals of nonresident offerors by the application of preference laws, if applicable. Contact the State Procurement Office at 701-328-2683 for assistance in applying preference laws.

EVALUATION CRITERIA AND SCORING

Person or Firm Name:
Name of Proposal Evaluation (PEC) Member:
Date of Review:
RFP Number: Pilot Project RFP Number:

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

TECHNOLOGY SOLUTION

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

Rating Scale (30 POINT Maximum)	
Point Value	Explanation
0	None. Not addressed or response of no value
1-7	Fair. Limited applicability
8-18	Good. Some applicability
19-26	Very Good. Substantial applicability
27-30	Excellent. Total applicability

Proposals will be evaluated against the question set out below.

1. Evaluation of the overall Technical Solution as outlined in Section 3.01-3.03.

•

EVALUATOR'S POINT TOTAL FOR TECHNOLOGY SOLUTION:

PRODUCT SUPPORT & CUSTOMER SERVICE

Weight **15 Percent**. Maximum Point Value for this Section
 100 Points x **15 Percent = 15 Points**

Rating Scale (15 POINT Maximum)	
Point Value	Explanation
0	None. Not addressed or response of no value
1-4	Fair. Limited applicability
5-8	Good. Some applicability
9-12	Very Good. Substantial applicability
13-15	Excellent. Total applicability

Proposals will be evaluated against the question set out below.

1. Evaluation of the overall Product Support & Customer Service as outlined in Section 3.04.

•
EVALUATOR'S POINT TOTAL FOR PRODUCT SUPPORT & CUSTOMER SERVICE:

EXPERIENCE, QUALIFICATIONS AND FINANCIAL STRENGTH

Weight **15 Percent**. Maximum Point Value for this Section
100 Points x **15 Percent = 15 Points**

Rating Scale (15 POINT Maximum)	
Point Value	Explanation
0	None. Not addressed or response of no value
1-4	Fair. Limited applicability
5-8	Good. Some applicability
9-12	Very Good. Substantial applicability
13-15	Excellent. Total applicability

Proposals will be evaluated against the question set out below.

1. Evaluation of the overall Experience & Qualifications as outlined in Sections 6.05.

-
2. Evaluation of the overall Financial Requirements as outlined in Section 6.06.
-

EVALUATOR'S POINT TOTAL FOR EXPERIENCE, QUALIFICATIONS & FINANCIAL STRENGTH:

Contract Cost

Weight **40 Percent**. Maximum Point Value for this Section
100 Points x **40 Percent = 40 Points**

Applying Preference Laws

The State will not consider any prompt payment discounts terms proposed by the offeror when evaluating cost. The cost amount used for evaluation may be affected by the application of North Dakota preference laws (N.D.C.C. § 44-08-01). The preference given to a resident offeror will be equal to the preference given or required by the state of the nonresident offeror (i.e. reciprocal preference).

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

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

See <http://www.nd.gov/spo/legal/docs/preference-laws.pdf> for a list of States Preference Laws or contact the North Dakota State Procurement Office at 701-328-2683.

Converting Cost to Points

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

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

COST PROPOSAL EVALUATION

EVALUATOR'S POINT TOTAL FOR CONTRACT COST

NOTES:

Request for Proposal Evaluation Summary

Name of RFP:		
RFP Number: Pilot Project RFP Number:		
Vendor Being Evaluated:		
Evaluator Name:		
Date:		
Technical Evaluation (Maximum 60 Points)	Maximum Points by Category	Score
1. Technology Solution	30	
2. Product Support and Customer Service	15	
3. Experience, Qualifications, and Financial Strength	15	
Cost Evaluation (Maximum 40 Points) 1. Make adjustments for reciprocal preference, if necessary. See list of States Preference Laws: http://www.nd.gov/spo/ 2. Calculated points awarded for price. <u>Price of Lowest Cost Proposal</u> Price of Proposal Being Rated X 40 points = Awarded Points		
8. Cost	40	
Total		

ATTACHMENT 2
SAMPLE TECHNOLOGY SERVICES CONTRACT

The parties to this contract are the State of North Dakota, acting through its Department of Information Technology in cooperation with the Office of Management and Budget, State Procurement Office (STATE), and _____ (CONTRACTOR);

1. SCOPE OF SERVICES

CONTRACTOR, in exchange for the compensation paid by STATE under this contract, agrees to provide the following services:

2. TERM OF CONTRACT

The term of this contract is for a period of 60 months, commencing on the 1st day of July, 2008, and terminating on the 30th day of June, 2013.

