

# STATE OF NORTH DAKOTA

**DEPARTMENT OF HEALTH  
Community Health Section  
Judicial Wing – Room 204  
600 East Boulevard Avenue – Dept. 301  
Bismarck, ND 58505-0200**

## Request For Proposal (RFP)

RFP Title: ***Women's Way Media Buy***

RFP Number: ***301.CancerWW.02***

Date of Issue: ***January 4, 2011***

Purpose of RFP: The North Dakota Department of Health is seeking proposals for a media buy for *Women's Way*, the North Dakota Breast and Cervical Cancer Early Detection Program. The proposal should include development, production and distribution of radio and television Public Service Announcements (PSAs). PSAs are an important part of the public education and recruitment components of the program. The contract period is February 15, 2011 through June 30, 2011.

Offerors are not required to return this form.

**Procurement Officer:** Lonny W. Mertz  
Community Health Section  
North Dakota Department of Health  
600 East Boulevard Avenue – Dept 301  
Bismarck, ND 58505-0200  
Phone: 701.328.3134  
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E-Mail: [lwmerz@nd.gov](mailto:lwmerz@nd.gov)

## TABLE OF CONTENTS

### SECTION ONE

#### Introduction and Instructions

- 1.01 Purpose of the RFP
- 1.02 Contact Person, Telephone, Fax, E-mail
- 1.03 RFP Schedule
- 1.04 Return Mailing Address and Deadline for Receipt of Proposals
- 1.05 Assistance to Offerors with a Disability
- 1.06 Deadline for Receipt of Questions and Objections
- 1.07 Approved Vendor Registration Requirements
- 1.08 Pre-proposal Conference
- 1.09 Amendments to the RFP
- 1.10 News Releases

### SECTION TWO

#### Background Information

- 2.01 Background Information
- 2.02 Budget

### SECTION THREE

#### Scope and Schedule

- 3.01 Scope of Work
- 3.02 Location of Work
- 3.03 Prior Experience
- 3.04 Federal Requirements
- 3.05 Deliverables

### SECTION FOUR

#### General Contract Information

- 4.01 Contract Term and Renewal Options
- 4.02 Contract Type
- 4.03 Standard Contract Provisions
- 4.04 Proposal as a Part of the Contract
- 4.05 Additional Terms and Conditions
- 4.06 Supplemental Terms and Conditions
- 4.07 Contract Approval
- 4.08 Contract Changes – Unanticipated Amendments
- 4.09 Indemnification and Insurance Requirements
- 4.10 Taxes and Taxpayer Identification
- 4.11 Proposed Payment Procedures
- 4.12 Contract Funding
- 4.13 Payment Terms
- 4.14 Contract Personnel
- 4.15 Right to Inspect Place of Business
- 4.16 Inspection & Modification - Reimbursement for Unacceptable Deliverables
- 4.17 Termination for Default
- 4.18 Open Records Laws - Confidentiality
- 4.19 Work Product, Equipment, and Material
- 4.20 Independent Entity
- 4.21 Assignment
- 4.22 Disputes - Applicable Law and Venue

## **SECTION FIVE**

### **Evaluation Criteria and Contractor Selection**

- 5.01 Understanding of the Project
- 5.02 Methodology Used for the Project
- 5.03 Management Plan for the Project
- 5.04 Experience and Qualifications
- 5.05 References
- 5.06 Contract Cost

## **SECTION SIX**

### **Proposal Format and Content**

- 6.01 Proposal Format and Content
- 6.02 Introduction
- 6.03 Understanding of the Project
- 6.04 Methodology Used for the Project
- 6.05 Management Plan for the Project
- 6.06 Experience and Qualifications
- 6.07 References
- 6.08 Cost Proposal
- 6.09 Required Enclosures

## **SECTION SEVEN**

### **Standard Proposal Information**

- 7.01 Authorized Signature
- 7.02 State Not Responsible for Preparation Costs
- 7.03 Conflict of Interest
- 7.04 Offeror's Certification
- 7.05 Offer Held Firm
- 7.06 Amendments to Proposals and Withdrawal of Proposals
- 7.07 Alternate Proposals
- 7.08 Subcontractors
- 7.09 Joint Ventures
- 7.10 Disclosure of Proposal Contents and Compliance with North Dakota Open Records Laws
- 7.11 Evaluation of Proposals
- 7.12 Right of Rejection
- 7.13 Clarification of Offers
- 7.14 Discussion and Best and Final Offers
- 7.15 Preference Laws
- 7.16 Contract Negotiation
- 7.17 Failure to Negotiate
- 7.18 Notice of Intent to Award – Offeror Notification of Selection
- 7.19 Protest and Appeal

## **SECTION EIGHT**

### **Attachments**

- 8.01 Attachments
  - A. Contract Template
  - B. Cost Proposal Format
  - C. Proposal Evaluation Form
  - D. Sample Notice of Intent to Award

## SECTION ONE INTRODUCTION AND INSTRUCTIONS

### 1.01

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

The North Dakota Department of Health, hereafter known as the purchasing agency is soliciting proposals for a media buy for *Women's Way*, the North Dakota Breast and Cervical Cancer Early Detection Program. The proposal should include development, production and distribution of radio and television Public Service Announcements (PSAs). PSAs are an important part of the public education and recruitment components of the program. As a breast and cervical cancer screening program, *Women's Way* serves eligible North Dakota women ages 40 through 64. In addition to age, women must be below 200% of federal poverty level, uninsured or under-insured.

### 1.02

#### **Contact Person, Telephone, Fax, E-mail**

PROCUREMENT OFFICER: Lonny W. Mertz  
PHONE: 701.328.3134  
FAX: 701.328.2036  
TTY Users call: 7-1-1  
E-MAIL: [lwmerz@nd.gov](mailto:lwmerz@nd.gov)

The procurement officer is the point of contact for this RFP. All vendor communications regarding this RFP must be directed to the procurement officer. Unauthorized contact regarding the RFP with other State employees of the purchasing agency may result in the vendor being disqualified, and the vendor may also be suspended or disbarred from the state bidders list.

### 1.03

#### **RFP Schedule**

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

The approximate RFP schedule is as follows:

- RFP Issued: **January 4, 2011**
- Deadline for receipt of questions and objections related to the RFP: **January 12, 2011, 2:00 p.m. Central Time.**
- Proposals due by: **January 25, 2011, 2:00 p.m. Central Time.**
- Proposal Evaluation Committee evaluation completed by approximately: **February 1, 2011**
- State issues Notice of Intent to Award a Contract approximately: **February 1, 2011**
- State issues contract approximately: **February 8, 2011**
- Contract start: **February 15, 2011**

### 1.04

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

Offerors must submit six unbound, unstapled copies and one electronic copy of the proposal on disk or CD of the proposal in a sealed envelope or package.

Envelopes or packages containing proposals must be clearly addressed as described below to ensure proper delivery and to avoid being opened by the State before the deadline for receipt. Envelopes or packages must be addressed as follows:

**NORTH DAKOTA DEPARTMENT OF HEALTH**  
Lonny W. Mertz, Grants Management Specialist  
Community Health Section  
Request for Proposal (RFP): *Women's Way* Media Buy  
RFP Number: 301.CancerWW.02  
600 East Boulevard Avenue-Dept. 301  
Bismarck, ND 58505-0200

Proposals must be received by the purchasing agency at the location specified no later than **2:00 P.M., CENTRAL** Time on **January 25, 2011**. Proposals will not be publicly read at the opening.

Proposals may not be delivered orally, by facsimile transmission, by other telecommunication or electronic means.

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

**1.05**  
**Assistance to Offerors with a Disability**

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

**1.06**  
**Deadline for Receipt of Questions and Objections**

Offerors must carefully review this solicitation, the contract, risk management provisions, and all attachments for defects, questionable, or objectionable material. All questions must be in writing and directed to the purchasing agency, addressed to the procurement officer, and cite the subject RFP number. The procurement officer must receive these written requests by the deadline specified in the RFP Schedule of Events to allow issuance of any necessary amendments.

