

STATE OF NORTH DAKOTA
(10/2010)
STATE HISTORICAL SOCIETY OF ND
612 East Boulevard Avenue
Bismarck, North Dakota 58505

Request For Proposal (RFP)

RFP Title: **Exhibition Walls System**

RFP Number: **701-10-005**

Date of Issue: 16, October, 2013

Purpose of RFP: Purpose of this RFP is to purchase a museum quality exhibition wall system that will be used to host temporary exhibits in a gallery in the North Dakota Heritage Center

Offerors are not required to return this form.

Procurement Officer: Ronald Phil Warner

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SECTION ONE INTRODUCTION AND INSTRUCTIONS

1.01

Purpose of the RFP

The, State Historical Society of ND, hereafter known as “purchasing agency” is soliciting proposals for purchasing a museum quality exhibition wall system that will be used to host temporary exhibits in the Governor's gallery of the North Dakota Heritage Center. This system will be a moveable free standing modular system which will be used as standalone displays, linked together on a continuous wall of any length as required or form intricate exhibition configurations or a combination of both.

1.02

Contact Person, Telephone, Fax, E-mail

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

PROCUREMENT OFFICER: Ronald Phil Warner
PHONE: 701-328-3561
FAX: 701-328-3710
TTY Users call: 1-800-366-6888 (Relay North Dakota)
E-MAIL: rwarner@nd.gov

1.03

RFP Schedule

This schedule of events represents the State's best estimate of the schedule that will be followed for this RFP. If a component of this schedule, such as the deadline for receipt of proposals, is delayed, the rest of the schedule will be shifted by the same number of days.

The approximate RFP schedule is as follows:

- RFP Issued: October 16, 2013.
- Recommended on site walkthrough of Governors Gallery: October 24, 2013 (non-mandatory)
- Deadline for receipt of questions and objections related to the RFP: October 29, 2013.
- Responses to questions / RFP amendments (if required) October 31, 2013.
- Proposals due by: **November 8, 2013 3:00 pm Central Time.**
- Proposal Evaluation Committee evaluation completed by approximately: November 15, 2013.
- State issues Notice of Intent to Award a Contract approximately: November 19, 2013.
- State issues contract approximately: November 27, 2013.
- Contract start: January 27, 2014

1.04

Return Mailing Address and Deadline for Receipt of Proposals

Offerors must submit four (4) of its proposal in a sealed envelope or package.

Cost proposals are to be submitted in a separate sealed envelope or package, clearly labeled "cost proposal."

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:

State Historical Society of North Dakota
Request for Proposal (RFP): Exhibition Walls System
RFP Number: 701-10-005
612 East Boulevard Avenue
Bismarck North Dakota 58505

Proposals must be received by the purchasing agency at the location specified no later than **3:00 P.M., CENTRAL**, Time on **November 8**. Proposals will not be publicly read at the opening.

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

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

1.05

Assistance to Offerors with a Disability

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

1.06

Deadline for Receipt of Questions and Objections

Offerors must carefully review this solicitation, the contract, risk management provisions, and all attachments for defects, questionable, or objectionable material. All questions must be in writing and directed to the purchasing agency, addressed to the procurement officer, and cite the subject RFP number. The procurement officer must receive these written requests by the deadline specified in the RFP Schedule of Events to allow issuance of any necessary amendments. If no deadline is specified, questions or objections must be received at least 7 days prior to solicitation closing.

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. Questions can be sent via email, fax or phone.

PROCUREMENT OFFICER: Ronald Phil Warner
PHONE: 701-328-3561
EMAIL: rwarn@nd.gov
FAX: 701-328-3710
TTY Users call: 1-800-366-6888 (Relay North Dakota)

1.07

Approved Vendor Registration Requirements

VENDORS MUST BE APPROVED BEFORE CONTRACT AWARD

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

To become an approved vendor, offerors must: 1) be registered with the North Dakota Secretary of State (fees apply), and 2) submit a completed Bidders List Application to the North Dakota Vendor Registry Office. Prospective offerors may access the Procurement Vendor Database on-line to verify whether their firm is currently on the bidders list. The bidders list that will be used for this solicitation is commodity code 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 701-328-2683 or infospo@nd.gov for assistance.

The successful offeror must register and become approved within 50 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.

For information about vendor registration, visit the State Procurement Office Vendor Registry website at: <http://www.nd.gov/spo/vendor/registry/> or call 701-328-2683 or infospo@nd.gov.