3. 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 _____ dated _____;
- c) STATE's Request for Proposal ("RFP") number _____, dated _____;
- d) CONTRACTOR's proposal dated _____ in response to RFP number _____.

4. TERMINATION OF CONTRACT

- a. **Termination without cause.** This contract may be terminated by mutual consent of both parties, or by either party upon 30 days' written notice.
- b. **Termination for lack of funding or authority.** STATE may terminate this contract effective upon delivery of written notice to CONTRACTOR, or on any later date stated in the notice, under any of the following conditions:
 - 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.

- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
- 3) If any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.
- 4) Termination of this contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

c. Termination for cause. STATE by written notice of default to CONTRACTOR may terminate the whole or any part of this contract:

- 1) If CONTRACTOR fails to provide services required by this contract within the time specified or any extension agreed to by STATE; or
- 2) If CONTRACTOR fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.

The rights and remedies of STATE provided in the above clause related to defaults by CONTRACTOR are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

5. COOPERATIVE PURCHASING

CONTRACTOR agrees that this contract is a cooperative purchasing contract established pursuant to North Dakota Century Code Section 54-44.4-13. This contract is an open-ended cooperative purchasing contract made available to other governmental entities. "Open-ended" means that other government entities may participate in this contract, but participation by other governmental entities is not mandated or guaranteed. "Government entities" means counties, cities, townships, institutions under the jurisdiction of the State Board of Higher Education, public primary and secondary educational entities, governmental boards and commissions, and nonprofit entities established on behalf of public entities for the purpose of purchasing.

6. FORCE MAJEURE

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

7. RENEWAL

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

8. SEVERABILITY

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

term.

9. ASSIGNMENT AND SUBCONTRACTS

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE's express written consent. However, CONTRACTOR may enter into subcontracts provided that any such subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor. CONTRACTOR will not have the authority to contract for or incur obligations on behalf of STATE.

10. NOTICE

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

_____	_____
_____	_____
_____	_____
_____	_____

11. APPLICABLE LAW AND VENUE

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be brought and solely litigated in the District Court of Burleigh County, North Dakota.

12. SPOLIATION – NOTICE OF POTENTIAL CLAIMS

CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect the evidence, including the scene of an accident.

13. INDEMNITY

Contractor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Contractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and 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.

Further:

- a. CONTRACTOR, at its own expense, will 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. 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.
- c. CONTRACTOR will comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of the contract and conduct its activities so as not to endanger any person or property.

14. INSURANCE

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

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

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

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.
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, including any excess policies (to the

extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies.

- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
 - a. "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
 - b. a provision that the policy and endorsements may not be canceled or modified without thirty days' prior written notice to the undersigned State representative;
 - c. a provision that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08;
 - d. a provision that Contractor's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Contractor's insurance and shall not contribute with it;
 - e. cross liability/severability of interest for all policies and endorsements;
 - f. The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;
 - g. The insolvency or bankruptcy of the insured Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy.
- 6) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- 7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

15. ATTORNEY FEES

In the event a lawsuit is instituted by STATE to obtain performance due of any kind 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.

16. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

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

17. CONFIDENTIALITY

Absent a court order, CONTRACTOR agrees not to 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. Absent a court order, STATE agrees not to disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and which STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. §

44-04-18. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.

18. COMPLIANCE WITH PUBLIC RECORDS LAW

CONTRACTOR understands that, except for disclosures prohibited in Section 16, STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this contract, except for records that are confidential under Section 16, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the open records law and to comply with STATE's instructions on how to respond to the request.