This will also help prevent the opening of a defective solicitation and exposure of offeror's proposals upon which an award could not be made. Protests based on the content of the solicitation will be disallowed if these faults have not been brought to the attention of the procurement officer, in writing, before the time indicated in the Schedule of Events.

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

**1.07**  
**Approved Vendor Registration Requirements**

**VENDORS MUST BE APPROVED BEFORE CONTRACT AWARD**

To become an approved vendor, offerors must: 1) be registered with the North Dakota Secretary of State

(fees apply), and 2) submit a completed Bidders List Application to the North Dakota Vendor Registry Office. Prospective offerors may access the Procurement Vendor Database on-line to verify whether their firm is currently on the bidders list. The bidders list that will be used for this solicitation is commodity code 915-01, 915-02 and 915-03 Communications and Media Related Services.

The Procurement Vendor Database, registration instructions and forms are available on-line at: <http://www.nd.gov/spo/vendor/registry/>. Contact the Vendor Registry Office at 701-328-2773 or [infospo@state.nd.us](mailto:infospo@state.nd.us) for assistance.

The successful offeror must register and become approved within 10 CALENDAR DAYS from the date of the Notice of Intent to Award. If an offeror fails to become approved by the time specified by the Procurement Officer, its proposal will be determined to be non-responsive, and its proposal will be rejected.

#### **1.08 Pre-proposal Conference**

A pre-proposal conference may be held between the top two proposals between January 25 and January 31, 2011 at the North Dakota Department of Health, 600 E. Boulevard Avenue, Bismarck ND 58505-0200. The purpose of the conference is to allow the potential offerors to make a formal presentation.

Offerors with a disability needing accommodation should contact the procurement officer.

#### **1.09 Amendments to the RFP**

If an amendment to this RFP is issued, it will be provided to all offerors that were mailed a copy of the RFP and to those that have requested a copy of the RFP from the procurement officer.

The Request for Proposal and any other amendments to the RFP will be posted on the following website: <https://secure.apps.state.nd.us/csd/spo/services/bidder/listCurrentSolicitations.htm>.

#### **1.10 News Releases**

News releases related to this RFP will not be made without prior approval of the procurement officer or project manager designated by the State.

## SECTION TWO BACKGROUND INFORMATION

### 2.01 Background Information

Background information concerning this project is as follows:

#### *Brief on Women's Way*

The purpose of *Women's Way*, the North Dakota Breast and Cervical Cancer Early Detection Program, administered through the North Dakota Department of Health, is to assure breast and cervical cancer screening, follow-up and support services for North Dakota's low-income, uninsured and underinsured, and medically under-served women ages 40 through 64. Since September 1997, women from every county of the state have received screening services funded by the program. *Women's Way* has increased the availability, accessibility and quality of screening services for uninsured and underinsured women, implemented education programs for both women and their healthcare providers, and established a surveillance system to monitor the impact of the program.

After 13 years, *Women's Way* is well established throughout the state and continues to serve women who need these vital services. Program services include recruitment and enrollment of women into the program; assuring women obtain breast and cervical cancer screening services (which include clinical breast exams, mammograms and Pap tests) through a *Women's Way* healthcare provider (usually the clinic where the woman normally goes); provision of liaison services with local healthcare providers and facilities; case management for follow-up of abnormal screening results; public education and program promotion; quality assurance and quality improvement; develop, link with and maintain local partnerships; collaborating with local and State Medicaid offices for referral of uninsured women diagnosed with breast and cervical cancer; implementation of in-reach and outreach strategies; provision of trainings and other educational opportunities.

The need to reach the 'hard to reach' women who do not seek preventive screening services continues. Regular screening is a vital step to finding breast and cervical cancer early while still in a curable stage. Early detection is critically important. Breast cancer is the most commonly diagnosed cancer for women, with 450 new cases per year in North Dakota. It is the second leading cause of cancer deaths in women. In 2002, incidence rates of cervical cancer in North Dakota increased, pulling even with national rates. There are about 20 newly diagnosed cases per year in ND. It is presumed most cases are linked to human papillomavirus (also called HPV). Since 1997, *Women's Way* has served over 16,375 women. Two hundred six *Women's Way* clients have been diagnosed with breast cancer and over 260 women have been diagnosed with cervical cancer or cervical precancer.

Based on data from the North Dakota Data Center, there are at least 24,226 women in North Dakota who are potentially eligible for *Women's Way*. Through October 2011, *Women's Way* served approximately 40% of these women. There are still 60% to reach and serve.

*Women's Way* has chosen three subgroups of women ages 40 through 64 as its priority for breast and cancer screening services – uninsured and underinsured women, rural women with reduced access to care and American Indian women. The priority population of *Women's Way* mammography services is women ages 50 through 64 who are low income, who have not been screened in the past year, and who have no other source of healthcare reimbursement, such as insurance. According to 2004 Behavioral Risk Factor Surveillance System (BRFSS) data, 21.72% of women ages 50 and over report they have not had a mammogram within the past two years. The priority population for *Women's Way* cervical cancer screening services is women ages of 40 through 64 who are low income, who are rarely screened (not screened in the past five years) or have never been screened, and who have no other source of healthcare reimbursement, such as insurance. Obtaining regular screening is a challenge for the American Indian women. The Indian Health Service (IHS) is traditionally funded at only 60% of need. As a result, IHS must prioritize the use of their health care funds. In general, it is most likely that acute care is prioritized more highly than preventive screening. Therefore, *Women's Way* finds that the need is great

for breast and cervical cancer screening among American Indian women who receive healthcare services on the reservation. *Women's Way* priority populations face many challenges/barriers when it comes to obtaining *Women's Way* services. Because of the rural nature of North Dakota, most women need to travel long distances to access health care. When diagnostic or follow-up services are needed, more travel is required. Through three different research projects conducted at different times, ND women identified barriers to mammography screening as fear of possible "bad" effects of radiation or x-rays, lack of awareness of screening guidelines, belief that mammography doesn't work, fear of pain, lack of female providers, fear that diagnosis means death and the attitude that 'it won't happen to me'. The three largest barriers to screening were lack of money, time and being afraid to find out.

#### *Primary Goal*

*Women's Way* strives to provide at least 3,200 women a year with breast and cervical cancer screening services. The challenge is reaching the 'hard to reach' priority subgroups mentioned above with effective strategies to:

- Educate all women on screening guidelines and importance of regular screening
- Motivate eligible women to enroll in *Women's Way*
- Motivate all women to go in for breast and cervical cancer screening

#### *Secondary Goal*

In addition to reaching program eligible women, the *Women's Way* public education goal involves the design and delivery of clear and consistent messages to all women about the importance of regular breast and cervical cancer screening. Benefits of the primary goal will educate and motivate all women to obtain regular breast and cervical cancer screening, regardless of income and insurance coverage status.

## **2.02**

### **Budget**

The estimated budget for provision of these services is between \$50,000 and \$70,000. The budget for the period of February 15, 2011 through June 30, 2011 should not exceed \$70,000. Proposals priced at more than \$70,000 will be considered non-responsive.

Funds for this contract are disbursed on a reimbursement basis only. The contractor is to incur all costs in advance of reimbursement.



## SECTION THREE SCOPE OF WORK

### 3.01 Scope of Work

#### **Overview**

Timely communication using the appropriate media channels is imperative to educate North Dakota women, the public, health care providers, policy makers and the media about the services the *Women's Way* program has to offer.

The North Dakota Department of Health, Division of Cancer Prevention and Control is soliciting proposals for promotion of the *Women's Way* program. The Department is seeking assistance in the development and implementation of promotions for the North Dakota *Women's Way* program. The offeror should be skilled in mass communication principles and techniques with the ability to develop promotional materials to reach specific target audiences.

#### **Definitions**

*Women's Way* program – is a breast and cervical cancer screening program which serves eligible North Dakota women ages 40 through 64. In addition to age, women must be below 200% of federal poverty level, uninsured or under-insured.