1.08

Pre-proposal Conference

An on-site walkthrough of the North Dakota Heritage Center is strongly recommended for offerors interested in submitting a proposal. Attendance at this walkthrough is not mandatory and responses to this RFP will not be rejected if the offerors do not respond to the recommendation.

The schedule for the recommended on-site walkthrough and question/answer period will be as follows:

- 10:00 AM guided walkthrough (not mandatory)
- 11:00 AM Question/Answer Period will be held in the Legislative Meeting Room of the North Dakota Heritage Center.

The purpose of the walkthrough is to discuss the work to be performed with the prospective offerors and allow them to ask questions concerning the RFP. Questions and answer period notes and any answers that are not immediately made available will be answered and provided to all prospective offerors as an amendment to the RFP and issued pursuant to section 1.09. The Question and Answer Period will last as long as there are questions to be answered and will end at the point where no additional questions are presented but no later than 5:00 PM. 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 who were notified of the RFP and to those that have requested a copy of the RFP from the procurement officer. Amendments will also be posted to the State Procurement Website at www.nd.gov/spo.

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: The North Dakota Heritage Center has a gallery that will be used to house temporary exhibits. This necessitates the need for a system of moveable museum quality walls that will give unlimited design flexibility using a wide variety of wall structures and components.

2.02

Budget

The estimated budget for completion of this project is between \$40,000 and \$50,000. Proposal priced at more than \$50,000 will be considered non-responsive.

SECTION THREE SCOPE OF WORK

3.01

Scope of Work

Vendor to provide a system of moveable museum quality walls/modules that will give unlimited design flexibility using a wide variety of wall structures and components.

- Free standing – does not require floor or ceiling tracks.
- Interlocking modules for stability and security. Walls/ modules will be approximately 8 ft high and available in various widths.
- Modules can be joined together for continuous seamless run.
- Modules can be arranged in multiple configurations of various angles.
- Simple to construct and dismantle.
- Light weight components that can be set-up by two people.
- Surfaces can accommodate mounting and hanging of objects up to 40 lbs.
- Modules, components and accessories shall be fire retardant – having a class A or 1 rating.
- Must be made of museum quality materials: formaldehyde free, low volatile organic compounds, glue cannot contain any phenol or urea.
- Expandable sets – ability to later add panels and other components.
- Low maintenance surface and components.
- Maintainable and repairable surfaces.
- Wall surface color can be changed.
- Adjustable for uneven floor conditions.
- Easy to store when not in use.
- Include transport/storage carts to store all wall/modules.
- All necessary connector hardware, corners, end caps, components, and any other hardware and tools needed for assembly.
- On-site tutorial by product trained supervisor to train agency staff how to assemble product.

3.02

Deliverables

The contractor will be required to provide the following deliverables:

- (a) moveable walls/wall modules and components in quantity to complete design as laid out in blueprint. Attachment 1.
- (b) transport/storage carts.
- (c) All necessary connection hardware and any additional hardware and tools necessary for assembly.
- (d) On-site tutorial.

3.03

Location of Work

The wall/module system will be delivered to and on site tutorial is to be performed at the following location:

North Dakota Heritage Center, 612 E. Blvd Ave., Bismarck, North Dakota

The State will provide workspace for the contractor. The Heritage Center has an interior loading dock large enough for 53' trailer.

The contractor should include in its price proposal: transportation, lodging, and per diem costs sufficient to pay for one (1) person to make one (1) trip to Bismarck, North Dakota for tutorial. Travel to other locations will not be required.

3.04

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: 10 years

3.05

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.

3.06

Contract Schedule

This schedule of events represents the State's best estimate of the contract schedule that will be followed. If a component of this schedule, such as the award date, is delayed, the rest of the schedule will be shifted by the same number of days.

The approximate contract schedule is as follows:

- Contract start: January 27, 2014
- Contractor submits deliverables to the State: March 21, 2014

SECTION FOUR GENERAL CONTRACT INFORMATION

4.01

Contract Term, Extension and Renewal Options

The State intends to enter into a contract with an effective date beginning January 27, 2014 and ending April 11, 2014

Extension Option

The State reserves the right to extend the contract period for an additional period of time, not to exceed, 7 days beyond the normal expiration date of the contract, upon mutual written agreement by both parties.

4.02

Contract Type

This 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 (Appendix A). 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 in consultation with the North Dakota Risk Management and the North Dakota Attorney General.

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 for indemnification and insurance requirements. The indemnification and insurance provisions as stated in the attached sample contract 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 701-328-1246 or visit its website at www.nd.gov/tax/ for more information.