19. 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 Workers' Compensation 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.

20. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable laws, rules, regulations and policies, including those relating to nondiscrimination, accessibility and civil rights. CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes and unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

21. STATE AUDIT

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

22. PREPAYMENT

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

23. TAXPAYER ID

CONTRACTOR's federal employer ID number is: _____.

24. EFFECTIVENESS OF CONTRACT

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

25. STATE TECHNOLOGY STANDARDS

CONTRACTOR agrees that technology products and services delivered as part of this agreement will comply with STATE's information technology standards. These standards can be found on STATE's web site at <http://www.nd.gov/ea/standards/>

26. PERSONNEL AND PROJECT MANAGEMENT

- a. CONTRACTOR shall provide individuals to:
- b. STATE will designate a Project Manager to:

If, during the course of the contract, it becomes necessary for STATE to change the person assigned as STATE's Project Manager, STATE will notify CONTRACTOR in writing, pursuant to section ten above.

- c. CONTRACTOR personnel will be responsible for providing written, weekly time utilizations, for each individual, for each week, to STATE's Project Manager, or STATE's project staff, as STATE's Project Manager may assign.
- d. CONTRACTOR's Project Manager shall deliver to STATE's Project Manager, weekly/monthly reports of CONTRACTOR's progress on the project and meeting the objective/deliverables as stated in the scope of services. Each report must contain a description of the current status of the project, the tasks on which time was spent, the estimated progress to be made in the next week/month, and the problems encountered, the proposed solutions to them and their effect, if any, on the deliverable schedule.
- e. Unless CONTRACTOR is notified otherwise by STATE, STATE's Project Manager shall carry out STATE's administrative and management functions under this contract, shall be responsible for acceptance of the contract deliverables, and shall provide support and overall direction to CONTRACTOR in producing the contract deliverables.
- f. STATE's working hours are Monday through Friday from 8:00 AM until 5:00 PM (CST or CDT) with one hour for lunch. STATE Project Manager may approve alternate work schedules.
- g. According to STATE policy, STATE personnel will only be obligated to work a forty-hour workweek, Monday through Friday, and will be allowed reasonable vacation, sick or educational absences.
- h. CONTRACTOR's personnel will not be expected to work on state holidays or other mandatory leave days.
- i. CONTRACTOR agrees and understands that STATE's execution of the contract is predicated, in part and among other considerations, on the utilization of the specific individual(s) and/or personnel qualification(s) as identified; primary being <name of appropriate personnel, if applicable, >. Therefore, CONTRACTOR agrees that no substitution of such specific individuals and/or personnel qualification will be made without the prior written approval of STATE and that such substitution will be made at no additional cost to STATE. CONTRACTOR further agrees that any substitution made pursuant to this paragraph must be of equal or higher skills, knowledge, and abilities than those personnel originally proposed and that STATE's approval of a substitution will not be construed as an acceptance of the substitution's performance potential. STATE agrees that an approval of a substitution will not be unreasonably withheld. CONTRACTOR shall furnish experienced, qualified Information Technology personnel to participate in the system development project. The personnel furnished must have the knowledge necessary to complete requirements as defined in the Contract.