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

The *Women's Way* state office will provide access to current *Women's Way* program brochures and other materials which can be used as props. The *Women's Way* state office will also assist in recommending and recruiting role models from *Women's Way* clientele. It will be the responsibility of the offeror to research media channels to develop and implement an effective campaign.

#### **Contractor-Furnished Property**

Contractor will provide office space, supplies, telecommunications equipment, computer and any necessary software or other supplies to carry out the scope of work in this RFP.

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

The successful bidder will be expected to:

- Prepare a detailed media/promotion plan to reach the target audiences.
- Acquire or develop media messages.
- Select and purchase media time.
- Work with Department of Health throughout the media campaign.
- Propose additional duties that will substantially improve the results of the project.
- Include strategies to maximize dollars.
- Demonstrate its capacity to handle all aspects of a communications campaign themselves, or specify how the agency will partner with other firms to accomplish the goals of the program.
- All PSAs should include *Women's Way* program eligibility information, program key messages, role model testimony, use of the program logo, toll free number and website address.
- Distribution will be to North Dakota radio and television stations in appropriate formats.
- All original PSAs will be given to the *Women's Way* state office at completion of the project.

The proposal should also include development, production and distribution of two sets:

Set one—for women, ages 40 through 64 of general population audiences:

- 6 radio PSAs 30 seconds each
- 6 radio PSAs 15 seconds each (can be shorter version of each of the 30 second PSAs)
  - 3 radio PSAs on breast cancer to air starting mid-March 2011 and through June 2011
  - 3 radio PSAs on cervical cancer to air starting mid-March 2011 and through June 2011
- 6 television PSAs 30 seconds each
- 6 television PSAs 15 seconds each (can be shorter version of each of the 30 second PSAs)

- All television PSAs will use the *Women's Way* branding
  - 3 television PSAs on breast cancer to air starting mid-March 2011 and through June 2011
  - 3 television PSAs on cervical cancer to air starting mid-March 2011 and through June 2011

Set two – Culturally appropriate PSAs for American Indian women ages 40 through 64:

- 2 radio PSAs 30 seconds each
- 2 radio PSAs 15 seconds each (can be shorter version of each of the 30 second PSAs)
  - 1 radio PSA on breast cancer to air starting mid-March 2011 and through June 2011
  - 1 radio PSA on cervical cancer to air starting mid-March 2011 and through June 2011
- 4 television PSAs 30 seconds each
- 4 television PSAs 15 seconds each (can be shorter version of each of the 30 second PSAs)
- All television PSAs will use the *Women's Way* branding
  - 2 television PSA on breast cancer to air mid-March 2011 and through June 2011
  - 2 television PSA on cervical cancer to air starting mid-March 2011 and through June 2011

TV requirements for Set One and Set Two:

- Paid messages must be state-wide and aired on NBC, CBS, ABC, Lifetime for Women and Oxygen
- Paid messages must air Monday – Sunday/6am – 9pm only
  - In-kind spots may run at any time and with no end date
- Half of the paid messages need to be aired equally during the morning, noon and evening local news
- The remaining paid messages need to be aired during programs to reach women ages 40-64 – the programs should have rating points no less than the average of the local news ratings
  - Some prime-time spots are desired
- A minimum of 440 paid spots is required
  - In-kind spots for paid spots is ideal

Radio requirements for Set One and Set Two:

- Paid messages must be aired state-wide
- Paid messages must air Monday – Sunday/6am – 9pm only
  - In-kind spots may run at any time and with no end date
- Half of the paid messages need to be aired equally during the morning, noon and evening
- The remaining paid messages need to be aired during times to reach women ages 40-64
  - Some prime-time spots are desired
- A minimum of 440 paid spots is required
  - In-kind spots for paid spots is ideal

Notes: Production will include either paying role models to travel to contractor's designated site or the contractor will travel to role model's community/home to film/record the PSA. Travel may include travel to and from areas near Williston, Grand Forks, Minot, Dickinson, Fargo, Jamestown, Wahpeton, Fort Yates, New Town or Rolette for filming/recording PSAs.

The paid ads must run before June 30, 2011. The in-kind spots may run after June 30, 2011.

**Quality Assurance**

All media materials will meet Department of Health standards. All media materials must receive final approval of the *Women's Way* State Program Director, Division of Cancer Prevention and Control and the Department of Health Public Information Officer prior to being disseminated. Contractor must provide monthly reports/invoices for the work accomplished. A timetable for projects will be laid out with the successful offeror. Successful offeror must keep the Department informed of any projects that are not on schedule, must indicate the barriers to that progress, and negotiate adjusted timelines with the Department. Lack of quality or progress on projects can result in termination of the contract.

### **Directives**

Contract is subject to restrictions on the use of federal funds for lobbying of federal or state legislative bodies. Under the provisions of 31 U.S.C. Section 1352, recipients are prohibited from using appropriated federal funds for lobbying Congress or any federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

Public Law No.104-208, Section 503 expressly prohibits the use of appropriated funds for indirect or "grass roots" lobbying efforts that are designed to support or defeat legislation pending before state legislatures. No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress or any State legislative body itself.

### **3.02**

#### **Location of Work**

The State will not provide workspace for the contractor.

### **3.03**

#### **Prior Experience**

In order for offers to be considered responsive, offerors must meet the minimum prior experience requirements. An 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 two years of experience in developing media campaigns on public health issues. A working knowledge of the *Women's Way* program is desirable.

### **3.04**

#### **Required Licenses**

At the time specified by the deadline for submission of proposals, the offeror must have and keep current any professional licenses and permits required by federal, state and local laws for performance of this contract. Offerors that do not possess required licenses at the time proposals are due will be determined non-responsive.

### **3.05**

#### **Deliverables**

The contractor will be required to provide the following deliverables;

- (a) For the period, a paid and earned media plan outlining media channels, placement, reach and frequency for all mass media.
- (b) A projection of the value of matched advertising.
- (c) Appropriate media ads for target audiences.
- (d) Promotional materials to reach specified target populations.
- (e) Monthly invoices outlining work accomplished.

All media materials must be technically acceptable and meet the Department's standards.

## **SECTION FOUR GENERAL CONTRACT INFORMATION**

### **4.01**

#### **Contract Term and Renewal Options**

The State intends to enter into a contract with an effective date beginning February 15, 2011 and ending June 30, 2011.

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

### **4.02**

#### **Contract Type**

The contract is a Firm Fixed Price contract.

### **4.03**

#### **Standard Contract Provisions**

The successful offeror will be required to sign and submit the contract attached to this RFP (Attachment 8.01A). The contractor must comply with the contract provisions set out in this attachment. Any objections to the contract provisions must be set out in the offeror's proposal. No alteration of these provisions will be permitted without prior written approval from the purchasing agency.

Offerors are instructed to contact the procurement officer in writing by the deadline set for questions with any concerns regarding the contract provisions.

### **4.04**

#### **Proposal as a Part of the Contract**

Part or all of this RFP and the successful proposal may be incorporated into the contract.

### **4.05**

#### **Additional Terms and Conditions**

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

### **4.06**

#### **Supplemental Terms and Conditions**

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

- (a) if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and
- (b) if the State's rights would be diminished as a result of application of a supplemental term or condition included in the proposal, the supplemental term or condition will be considered null and void.

#### **4.07**

##### **Contract Approval**

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

#### **4.08**

##### **Contract Changes - Unanticipated Amendments**

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

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

#### **4.09**

##### **Indemnification and Insurance Requirements**

Offerors must review the attached Contract Template in the Appendix for indemnification and insurance requirements. The indemnification and insurance provisions will be incorporated into the final contract.

Objections to any of the provisions of the Indemnification and Insurance Requirements must be made in writing to the attention of the procurement officer by the time and date set for receipt of questions. No alteration of these provisions will be permitted without prior written approval from the purchasing agency in consultation with the North Dakota Risk Management Division.