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

contractor. In the case of employees performing the services in the state, the contractor is required to withhold state income tax from the employees' compensation and remit to the state as required by law. Contact the North Dakota Tax Department at 701-328-1248 or visit its web site for more information

4.11

F.O.B. Point and Freight

All commodities purchased through this contract will be Free on Board ("F.O.B.") final destination, freight prepaid. Unless specifically stated otherwise, all prices offered must include the delivery costs to any location within the State of North Dakota. Title will pass to the State at destination, and the vendor will be responsible for any freight claims.

4.12

Proposed Payment Procedures

The State will make a single payment when all of the deliverables are received and the contract is completed and approved by the project manager designated by the State.

4.13

Contract Funding

Payment for the contract is subject to funds already appropriated and identified.

4.14

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.

4.15

Inspection & Modification - Reimbursement for Unacceptable Deliverables

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

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

4.16

Termination for Default

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

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

4.17

Open Records Laws - Confidentiality

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

4.18

Work Product, Equipment, and Material

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

4.19

Independent Entity

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

4.20

Assignment

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

4.21

Disputes - Applicable Law and Venue

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

4.22

Bid Bond – Bid Security - Performance Bond - Surety Deposit

Performance Bond

Offerors must obtain a letter of commitment for a performance bond from a bonding company and submit it with the proposal. The amount of the performance bond must be equal to 100 percent of the contract for the full term of the contract.

If the contractor fails to satisfactorily perform the contract, the bonding company that provided the performance bond will be required to pay the dollar amount of the bond to the State.

The actual performance bond must be obtained from the bonding company and provided to the State within 14 days after the date of the Notice of Intent to Award unless the time is extended in writing by the purchasing agency. An offeror's failure to provide the performance bond, within the required time, will cause the State to reject the proposal.

SECTION FIVE EVALUATION CRITERIA AND CONTRACTOR SELECTION

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

Evaluation of proposals will proceed in three (3) phases:

1. Responsiveness and Responsibility
2. Team Evaluation
3. Best and Final Offers and/or Award

Phase One: All proposals will be reviewed by the Procurement Officer and other designated State employees to determine if Offeror's proposal is responsiveness to RFP requirements, if Offeror meets the minimum qualifications required to present a proposal. All proposals not rejected during Phase One will move to Phase Two.

Phase Two: All proposals not rejected in Phase One will be reviewed in detail by a team of evaluators. These evaluators will review and score proposals in accordance with the evaluation criteria and weight detailed below.

Phase Three: The team may make an award or if determined to be appropriate, a request for Best and Final offers may be made in accordance with Section 7.10 of this RFP.

Proposal Evaluation Criteria/Categories

Proposals will be scored in four (4) major categories. The categories will carry the following relative weights:

1. **Project Understanding and Management (10%)**
2. **Product Design and Specifications (40%)**
3. **Experience and Qualifications (35%)**
4. **Cost-Price Proposal (15%)**

Team members will utilize the evaluation worksheets to evaluate and score each category. Scores will be based on how well the Offeror answered the questions on the worksheets as well as the quality of their response. All evaluator's scores for all Offerors will be compiled in a worksheet.

SECTION SIX PROPOSAL FORMAT AND CONTENT

General Information

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

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

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. An Offeror's proposal must be organized as follows:

Physical Organization

Prepare proposals on 8.5 x 11 paper and insert in a three ring binder with sections (as defined below) separated by tabbed dividers. Any exhibits, pictures or drawings that are printed on paper larger than 8.5 x 11 should be folded, punched and bound in folder or enclosed in folder in sheet protectors or some

other similar presentation, if possible. If not possible to include in binder, enclose in other container or presentation type folder which is as compactly sized as possible.

Proposals must be separated into an introductory section, three (3) content sections and one (1) cost proposal section. Each section must be formatted as follows and include the information detailed below by providing comprehensive narrative statements and descriptions. Offerors must provide all documents, samples or other information specifically required by this RFP.

Prepare and submit four (4) complete and compiled copies of Section 1 through 3 of your proposal and one (1) copy of your cost proposal as Section 4.