- j. Upon request by STATE, CONTRACTOR shall replace any CONTRACTOR personnel who STATE determines, in its sole discretion, to be unable to perform the responsibilities of the contract acceptably. E.g. inappropriate or unprofessional personal conduct, professional inabilities, etc.
- k. CONTRACTOR shall conduct background investigations on all contracted staff and subcontractors assigned by CONTRACTOR to perform work under this contract, and shall furnish the results of such background investigations to STATE. STATE shall have the right to reject any individual assigned to perform work under this contract if, in its sole discretion, it determines that the results of the background investigation make the individual unacceptable. The background investigations to be performed are:
 - Criminal History, <applicable/not applicable>
 - References, <applicable/not applicable>
 - Employment, <applicable/not applicable>
 - Motor vehicle, <applicable/not applicable>
 - Credit, <applicable/not applicable>
 - Education, <applicable/not applicable>
- l. CONTRACTOR agrees that STATE may require contracted staff and subcontractors assigned by CONTRACTOR to perform work under this contract to submit to a criminal history record check in accordance with N.D.C.C. 54-59-20 and 12-60-24. STATE shall have the right to reject any individual assigned to perform work under this contract if, in its sole discretion, it determines that the results of the criminal history record check make the individual unacceptable.
- m. CONTRACTOR shall assign personnel on a full-time basis. In the event that a work assignment does not justify full-time participation, CONTRACTOR shall assign person on a part-time basis with prior written approval of STATE's Project Manager. However, if the part-time assignments are specified in the contract, no written approval from STATE's Project Manager will be necessary except for substitution of CONTRACTOR personnel.
- n. CONTRACTOR shall warrant that personnel assigned to perform tasks in response to this contract will remain assigned, for the agreed-upon length of time, and will not be replaced or reassigned except by mutual agreement and written notice of STATE. Prior to assignment of personnel, CONTRACTOR shall obtain written approval from STATE for all personnel to be assigned to this project.

27. EQUIPMENT, MATERIALS AND WORKSPACE

- a. CONTRACTOR's assigned contract staff will be on site for the duration of the contract.
- b. On site will be <list agency physical location address>.
- c. STATE agrees to provide an adequate working space, when required.
- d. Equipment and software for on-site CONTRACTOR personnel is to be provided by <CONTRACTOR or Agency name>.
- e. When STATE and CONTRACTOR agree that remote access to systems is required, STATE will provide the necessary remote access security to enable CONTRACTOR access to the appropriate STATE systems.

28. REVIEW, APPROVAL, AND ACCEPTANCE PROCESS

- a. Unless otherwise noted in this contract or agreed upon in writing by both parties, acceptance testing will be performed on-site, on STATE's platform.
- b. Prior to acceptance testing, CONTRACTOR will furnish STATE with documentation of the deliverable item and the expected performance.

- c. The review, approval, and acceptance process for all project deliverables as specified in scope of services will be the responsibility of STATE's Project Manager. The Project Manager will be responsible for ensuring that the approval process follows the proper procedures prior to acceptance of deliverables by STATE. STATE shall apply the following procedures to acceptance of all deliverables:
 - 1) For the life of this contract, STATE has the right to complete a review of any deliverable received from CONTRACTOR and notify CONTRACTOR of STATE's findings; and
 - 2) If the deliverable is unacceptable, CONTRACTOR shall resubmit the deliverable after the appropriate correction or modifications have been made.
- d. The process described above will be repeated until acceptance is obtained, STATE terminates for cause or a waiver is obtained.

29. CHANGE CONTROL PROCESS

- a. CONTRACTOR and STATE will implement a change control process to manage issues and changes during the life of the project. A change request must be in writing to document the potential change.
- b. The change will be reviewed and, if acceptable to STATE, CONTRACTOR will submit to STATE an estimate of the charges and the anticipated changes in the delivery schedule that will result from the proposed change in the scope of work.
- c. CONTRACTOR will continue performing the services in accordance with the original agreement, until the parties agree in writing on the change in the scope of work.
- d. Change orders that involve changes to the scope of services or that result in a requirement for additional project funding will require approval by STATE.
- e. Once both parties approve a change, a change order shall be issued in writing prior to implementation.
- f. All change orders will be logged and tracked.
- g. **Steps for the change control process:**
 - 1) Complete a write-up for the proposed change and submit copies to CONTRACTOR and STATE's Project Managers who will in turn provide to relevant parties for assessment.
 - 2) Record the request in the change control log.
 - 3) Investigate the impact of the proposed change and evaluate the impact of not performing the change.
 - 4) Prepare a response to the proposed change.
 - 5) Retain the original in the project library.
 - 6) CONTRACTOR and STATE agree whether the change should be performed and obtain authorization sign-off of the change request. The appropriate document is created.
- h. **If the change is not accepted:**
 - 1) CONTRACTOR's Project Manager will discuss and document the issue with STATE's Project Manager.
 - 2) The proposed change can be modified and re-submitted or withdrawn if it is agreed to be non-essential. In this case the reasons will be documented.
- i. **If the change is accepted:**
 - 1) Once the change request has been approved and signed, work may begin, unless the change results in a change to the price, schedule or both. If such is the case, work will not proceed until such time as the document is modified and signed off on by the authorized parties.
 - 2) CONTRACTOR's Project Manager and STATE's Project Manager will adapt project plans to incorporate approved changes.