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

#### **4.10**

##### **Taxes and Taxpayer Identification**

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

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

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

A contractor performing any contract, including a service contract, within North Dakota is also subject to the corporation income tax, individual income tax, and withholding tax reporting requirements, whether the contract is performed by a corporation, partnership, or other business entity, or as an employee of the contractor. In the case of employees performing the services in the state, the contractor is required to

withhold state income tax from the employees' compensation and remit to the state as required by law. Contact the North Dakota Tax Department at 701-328-3125 or visit its web site for more information

#### **4.11**

##### **Proposed Payment Procedures**

The State will make payments based on a negotiated payment schedule. Each billing must consist of an invoice and progress report. No payment will be made until the progress report and the project director has approved invoice.

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

#### **4.12**

##### **Contract Funding**

Approval or continuation of a contract resulting from this solicitation is contingent upon continuing appropriation. The contract may be terminated by the state or modified by agreement of both parties in the event funding from federal, state, or other sources is not obtained and continued at sufficient levels.

#### **4.13**

##### **Payment Terms**

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

Payment for commodities and services received under contracts will normally be made within 30 calendar days after receipt and acceptance by the purchasing agency or after receipt of a correct invoice, whichever is later. Payment inquiries must be directed to the purchasing agency.

Prompt Payment Discount Terms offered by the contractor may be taken by the purchasing agency if payment is made within the specified terms.

#### **4.14**

##### **Contract Personnel**

The project manager designated by the purchasing agency must approve any change of the contractor's project team members named in the proposal, in advance and in writing. Personnel changes that are not approved by the State may be grounds for the State to terminate the contract.

#### **4.15**

##### **Right to Inspect Place of Business**

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

#### **4.16**

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

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

Substantial failure of the contractor to perform the contract may cause the State to terminate the contract.

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

#### **4.17**

##### **Termination for Default**

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

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

#### **4.18**

##### **Open Records Laws - Confidentiality**

Any records that are obtained or generated by the contractor under this contract are subject to North Dakota open records law regarding public records and handling of confidential information.

#### **4.19**

##### **Work Product, Equipment, and Material**

All work product, equipment or materials created or purchased under this contract belong to the State and must be delivered to State at State's request upon termination of this contract, unless otherwise agreed in writing by the purchasing agency.

#### **4.20**

##### **Independent Entity**

The contractor is an independent entity under this contract and is not a State employee for any purpose. The contractor retains sole and absolute discretion in the manner and means of carrying out the contractor's activities and responsibilities under the contract, except to the extent specified in the contract.

#### **4.21**

##### **Assignment**

Contractor may not assign or otherwise transfer or delegate any right or duty without the State's express written consent. However, the contractor may enter into subcontracts provided that the subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments.

#### **4.22**

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

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

**SECTION FIVE  
EVALUATION CRITERIA AND CONTRACTOR SELECTION**

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

**5.01**

**Understanding of the Project**

*Five Percent (5%)* of the total possible evaluation points will be assigned to this criterion.

Proposals will be evaluated against the questions set out below:

- [a] How well has the offeror demonstrated a thorough understanding of the purpose and scope of the project?
- [b] How well has the offeror identified pertinent issues and potential problems related to the project?
- [c] How well has the offeror demonstrated an understanding of the deliverables the State expects it to provide?
- [d] How well has the offeror demonstrated an understanding of the State's time schedule and can meet it?
- [e] Is the proposal submitted responsive to all material requirements in the RFP?

**5.02**

**Methodology Used for the Project**

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

Proposals will be evaluated against the questions set out below:

- [a] Does the methodology depict a logical approach to fulfilling the requirements of the RFP?
- [b] Does the methodology match and achieve the objectives set out in the proposal?
- [c] Does the methodology interface with the time schedule in the proposal?
- [d] Does the methodology have provisions for quality assurance?

**5.03**

**Management Plan for the Project**

*Twenty Percent (20%)* of the total possible evaluation points will be assigned to this criterion.

Proposals will be evaluated against the questions set out below:

- [a] How well does the management plan support all of the project requirements and logically lead to the deliverables required in the RFP?
- [b] How well is accountability completely and clearly defined?



[c] Is the organization of the project team clear?

[d] How well does the management plan illustrate the lines of authority and communication?

[e] To what extent does the offeror already have the hardware, software, equipment, and licenses necessary to perform the contract?

[f] Does it appear that offeror can meet the schedule set out in the RFP?

[g] Has the offeror gone beyond the minimum tasks necessary to meet the objectives of the RFP?

[h] Is the proposal practical, feasible, and within budget?

[i] How will the offeror ensure quality communication with the Department of Health staff?

#### **5.04**

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

*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, no points will be awarded for meeting the minimum. Points will be awarded for experience and qualifications that exceed the stated minimums. Proposals will be evaluated against the questions set out below:

##### **Questions regarding the personnel.**

[a] Do the individuals assigned to the project have experience on similar projects?

[b] Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the RFP requires?

[c] How extensive is the applicable education and experience of the personnel designated to work on the project?

##### **Questions regarding the offeror.**

[d] How well has the offeror demonstrated experience in completing similar projects on time and within budget?

[e] How successful is the general history of the offeror regarding timely and successful completion of projects?

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

#### **5.05**

##### **References**

*Five Percent (5%)* of the total possible points will be assigned to this criterion.

If the RFP required a minimum number of references, no points will be awarded for meeting the minimum. Points will be awarded if the number of references submitted exceeds the stated minimums. Proposals will be evaluated against the questions set out below:

[a] Has the offeror provided the minimum number of references?

[b] Were the references consistent?

[c] What was the overall impression of the references in terms of the quality of work of the offeror – satisfactory (good), high, or exceptional?

## **5.06**

### **Contract Cost**

*Forty Percent (40%)* of the total possible evaluation points will be assigned to cost.

Any prompt payment discounts terms proposed by the offeror will not be considered in evaluating cost. The cost amount used for evaluation may be affected by the application of North Dakota preference laws (N.D.C.C. § 44-08-01). 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 evaluated according to the method set forth in the Proposal Evaluation form attached to this RFP.

## **SECTION SIX PROPOSAL FORMAT AND CONTENT**

### **6.01 Proposal Format and Content**

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

### **6.02 Introduction**

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

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

Proposals must be signed by a company officer empowered to bind the company. An offeror's failure to include these items in the proposals may cause the proposal to be determined to be non-responsive and the proposal may be rejected.

### **6.03 Understanding of the Project**

Offerors must provide comprehensive narrative statements that illustrate their understanding of the requirements of the project, deliverables, project schedule, and contract terms and conditions. Offerors must also identify any pertinent issues and potential problems related to the project.

### **6.04 Methodology Used for the Project**

Offerors must provide comprehensive narrative statements that set out the methodology it intends to employ. Offerors must illustrate how the methodology will serve to accomplish the work and provide the deliverables described in the scope of work within the State's project schedule.

### **6.05 Management Plan for the Project**

Offerors must provide comprehensive narrative statements that set out the management plan it intends to follow and illustrate how the plan will serve to accomplish the work and furnish the deliverables described in the scope of work within the State's project schedule. Offerors must provide a narrative or organizational chart that describes the organization of the project team. The organizational chart must illustrate the lines of authority, designate the individual responsible and accountable for the completion of each component and deliverable of the RFP, and indicate where the work will be performed.

### **6.06 Experience and Qualifications**

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

- (a) title;
- (b) resume;
- (c) description of the type of work the individual will perform; and
- (d) the number of estimated hours for each individual named above.

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

#### **6.07 References**

Offerors must provide two reference names and phone numbers for similar projects the offeror's firm has completed. The State reserves the right to contact any references provided by the offeror. Offerors are invited to provide letters of reference from previous clients.

#### **6.08 Cost Proposal**

Cost proposals must include an itemized list of all direct and indirect costs associated with the performance of the contract. This may include total number of hours at various hourly rates, direct expenses, payroll, supplies, overhead assigned to each person working on the project, percentage of each person's time devoted to the project, and profit.

All costs associated with the contract must be stated in U.S. currency. Any commodities being imported must be identified, and the price must include any applicable customs, brokerage agency fees, and duties.