Introductory/Affirmations Section

An "Introduction" section must include the following:

- A cover letter signed by a company officer with authority to bind the company. The letter must contain the following:
 - o the complete name and address of the Offeror and the name, mailing address, and telephone number of the person the State should contact regarding the proposal;
 - o confirmation that the Offeror will comply with all provisions in this RFP;
 - o disclosure of any instances where the Offeror 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);
 - o a statement certifying that the offeror complies with:
 - the laws of the State of North Dakota;
 - *North Dakota Administrative Code*;
 - all applicable local, state, and federal laws, code, and regulations;
 - the applicable portion of the Federal Civil Rights Act of 1964;
 - the Equal Employment Opportunity Act and the regulations issued by the federal government;
 - the Americans with Disabilities Act of 1990 and the regulations issued by the federal government;
 - all terms, conditions, and requirements set forth in this RFP;
 - a condition that the proposal submitted was independently arrived at, without collusion; and
 - a condition that the offer will remain open and valid for the period indicated in this solicitation.
- A completed and signed hard copy of the Affirmations document attached hereto as Attachment A. The Affirmations documents must be signed by a company officer empowered to bind the company.

Section One – Project Understanding and Management

Offerors must provide comprehensive statements that illustrate how they plan to manage the process of designing, fabricating and installing the products described in Section 3 of this RFP, including, but not limited to:

- Provide evidence that compellingly indicates your understanding of the project,
- Identify and discuss your methodology for design, fabrication and installation.
- Identify common issues and problems related to similar projects and how you mitigate the risks associated therewith.
- Demonstrate your understanding of the deliverables.
- Provide a timeline for the design, fabrication, installation and turnover/closeout.
- Provide proposed payment terms.
- Provide information on your quality control practices.

Section Two – Product Design and Specifications

Offerors must provide comprehensive statements and other detailed information on their proposed product:

- Provide basic design information for the proposed system.
- Provide schematic drawings indicating how the system will fit into the location described.
- Provide information on the following details of the proposed system:
 - Free standing – not requiring tracks
 - Interlocking modules for stability and adjustable for uneven floors
 - Modules can be configured various angles
 - Easy to store
 - Modules lightweight and simple to construct and dismantle
 - Ability to accommodate hanging heavy objects
 - Class A or 1 fire rating
 - Low maintenance and repairable surfaces
 - On-site tutorial
 - Any and all other items required for the system not enumerated elsewhere.
- Assurance that all materials meet the definition of archival quality and all other specifications noted in Section 3 of this RFP document.
- Information on why you believe your proposed product and design will be most advantageous to the State.

Section Three – Experience and Qualifications

Offerors must provide:

- At least three customer references for whom you have completed similar projects.
- Information on previous projects that demonstrates your experience in manufacturing moveable wall systems similar to the system described in Section 3 of this RFP document.
- Provide information on previous projects that were completed in a timely and successful manner.
- Provide evidence of professional certifications.
- Provide information on the personnel to be assigned to this project and their experience and qualifications for this project of this nature.

Section Four – Cost Proposal

Offerors must provide a completed cost proposal using the format provided for in Attachment 4.

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 SEVEN STANDARD PROPOSAL INFORMATION

7.01

Authorized Signature

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

7.02

State Not Responsible for Preparation Costs

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

7.03

Conflict of Interest

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

7.04

Offeror's Certification

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

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

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

7.05

Offer Held firm

Proposals must remain open and valid for at least 90 days from the deadline specified for submission of proposals. In the event 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.nd.gov/OpenRecords/ORM.htm>

After award, proposals will be subject to the North Dakota open records law. Records are closed or confidential only if specifically stated in law. If 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://www.nd.gov/spo/legal/resources/> or contact the North Dakota State Procurement Office at 701-328-2740.

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: primarily by teleconference or email.

However, if on site negotiations are needed they will be at:

North Dakota Heritage Center
612 East Boulevard Avenue
Bismarck, North Dakota

If contract negotiations are held, the offeror will be responsible for all costs 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

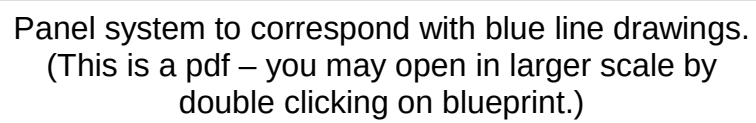
8.01

Attachments

Attachments

1. Blueprint
2. Proposal Evaluation Form
3. Contract Form including Indemnification and Insurance Requirements
4. Notice of Intent to Award
5. Offeror Checklist

Blueprint



ATTACHMENT 2

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

COST PROPOSAL

If offerors were required to place cost proposals in a separate sealed envelope, do not open the cost proposal until 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 701-328-2740 for assistance in applying preference laws.