- 3) Each change request duly authorized in writing by STATE and agreed to by CONTRACTOR will be deemed incorporated into and part of this contract.
- 4) Progress on the change requests will be reported at progress meetings or, for those cases where those meetings do not occur, status reports to all pertinent parties will be furnished.
- j. Both CONTRACTOR and STATE must sign off that a change has been completed.
- k. The log will be updated.
- l. The log will be supplied at the progress meetings or, in those cases where those meetings do not occur, the log update information will be included in the status reports to STATE's Project Manager.

30. FINAL ACCEPTANCE

- a. "Final Acceptance" will be defined as:
 - 1) The successful completion of all deliverables as stated in the scope of services and following the Review, Approval, and Acceptance processes described above, **AND**
 - 2) The final delivered product fully implemented in STATE's live production environment no later than _____, **AND**
 - 3) STATE will have sixty-days thereafter in which to accept or reject it in writing. If STATE rejects it, STATE will specify in writing its grounds for rejection and CONTRACTOR will use its best efforts to make the product conform to the technical specifications/system design as soon as possible and at no additional cost to STATE. CONTRACTOR shall continue to use its best efforts to make the product conform to the technical specifications/system design until STATE accepts the product or terminates this agreement upon written notice to CONTRACTOR.

31. PAYMENTS

- a. The contractual amount to be paid for this project shall constitute the entire compensation due CONTRACTOR for the service and all of CONTRACTOR's obligations regardless of the difficulty, materials or equipment required. The contractual amount includes fees, licenses, overhead, profit and all other direct and indirect costs incurred or to be incurred, by CONTRACTOR, except as noted in this section of the contract. A valid change order processed in accordance with this contract may modify the contractual amount.
- b. STATE has tax-exempt status.
- c. The cost of the project is firm for the duration of the contract and is not subject to escalation for any reason, unless this contract is amended, or a valid change order is processed in accordance with this contract.
- d. The project cost will be billed by CONTRACTOR to STATE, and is tied directly to STATE's acceptance of agreed upon deliverables as specified in the scope of work.
- e. Payment will be made upon receipt of invoices from CONTRACTOR.
- f. The final cost of each billing will be as specified in the scope of work.
- g. Total dollar contractual amount of \$_____, shall not be exceeded.
- h. State will be allowed thirty-days to process each payment.
- i. No claim for additional services, not specifically provided herein, will be allowed by STATE except to the extent provided by a valid change order or amendment to this contract.
- j. The 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. Any payment will be reduced for overpayments, or increased for underpayments on subsequent invoices.

- k. STATE reserves the right to deduct from amounts that are or will become due and payable to CONTRACTOR under this, or any contract between the parties, any amounts that are or will become due and payable to STATE by CONTRACTOR.
- l. CONTRACTOR shall maintain documentation for all charges against STATE under this contract. The books, records and documents of CONTRACTOR, as they relate to work performed or money received under this contract, must be maintained for a period of three (3) full years from the date of the final payment, and must be subject to audit, at any reasonable time and upon reasonable notice, by STATE or the State Auditor or the Federal Auditor or their duly appointed representatives.

Reimbursement for contracted staff travel and travel-related costs associated with on-site work done in performance of this contract will be paid at the same rate payable to State employees under North Dakota Century Code Section 44-08-04.