Offerors should describe any discounts terms for prompt payment. Discounts for prompt payment will not be considered in evaluating cost.

Offerors must complete cost proposal indicating how costs were determined along with a justification of these costs. In addition, the offeror must project the value of in-kind advertising, separate from the general budget.

#### **6.09 Required Enclosures**

Resumes of Key Staff  
Organizational Chart  
References  
Detailed budget  
Projection of in-kind advertising

## **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).

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). The Department recognizes that the applicants may have clients with a reputation, products or services that are perceived by some to be in conflict with the purpose, goals and objectives of the Division of Chronic Disease. Examples of these clients include tobacco and tobacco-owned companies.

Any relationship by the individual/agency and their parent companies or subsidiaries with any affiliates or subsidiaries of a tobacco company must be disclosed as part of the submission of this request. The proposal shall assure that the credibility and integrity of the Department are protected at all times so that the Department goals are not compromised or diminished.

Offerors that do not have any clients that pose a potential conflict of interest at the time the contract funds are awarded need to be aware that if such clients are subsequently accepted, the Department shall be notified within 30 days and provided the information required above regarding how potential conflicts of interest will be mitigated.

The State reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the offeror's proposal. The State's determination regarding any questions of conflict of interest is final.

### **7.04**

#### **Offeror's Certification**

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

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

conflict of interest (e.g. employed by the State of North Dakota).

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

#### **7.05**

##### **Offer Held firm**

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

#### **7.06**

##### **Amendments to Proposals and Withdrawals of Proposals**

Offerors may amend or withdraw proposals prior to the deadline set for receipt of proposals. No amendments will be accepted after the deadline unless they are in response to the State's request. After the deadline, offerors may make a written request to withdraw proposals and provide evidence that a substantial mistake has been made. The procurement officer may permit withdrawal of the proposal upon verifying that a substantial mistake has been made, and the State may retain the offeror's bid bond or other bid type of bid security, if one was required.

#### **7.07**

##### **Alternate Proposals**

Offerors may submit only one proposal for evaluation.

Alternate proposals (proposals that offer something different than what is requested) will be rejected.

#### **7.08**

##### **Subcontractors**

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

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

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

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

## **7.09 Joint Ventures**

Joint ventures will not be allowed.

## **7.10 Disclosure of Proposal Contents and Compliance with North Dakota Open Records Laws**

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

Offerors may make a written request that trade secrets and other proprietary data contained in proposals be held confidential. Material considered confidential by the offeror must be clearly identified, and the offeror must include a brief statement that sets out the reasons for confidentiality. See the North Dakota Office of the Attorney General website for additional information.

<http://www.ag.state.nd.us/OpenRecords/ORM.htm>

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

## **7.11 Evaluation of Proposals**

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

## **7.12 Right of Rejection**

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

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

The procurement officer may waive minor informalities that:

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

The State reserves the right to reject any proposal determined to be not responsive, and to reject the

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

### **7.13**

#### **Clarification of Offers**

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

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

### **7.14**

#### **Discussions and Best and Final Offers**

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

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

### **7.15**

#### **Preference Laws**

The preference given to a resident North Dakota offeror will be equal to the preference given or required by the state of the nonresident bidder. A "resident" North Dakota bidder, offeror, seller, or contractor is one that has maintained a bona fide place of business within this State for at least one year prior to the date on which a contract was awarded. For a listing of state preference laws, visit the following website: [http://tpps.das.state.or.us/purchasing/pref-law/reciprocal\\_detail.php](http://tpps.das.state.or.us/purchasing/pref-law/reciprocal_detail.php) or contact the North Dakota State Procurement Office at 701-328-2683.

### **7.16**

#### **Contract Negotiation**

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

If contract negotiations are commenced, they will be held:

North Dakota Department of Health  
Community Health Section, State Capitol  
Room 210  
600 East Boulevard Ave. – Dept. 301  
Bismarck, ND



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

### **7.17 Failure to Negotiate**

If the selected offeror:

- fails to provide the information required to begin negotiations in a timely manner;
- fails to negotiate in good faith;
- indicates it cannot perform the contract within the budgeted funds available for the project; or
- if the offeror and the State, after a good faith effort, cannot come to terms,

the State may terminate negotiations with the offeror initially selected and commence negotiations with the next highest ranked offeror.

### **7.18 Notice of Intent to Award - Offeror Notification of Selection**

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

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

### **7.19 Protest and Appeal**

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

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

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

If an offeror wishes to protest the award of a contract or proposed award of a contract, the protest must be received, in writing, by the procurement officer within seven calendar days after the date the Notice of Intent to Award was issued.

**SECTION EIGHT  
ATTACHMENTS**

**8.01  
Attachments**

**Attachments**

- A. Contract Template
- B. Cost Proposal Example
- C. Proposal Evaluation Form
- D. Sample Notice of Award

**ATTACHMENT 8.01 A  
CONTRACT TEMPLATE**

<b>Contract No.</b>		<b>CFDA No.</b>		North Dakota Department of Health 600 East Boulevard Ave-Dept. 301 Bismarck, ND 58505-0200 Type: Purchase of Service Agreement (SFN53772)	
<b>Contract Period</b>					
From:		Through:			
<b>This contract is not effective and expenditures related to this contract should not be incurred until all parties have signed this document.</b>					
<b>Title of Project/Program:</b>				<b>Health Dept. Grant Code:</b>	
<b>Contractor Name and Address:</b>			<b>North Dakota Department of Health Program Director:</b>		
Contact Name: Telephone:			Telephone:		
<b>Financial Information</b>	<b>Dept of Health Cost Share</b>	<b>Contractor Cost Share</b>	<b>Total Project/Program Costs</b>		
Amount of Financial Assistance	\$0	\$0	\$0		
Previous Funds Awarded	\$0	\$0	\$0		
Total Funds Awarded to Date	\$0	\$0	\$0		
<b>Scope of Service:</b>					
<b>Reporting Requirements:</b>					
<b>Special Conditions:</b>					
This contract is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements for Contracts issued by ND Dept. of Health as signed by Contractor for the period July 1, 2009 to June 30, 2011 [Accounting Use Only <input type="checkbox"/> Requirements Received] (2) applicable Federal and State regulations.					
<b>Evidence of Contractor's Acceptance</b>			<b>Evidence of Departmental Acceptance</b>		
Signature		Date	Signature		Date
<b>Typed Name and Title of Authorized Representative</b>			<b>Typed Name and Title of Authorized Representative</b> Arvy Smith, Deputy State Health Officer		
Signature		Date	Signature		Date
<b>Typed Name and Title of Authorized Representative</b>			<b>Typed Name and Title of Authorized Representative</b>		

Contractor: All attachments if referenced in the scope of service must be returned with the signed contract. If you did not receive attachments as indicated in the scope of service, please contact the Program Director identified above.

**CONTRACT REQUIREMENTS ADDENDUM FOR ALL AGREEMENTS BETWEEN NORTH DAKOTA DEPARTMENT OF HEALTH (STATE) AND (CONTRACTOR) FOR NOTICE OF GRANT AWARD AND PURCHASE OF SERVICE AGREEMENTS. - SAMPLE**

**1. EVALUATION**

STATE shall, throughout the effective dates on the contract, conduct an ongoing evaluation of CONTRACTOR'S performance in carrying out the Scope of Service in the contract. Compliance with Contract Requirements will also be monitored. Such evaluation may include periodic site visits by STATE representatives to review progress made by CONTRACTOR in accomplishing stated goals and objectives.

**2. MERGER AND MODIFICATION**

This contract 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.

**3. ASSIGNMENT AND SUBCONTRACTS**

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE'S express written consent. CONTRACTOR may enter into subcontracts provided that written approval from the STATE has been obtained and that any subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor. CONTRACTOR has no authority to contract for or incur obligations on behalf of STATE.