EVALUATION CRITERIA AND SCORING

Person or Firm Name _____

Name of Proposal Evaluation (PEC) Member _____

Date of Review _____

RFP Title/Number _____

I hereby certify that I do not have a conflict of interest with this offeror. I further certify that I have reviewed the Request for Proposal Evaluators Guide and that neither I nor my immediate family members have a conflict of interest with regard to this offeror who submitted a proposal in response to this Request for Proposal, in accordance with [N.D.A.C. § 4-12-04-04](#).

Signature _____ Date _____

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

Section One: Project Understanding and Management

Weight 10 Percent. Maximum Point Value for this Section

100 Points x 10 Percent = 10 Points

Rating Scale (10 POINT Maximum)	
Point Value	Explanation
0	None. Not addressed or response of no value
1-2	Fair. Limited applicability
3-4	Good. Some applicability
5-7	Very Good. Substantial applicability
8-10	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] 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] Has the offeror demonstrated an understanding of the deliverables the State expects it to provide?

EVALUATOR'S NOTES _____

[d] 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 SECTION ONE
PROJECT UNDERSTANDING AND MANAGEMENT**

Section Two Product Design and Specifications

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

Rating Scale (40 Points Maximum)	
Point Value	Explanation
0	None. Not addressed or response of no value
1-10	Fair. Limited applicability
11-20	Good. Some applicability
21-30	Very Good. Substantial applicability
31-40	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 plan depict a logical approach to fulfilling the requirements of the RFP?

EVALUATOR'S NOTES _____

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

EVALUATOR'S NOTES _____

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

EVALUATOR'S NOTES _____

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

EVALUATOR'S NOTES _____

**EVALUATOR'S POINT TOTAL FOR SECTION TWO
PRODUCT DESIGN AND SPECIFICATIONS**

Section Three Experience and Qualifications

Weight 35 Percent. Maximum Point Value for this Section
100 Points x 35 Percent = 35 Points.

Rating Scale (35 Points Maximum)	
Point Value	Explanation
0	None. Not addressed or response of no value
1-8	Fair. Limited applicability
9-17	Good. Some applicability
18-26	Very Good. Substantial applicability
27-35	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] Does the project manager have license/certification by the manufacturer as RFP requires? Do the individuals assigned to the project have experience on projects of similar or larger size?

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 firm.

[d] Has the firm demonstrated experience in completing similar projects on time and within budget?

EVALUATOR'S NOTES _____

[e] How successful is the general history of the firm regarding timely and successful completion of projects? Has the firm required experience in the manufacturing of high density mobile storage system?

EVALUATOR'S NOTES _____

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

EVALUATOR'S NOTES _____

[g] Has the firm provided letters of reference from previous clients?

EVALUATOR'S NOTES _____

[h] 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 SECTION THREE
EXPERIENCE AND QUALIFICATIONS**

Section Four Cost Proposal

Weight 15 Percent. Maximum Point Value for this Section
100 Points x 15 Percent = 15 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.oregon.gov/DAS/SSD/SPO/reciprocal_detail.shtml 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 SECTION FOUR
COST PROPOSAL

**Request for Proposal
Evaluation Summary**

Name of RFP:		
RFP Number		
Vendor Being Evaluated:		
Evaluator Name:		
Date:		
Technical Evaluation (Maximum 85 Points)	Maximum Points by Category	Score
1. Project Understanding and Management:	10	
2. Product Design and Specifications:	40	
3. Experience and Qualifications:	35	
Cost Evaluation (Maximum 15 Points) 1. Make adjustments for reciprocal preference, if necessary. See list of States Preference Laws: http://cms.oregon.gov/DAS/EGS/PS/Pages/reciprocal.aspx Calculated points awarded for price. <u>Price of Lowest Cost Proposal</u> Price of Proposal Being Rated X 15 points = Awarded Points		
5. Cost	15	
Total		

**Request for Proposal
Evaluation Totals**

Name of RFP:						
Name of Offeror:						
Date:						
Technical Evaluation Criteria	85 POINTS Maximum	Evaluator	Evaluator	Evaluator	Evaluator	Evaluator
1. Project Understanding and Management	10					
2. Product Design and Specifications	40					
3. Experience and Qualifications:	35					
Evaluator Totals						
Grand Total		Note: Sum of all individual scores.				
Technical Proposal Score		Note: Total of individual points divided by the number of evaluators (85 POINT MAXIMUM).				
Cost Propose Score		Note: (15 POINT MAXIMUM)				
TOTAL						