32. WORK PRODUCT

Product(s) created or purchased under this contract belong to STATE and must be delivered or returned upon termination of this contract if these items were charged to and paid for by STATE in the course of CONTRACTOR's performance of this contract. All software and related materials developed by CONTRACTOR in performance of this contract for STATE will be the sole property of STATE, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to STATE. If CONTRACTOR incorporates any of CONTRACTOR's Software in any work product provided to STATE, CONTRACTOR agrees to provide written notice to STATE of its incorporation in the work product and to convey to STATE a non-exclusive, perpetual, cost-free license, and patent and copyright indemnity, for the software to use that software for its intended purpose. All other ownership rights to CONTRACTOR's software will remain with CONTRACTOR.

33. REPRESENTATIONS AND WARRANTIES

CONTRACTOR represents and warrants to STATE that neither CONTRACTOR, in connection with performing the services in performance of this contract, nor the completed product delivered by CONTRACTOR, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any person. CONTRACTOR further represents and warrants to STATE that it will not use any trade secrets or confidential or proprietary information owned by any third party in performing the services related to this contract or in delivery of the completed product. CONTRACTOR further represents and warrants to STATE that neither CONTRACTOR nor any other company or individual performing services pursuant to this contract is under any obligation to assign or give any work done under this contract to any third party.

34. PRODUCT CONFORMITY

STATE will have 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 will 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, will provide a correction or provide a mutually acceptable plan for correction within thirty-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 will be required to reimburse STATE for any such costs incurred or STATE may consider this to be cause for breach of contract.

35. MAINTENANCE

CONTRACTOR will provide, and STATE may subscribe to, maintenance services, including software/hardware updates and technical support services, for the product(s) delivered pursuant to this contract commencing at the end of the warranty period. CONTRACTOR and STATE will negotiate the terms and price of such maintenance services, however CONTRACTOR will not charge STATE more than \$_____ per year for the first two (2) years of maintenance services. Starting with the third year of maintenance, CONTRACTOR agrees that any change to the annual maintenance and support fee may increase by not more than 5% per year for the life of this contract. CONTRACTOR warrants that it will continue to offer maintenance services for the product(s) for a minimum of three (3) years from the date of final acceptance or installation date of any software/product update.

CONTRACTOR

BY: _____

ITS: _____

DATE: _____

STATE OF NORTH DAKOTA, acting through its
Information Technology Department

BY: _____

ITS: _____

DATE: _____

STATE OF NORTH DAKOTA, acting through its
OMB State Procurement Office

BY: _____

ITS: _____

DATE: _____

ATTACHMENT A - SCOPE OF SERVICES

CONTRACTOR, in exchange for the compensation paid by STATE under this contract, agrees to provide the following services:

Deliverable 1: <name of deliverable>

Description: <detailed description of deliverable>

Completion Date:

Acceptance: <describe acceptance testing criteria, what is required for this deliverable to be accepted, how acceptance will be conveyed, i.e. Signoff by customer on this deliverable>

Deliverable 2: Technical System Design

Description: CONTRACTOR shall develop the technical design for the system in accordance with the functional specifications in <exhibit x> attached hereto. The technical system design must include hardware and software specifications, performance specifications, a narrative description of the system, a description of all input data (such as type, range of expected values, and relationship to other data), a description and pictures of all screens, including sequence diagrams, and definitions and descriptions of all outputs and reports to be generated and the process for generating them.

Completion Date:

Acceptance: Upon receipt of the technical design document from CONTRACTOR, STATE will have 10 (ten) working days in which to accept or reject it in writing. If STATE rejects it, STATE will specify in writing its grounds for rejection and CONTRACTOR shall use its best efforts to revise the design to make it acceptable to STATE within the following 10 (ten) working days. If STATE rejects technical system design a second time, STATE will have the option of repeating the procedure as described in this acceptance statement above or terminating this agreement upon written notice to CONTRACTOR.

.
.
.

Deliverable X

Payments Schedule:

Payment Schedule

Payment

Upon acceptance of Deliverable 1 \$ _____

Upon acceptance of Deliverable 2 \$ _____

Upon acceptance of Deliverable X \$ _____

Upon final acceptance \$ _____