**4. 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.

**5. INDEMNITY AND INSURANCE**

**Indemnification and Insurance Requirements for Private Entity**

**Indemnification Requirements as Checked**

**On-Site Services**

CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (STATE), from and against claims based on the vicarious liability of the STATE or its agents, but not against claims based on the STATE'S contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by CONTRACTOR to the STATE under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. 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.

**Off-Site Services**

The STATE and CONTRACTOR each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

**Insurance Requirements for Private Entity On-Site Services (Additional requirements apply if checked)**

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 \$500,000 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 if checked.
- 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 if checked.
- 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 if checked.

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 is the sole responsibility of Contractor.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by State. The policies shall be in form and terms approved by 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) must be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. State must have all the rights and coverages as Contractor under the 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 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 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 will 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 State must be in excess of Contractor's insurance and must not contribute with it;
- e) cross liability/severability of interest for all policies and endorsements;
  - f) The legal defense provided to State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for 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 State to terminate this agreement immediately.

**Insurance Requirements for Private Entity Off-Site Services (Additional requirements apply if checked)**

CONTRACTOR shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$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 \$500,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements.
- 4)  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 if checked.

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 insurance required in this agreement, through a policy or endorsement, shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State representative.
- 4) 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.
- 5) Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately

**Indemnification and Insurance Requirements for State Agency**

**Indemnification Requirements for State Agency**

The STATE and CONTRACTOR each agrees to assume its own liability for any and all

claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

#### **Insurance Requirements for State Agency**

The STATE and CONTRACTOR each shall secure and keep in force during the term of this agreement, from an insurance company, government self-insurance pool or government self-retention fund authorized to do business in North Dakota, commercial general liability with minimum limits of liability of \$250,000 per person and \$1,000,000 per occurrence.

#### **Insurance Requirements for Political Subdivision**

##### **Insurance Requirements for Political Subdivision**

CONTRACTOR shall secure and keep in force during the term of this agreement, from North Dakota Insurance Reserve Fund, 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 \$500,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$500,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements.

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 insurance required in this agreement, through a policy or endorsement, shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned STATE representative.
- 4) The CONTRACTOR shall furnish a certificate of insurance to the undersigned STATE representative prior to commencement of this agreement.
- 5) Failure to provide insurance as required in this agreement is a material breach of contract entitling STATE to terminate this agreement immediately.

#### **6. WORK PRODUCT, EQUIPMENT AND MATERIALS**

All work product, equipment or materials created or purchased under this contract belong to STATE and must be delivered to STATE at STATE'S request upon termination of this contract. CONTRACTOR agrees that all materials prepared under this contract are "works for hire" within the meaning of the copyright laws of the United States and assigns to STATE all rights and interests CONTRACTOR may have in the materials it prepares under this contract, including any right to derivative use of the material. CONTRACTOR shall execute all necessary documents to enable STATE to protect its rights under this section.

#### **7. 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.

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.
- (3) 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.

## 8. **SPECIAL CONDITIONS**

CONTRACTOR shall meet all other applicable special conditions as specified in the contract.

## 9. **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 in the District Court of Burleigh County, North Dakota.

## 10. **SEVERABILITY**

If any term of this contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms must 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.



**11. NOTICE**

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

\_\_\_\_\_ or North Dakota Department of Health  
\_\_\_\_\_ Attn: Karen Haas, Division of Accounting  
\_\_\_\_\_ 600 East Boulevard Ave-Dept 301  
\_\_\_\_\_ Bismarck, ND 58505-0200

Notice provided under this provision does not meet the notice requirements for monetary claims against the STATE found at N.D.C.C. § 33-12.2-04.

**12. CONFIDENTIALITY AND OPEN RECORD LAWS**

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 by state or federal laws, or as authorized in advance by STATE. STATE agrees not to disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. § 44-04-18. Any protected health information subject to N.D.C.C. ch. 23-01.3 or personal health information subject to federal HIPAA regulations may only be released as authorized by those laws. 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.

**Private Entity:**

CONTRACTOR understands that, except for information that is confidential under state or federal law or otherwise exempt from the North Dakota open records law, 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 or exempt 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.

**Political Subdivisions and State Agencies:**

CONTRACTOR and STATE are both independently responsible under the North Dakota open records law. Except for information that is confidential under state or federal law or otherwise exempt from the North Dakota open records law, STATE and CONTRACTOR must disclose to the public upon request any records received from each other. CONTRACTOR and STATE agree to contact the other immediately upon receiving a request for such information under state or federal law.

**13. 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 that is reasonably expected to cause a delay or default.

**14. RENEWAL**

This contract does not automatically renew.

**15. SPOILIATION – NOTICE OF POTENTIAL CLAIMS**

CONTRACTOR agrees to 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.

**16. 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.

**17. 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.

**18. 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 file all required reports, make required payroll deductions, and pay all taxes and premiums owed, including sales and use taxes and unemployment compensation and workers' compensation premiums in a timely manner. CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

**19. ADVANCE PAYMENT**

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

**20. LIMITATIONS ON APPROPRIATIONS AND SPENDING AUTHORITY**

Continuation of this Contract beyond June 30 of any odd-numbered year is contingent on continued legislative appropriation of funds for the purposes of this Contract. If those appropriations are not forthcoming, STATE will notify CONTRACTOR as soon as possible and the Contract will terminate on June 30 of that year. STATE will neither be penalized nor incur any liability because of termination of the Contract as provided above.

**21. TAXPAYER ID**

CONTRACTOR'S federal employer ID number or social security number is: \_\_\_\_\_

**22. EFFECTIVENESS OF CONTRACT**

Contracts are not effective until fully executed by all parties

**23. STATE AUDIT REQUIREMENTS:**

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 Department of Health, 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,

24. **FEDERAL AUDIT REQUIREMENTS**

The CONTRACTOR agrees that if the CONTRACTOR received more than \$500,000 either directly or indirectly from all federal sources, and is subject to the provisions of the Single Audit Act Amendments of 1996 (P.L.104-156), the CONTRACTOR will submit a copy of the A133 audit upon its completion to the STATE. Organizations receiving less than \$500,000 must have records available for review upon request of the STATE and/or Federal agency.

**RETENTION AND ACCESS REQUIREMENTS FOR RECORDS**

Common Rule \_\_\_42. (b) requires supporting documentation be retained by your agency for a minimum of three years from the date of the last request for reimbursement of the contract period or until audit is completed and findings resolved. Common Rule\_\_42. (e) allows the regulatory agencies, including Department of Health, timely and unrestrictive access to any pertinent supporting documentation.

25. **CASH MANAGEMENT/ALLOWABLE COSTS/APPLICABLE REGULATIONS**

The CONTRACTOR shall maintain accounting and project records that are sufficient to prepare required reports, track funds to level of expenditure, provide internal control by progress, provide budget control, assure allowable costs per the applicable Grant circulars (<http://www.whitehouse.gov/omb/circulars>) and the Codification of Government wide Grants Requirements (Common Rule) as found in the applicable Code of Federal Regulations: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html> listed below. Guidelines for Grant Award Financial Reporting are provided as a reference but are not inclusive of all reporting requirements.

State and Local Governments:

Circular A-87 Cost Principles for State/Local Government

Circular A-102 Administrative Requirements

Grants Management Common Rule:

Dept. of Agriculture 7 CFR 3016

Environmental Protection Agency 40 CFR 31

Dept. of Health & Human Services 45 CFR 92

Dept. of Justice 28 CFR 66

Dept. of Transportation 49 CFR 18

Educational Institutions:

Circular A-21 Cost Principles for Educational Institutions

Circular A-110 Administrative Requirements

Codified Common Rule:

Dept. of Agriculture 7 CFR 3019

Environmental Protection Agency 40 CFR 30

Dept. of Health & Human Services 45 CFR 74

Dept. of Justice 28 CFR 70

Dept. of Transportation 49 CFR 19

Non Profit Organizations:

Circular A-122 Cost Principles for Non Profit Organizations

Circular A-110 Administrative Requirements

Codified Common Rule:

Dept. of Agriculture 7 CFR 3017

**26. CIVIL RIGHTS**

The CONTRACTOR shall comply with Title VI of the Civil Rights Act of 1964, Executive Order 11246 and Executive Order 11375. In accordance with the aforementioned act, no person shall, on the grounds of race, color, national origin, age, disability, sex, or religion be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or in part, by federal funds.

**27. DEBARMENT/SUSPENSION**

The CONTRACTOR is advised that the signature on this form certifies that the company or any person associated therewith is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three years; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction on any matter involving fraud or official misconduct within the past three years.

**28. PRO-CHILDREN ACT OF 1994**

The CONTRACTOR agrees to comply with Public Law 103-227, Part C which states smoking should be prohibited in any indoor facility owned, leased, or contracted for and used for the routine or regular provision of health care, day care, or early childhood development services to children under the age of 18 where federally funded children's services are provided.

**29. DRUG FREE**

The CONTRACTOR certifies in accordance with C.F.R. 45 Part 76 that it will provide a drug-free workplace, or in case of an individual, certify that his or her conduct of grant activity will be drug-free.

**30. SMOKE FREE**

The CONTRACTOR will provide a smoke-free workplace and promote the nonuse of tobacco products in areas including office space, conference or meeting rooms, corridors, stairways, lobbies, rest rooms, cafeterias and other public space.

**31. ENERGY AND ENVIRONMENTAL CONSERVATION**

CONTRACTOR must give preference, to the extent practicable and economically feasible, to products and services that conserve natural resources and protect the environment and are energy efficient. (40CFR 30.44(a)).

**32. RESOURCE CONSERVATION AND RECOVERY ACT**

Section 6002 of the Resource Conservation and Recovery Act requires preference be given in procurement programs to the purchase of specific products containing recycled materials pursuant to the Environmental Protection Agency guidelines (40CFR Parts 247-253).

**33. SEAT BELT USAGE**

Executive Order 13043 of April 16, 1997 requires each federal agency to encourage CONTRACTORS and subcontractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles.

**34. EQUIPMENT**

The CONTRACTOR agrees that equipment purchased with federal funds and having an acquisition cost of \$5,000 or more per unit is the property of the State of North Dakota. Such equipment shall remain on loan to the CONTRACTOR until such time of its replacement, transfer or disposal pursuant to the direction of the STATE.

**35. POLITICAL ACTIVITY**

The CONTRACTOR will comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or part with federal funds.

**36. RESTRICTIONS FOR LOBBYING**

This award is subject to restrictions on the use of federal funds for lobbying of federal or state legislative bodies. Under the provisions of 31 U.S.C. Section 1352, recipients are prohibited from using appropriated federal funds for lobbying Congress or any federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for subgrant, contract under grants or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the CONTRACTOR certifies that:

(a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement;

(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

Public Law No.104-208, Section 503 expressly prohibits the use of appropriated funds for indirect or "grass roots" lobbying efforts that are designed to support or defeat legislation pending before state legislatures. No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress or any state legislative body itself.

Governmental entities are prohibited by law from lobbying. Activities designed to influence action in regard to a particular piece of pending state or federal legislation are considered lobbying. That

includes lobbying for or against pending legislation, as well as indirect or "grass roots" lobbying efforts that are directed at inducing the public to contact their elected representatives to urge support of, or opposition to, pending legislation.

The North Dakota attorney general has determined that governmental entities may provide the public with neutral factual information but may not, without express legislative authority, expend public funds for the purpose of influencing the result of an election issue, including initiated measures.

No part of any funding may be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence election issues or pending legislation.

**37. RELIGIOUS ACTIVITY**

The CONTRACTOR will comply with the applicable provisions of 45 C.F.R. Parts 74, 87, 92 and 96 regarding equal treatment for faith-based organizations.

**38. TRAFFICKING IN PERSONS (APPLICABLE TO PRIVATE ENTITY)**

Prohibition Statement—You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

**I hereby certify that our agency has agreed upon the above conditions applicable to funding received through all contracts issued by the STATE and will ensure all program managers are aware of and will comply with the requirements. I also certify that the person(s) responsible for authorizing, expending or accounting for grant funds will be provided access to the circulars and grant requirements as specified in Section 25 above.**

**If the CONTRACTOR has contract(s) in place that extend past June 30, 2009, CONTRACTOR agrees that this requirement form will become a part of the contract(s).**

CONTRACTOR

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

For questions regarding Contract Requirements contact:

Karen Haas  
North Dakota Department of Health  
Division of Accounting  
701.328.3325  
[khaas@nd.gov](mailto:khaas@nd.gov)

**ATTACHMENT 8.01 B  
COST PROPOSAL EXAMPLE**

**Direct Costs**

**Total number of hours at various hourly rates  
Direct expenses**

**Indirect Costs**

**Supplies  
Overhead  
Profit**

**List any applicable Prompt Payment Discount Terms.**

## ATTACHMENT 8.01 C PROPOSAL EVALUATION FORM

All proposals will be reviewed for responsiveness and then evaluated using the criteria set out herein.

### INSTRUCTIONS FOR EVALUATORS

Each evaluation criterion has been assigned 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

This rating scale is intended 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 criteria receiving a weighting of 20% of the total possible points. Using a 100 Point Scale, a maximum of 20 points can be awarded. The rating scale would be:

Rating Scale ( <b>20 POINT</b> Maximum)	
Point Value	Explanation
<b>0</b>	None. Not addressed or response of no value
<b>1-5</b>	Fair. Limited applicability
<b>6-10</b>	Good. Some applicability
<b>11-15</b>	Very Good. Substantial applicability
<b>16-20</b>	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 the technical proposals have been evaluated.

Not all members of the evaluation need to evaluate the cost proposal. The cost proposals may be evaluated by selected members of the evaluation committee, reviewed by group, and recorded on the evaluation summary sheets.

Any prompt payment discounts terms offered by the vendor are not taken into consideration in evaluating cost. However, the cost proposals of nonresident offerors may be adjusted 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 Offeror Name \_\_\_\_\_

Name of Proposal Evaluation (PEC) Member \_\_\_\_\_

Date of Review \_\_\_\_\_

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

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

### 7.01

#### Understanding of the Project

Weight **5 Percent**. Maximum Point Value for this Section

100 Points x **5 Percent = 5 Points**

Rating Scale ( <b>5 POINT</b> Maximum)	
Point Value	Explanation
<b>0</b>	None. Not addressed or response of no value
<b>1</b>	Fair. Limited applicability
<b>2</b>	Good. Some applicability
<b>3</b>	Very Good. Substantial applicability
<b>4-5</b>	Excellent. Total applicability

Proposals will be evaluated against the questions set out below. Do not assign points to individual questions; instead, award a total score for each evaluation criterion.

[a] How well has the offeror demonstrated a thorough understanding of the purpose and scope of the project?

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

[b] How well has the offeror identified pertinent issues and potential problems related to the project?

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

[c] How well has the offeror demonstrated an understanding of the deliverables the State expects it to provide?

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

[d] How well has the offeror demonstrated an understanding of the State's time schedule and can meet it?

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

\_\_\_\_\_

[e] Is the proposal submitted responsive to all material requirements in the RFP?

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

\_\_\_\_\_

**EVALUATOR'S POINT TOTAL FOR 7.01** \_\_\_\_\_

**7.02  
Methodology Used for the Project**

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

Rating Scale ( <b>15 POINT</b> Maximum)	
Point Value	Explanation
<b>0</b>	None. Not addressed or response of no value
<b>1-3</b>	Fair. Limited applicability
<b>4-5</b>	Good. Some applicability
<b>6-10</b>	Very Good. Substantial applicability
<b>11-15</b>	Excellent. Total applicability

Proposals will be evaluated against the questions set out below. Do not assign points to individual questions; instead, award a total score for each evaluation criterion.

[a] Does the methodology depict a logical approach to fulfilling the requirements of the RFP?

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

\_\_\_\_\_

[b] Does the methodology match and achieve the objectives set out in the proposal?

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

\_\_\_\_\_

[c] Does the methodology interface with the time schedule in the proposal?

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

\_\_\_\_\_

[d] Does the methodology have provisions for quality assurance?

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

EVALUATOR'S POINT TOTAL FOR 7.02 \_\_\_\_\_

**7.03  
Management Plan for the Project**

Weight **20 Percent**. Maximum Point Value for this Section  
100 Points x **20 Percent = 20 Points**

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

Proposals will be evaluated against the questions set out below. Do not assign points to individual questions; instead, award a total score for each evaluation criterion.

[a] How well does the management plan support all of the project requirements and logically lead to the deliverables required in the RFP?

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

[b] How well is accountability completely and clearly defined?

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

[c] Is the organization of the project team clear?

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

[d] How well does the management plan illustrate the lines of authority and communication?

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

[e] To what extent does the offeror already have the hardware, software, equipment, and licenses necessary to perform the contract?

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

[f] Does it appear that offeror can meet the schedule set out in the RFP?

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

[g] Has the offeror gone beyond the minimum tasks necessary to meet the objectives of the RFP?

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

[h] Is the proposal practical, feasible, and within budget?

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

[i] How will the offeror ensure quality communication with the Department of Health staff?

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

**EVALUATOR'S POINT TOTAL FOR 7.03** \_\_\_\_\_

**7.04  
Experience and Qualifications**

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

Rating Scale ( <b>15 POINT</b> Maximum)	
Point Value	Explanation
<b>0</b>	None. Not addressed or response of no value
<b>1-3</b>	Fair. Limited applicability
<b>4-5</b>	Good. Some applicability
<b>6-10</b>	Very Good. Substantial applicability
<b>11-15</b>	Excellent. Total applicability

Proposals will be evaluated against the questions set out below. Do not assign points to individual questions; instead, award a total score for each evaluation criterion.

**Questions regarding the personnel.**

[a] Do the individuals assigned to the project have experience on similar projects?

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

[b] Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the RFP requires?

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

[c] How extensive is the applicable education and experience of the personnel designated to work on the project?

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

**Questions regarding the offeror.**

[d] How well has the offeror demonstrated experience in completing similar projects on time and within budget?

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

[e] How successful is the general history of the offeror regarding timely and successful completion of projects?

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

[f] Has the offeror provided letters of reference from previous/current clients?

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

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

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

**EVALUATOR'S POINT TOTAL FOR 7.04** \_\_\_\_\_

**7.05  
References**

Weight **5 Percent**. Maximum Point Value for this Section  
100 Points x **5 Percent = 5 Points**

Rating Scale ( <b>5 POINT</b> Maximum)	
Point Value	Explanation
<b>0</b>	None. Not addressed or response of no value
<b>1</b>	Fair. Limited applicability
<b>2</b>	Good. Some applicability
<b>3</b>	Very Good. Substantial applicability
<b>4-5</b>	Excellent. Total applicability

Proposals will be evaluated against the questions set out below. Do not assign points to individual questions; instead, award a total score for each evaluation criterion.

If the RFP required a minimum number of references, no points will be awarded for meeting the minimum. Points will be awarded if the number of references submitted exceeds the stated minimum.

[a] Has the offeror provided the minimum number of references?

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

[b] Were references consistent?

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

[c] What was the overall impression of the references in terms of the quality of work of the offeror – satisfactory (good), high or exceptional?

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

**EVALUATOR'S POINT TOTAL FOR 7.05** \_\_\_\_\_

## 7.06

### Contract Cost

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

### Applying Preference Laws

Any prompt payment discounts terms proposed by the offeror will not be considered in evaluating cost. The cost amount used for evaluation may be affected by the application of North Dakota preference laws ( N.D.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, determine whether the offeror's state of residence has a preference law for vendors resident in that state. The cost proposal of the nonresident offeror will be increased 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.state.nd.us/csd/spo/resources.html> 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:

Price of Lowest Cost Proposal

Price of Proposal Being Rated X Total Points for Cost Available = Awarded Points

## COST PROPOSAL EVALUATION

EVALUATOR'S POINT TOTAL FOR 7.06 \_\_\_\_\_

**Request for Proposal  
Evaluation Summary**

Name of RFP: Women's Way Media Buy		
RFP Number: 301.CancerWW.02		
Vendor Being Evaluated:		
Evaluator Name:		
Date:		
<b>Technical Evaluation (Maximum 60 Points)</b>	<b>Maximum Points by Category</b>	<b>Score</b>
1. Understanding of the Project:	<b>5</b>	
2. Methodology Used for the Project:	<b>15</b>	
3. Management Plan for the Project:	<b>20</b>	
4. Experience and Qualifications:	<b>15</b>	
5. References:	<b>5</b>	
<b>Cost Evaluation (Maximum 40 Points)</b>		
1. Make adjustments for reciprocal preference, if necessary. See list of States Preference Laws:		
2. Calculated points awarded for price.		
<u>Price of Lowest Cost Proposal</u> Price of Proposal Being Rated X <b>40 points</b> = Awarded Points		
5. Cost	<b>40</b>	
<b>Total</b>		



**Request for Proposal  
Evaluation Totals**

Name of RFP: Women’s Way Media Buy – 301.CancerWW.02							
Name of Offeror:							
Date:							
Technical Evaluation Criteria	<b>60 POINTS</b> Maximum	Evaluator	Evaluator	Evaluator	Evaluator	Evaluator	Evaluator
1. Understanding of the Project	<b>5</b>						
2. Methodology Used for the Project:	<b>15</b>						
3. Management Plan for the Project:	<b>20</b>						
4. Experience and Qualifications:	<b>15</b>						
5. References	<b>5</b>						
Evaluator Totals							
Grand Total	Note: Sum of all individual scores.						
Technical Proposal Score	Note: Total of individual points divided by the number of evaluators ( <b>60 POINT MAXIMUM</b> ).						
Cost Proposal Score	Note: ( <b>40 POINT MAXIMUM</b> )						
TOTAL							

**Request for Proposal  
Summary of Evaluation Committee Totals**

Name of RFP: Women's Way Media Buy – 301.CancerWW.02					
Date:					
	Vendor 1	Vendor 2	Vendor 3	Vendor 4	Vendor 5
Technical Proposal Score <b>(70 Points Maximum)</b>					
Cost Proposals Score <b>(30 Points Maximum)</b>					
Grand Total					

**ATTACHMENT 8.01 D  
SAMPLE NOTICE OF AWARD**

**STATE OF NORTH DAKOTA  
DEPARTMENT OF HEALTH  
600 E. BOULEVARD AVENUE, DEPT. 301  
BISMARCK ND 58505-0200  
Telephone: 701.328.3134 Fax: 701.328.2036**

**DATE**

**NOTICE OF INTENT TO AWARD**

Request for Proposal (RFP) 301.CancerWW.02 **Women's Way Media Buy Contractor** was issued by the **North Dakota Department of Health** on **January 4, 2011**.

The following vendors submitted proposals in response to the RFP:

**LIST NAMES AND ADDRESSES OF ALL OFFERORS THAT SUBMITTED PROPOSALS  
OR INCLUDE AS AN ATTACHMENT.**

A committee evaluated the proposals based upon the criteria stated in the RFP to select the offeror that submitted the most advantageous proposal. We announce our intent to award a contract to **NAME OF SUCCESSFUL OFFEROR**.

The successful offeror is instructed not to begin work, purchase materials, or enter into subcontracts relating to the project until both the recipient and the State sign the contract.

An offeror may protest this Notice of Intent to Award by submitting a written protest to the procurement officer within seven calendar days after the date of this notice.

On behalf of the **North Dakota Department of Health**, thank you for your efforts in preparing a proposal in response to this solicitation. We appreciate your interest in doing business with the State of North Dakota, and your company will remain our bidders list for any future solicitations of a similar nature.

If you have any questions, please feel free to contact me at (701) 328.3134.

Sincerely,

Lonny W. Mertz

Procurement Officer