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

Name of RFP:						
Date:						
Technical Evaluation Criteria	85 POINTS Maximum	Vendor 1	Vendor 2	Vendor 3	Vendor 4	Vendor 5
1. Project Understanding and Management	10					
2. Project Design and Specifications	40					
3. Experience and Qualifications:	35					
Technical Proposal Score						
Cost Proposals Score						
Grand Total						

ATTACHMENT 3

CONTRACT

The parties to this contract are the State of North Dakota, acting through its [agency name] (STATE) and [contractor's legal name] (CONTRACTOR);

1. SCOPE OF SERVICE

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

- [State what is to be done under the contract. This may be a brief statement, or may require an attachment setting out the scope of services in great detail.]

2. TERM OF CONTRACT

The term of this contract is for [#] months, beginning on [Month, Day], 20[Year], and ending on [Month, Day], 20[Year].

3. COMPENSATION

STATE will pay for the services provided by CONTRACTOR under this contract an amount not to exceed _____ per _____, to be paid _____.

4. TERMINATION OF CONTRACT

a. Termination without cause. This contract may be terminated by mutual consent of both parties.

b. Termination for lack of funding or authority. STATE by written notice of default to CONTRACTOR, may terminate the whole or any part of this contract, under any of the following conditions:

- (1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
- (2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
- (3) If any license, permit, or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended, or not renewed.

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

c. Termination for cause. STATE may terminate this contract effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice:

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

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

5. FORCE MAJEURE

CONTRACTOR shall not be held responsible for delay or default caused by fire, flood, 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.

6. RENEWAL

This contract will not automatically renew. If STATE desires to renew, STATE will provide written notice to CONTRACTOR of its intent to renew this contract at least 30 days before the scheduled termination date.

7. 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.

8. 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.

9. SEVERABILITY

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

10. ASSIGNMENT AND SUBCONTRACTS

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

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:

(INSERT) NAME(S)
ADDRESS
CITY, STATE ZIP CODE

Or

Notice provided under this provision does not meet the notice requirements for monetary claims against the State found at N.D.C.C. § 32-12.2-04.

12. APPLICABLE LAW AND VENUE

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

13. SPOILIATION – NOTICE OF POTENTIAL CLAIMS

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

14. INDEMNITY

CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the Contractor or its agent, but not against claims based on the State=s contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. 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.

15. INSURANCE

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

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer=s liability or Astop gap@ insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance. The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.
 - 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated AA-@ or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an AA-@ rating must be approved by the State. The policies shall be in form and terms approved by the State.
 - 3) The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
 - 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies.
- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
- a) a Awaiver of Subrogation@ waiving any right to recovery the insurance company may have against the State;
 - b) a provision that the policy and endorsements may not be canceled or modified without thirty days= prior written notice to the undersigned State representative
 - c) a provision that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. ' 54-12-08;
 - d) a provision that Contractor=s insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention

maintained by the State shall be in excess of the Contractor's insurance and shall not contribute with it;
e) cross liability/severability of interest for all policies and endorsements;
f) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;
g) The insolvency or bankruptcy of the insured Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy.

6) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.

7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

16. ATTORNEY FEES

In the event a lawsuit is instituted by STATE to obtain performance due under this contract, and STATE is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay STATE'S reasonable attorney fees and costs in connection with the lawsuit.

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. CONFIDENTIALITY

CONTRACTOR shall not use or disclose any information it receives from STATE under this contract that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by STATE. STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. § 44-04-18. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract.

19. COMPLIANCE WITH PUBLIC RECORDS LAW

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

20. 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.

21. INDEPENDENT ENTITY

CONTRACTOR is an independent entity under this contract and is not a STATE employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR'S activities and responsibilities under this contract, except to the extent specified in this contract.

22. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

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

23. STATE AUDIT

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

24. PREPAYMENT

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

25. TAXPAYER ID

CONTRACTOR'S federal employer ID number is: _____.

26. PAYMENT OF TAXES BY STATE

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

27. EFFECTIVENESS OF CONTRACT

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

CONTRACTOR

STATE OF NORTH DAKOTA
Acting through its

(agency)

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT 4

COST PROPOSAL

Cost proposals are to set out in the following format:

Wall modules

Corners, end caps, frames

Connectors, hardware, accessories, and tools

Other essential components not listed (explain)

Transport carts

Tutorial (Product supervisor to train staff how to install walls and components)

Crating

Shipping

ATTACHMENT 5

STATE OF NORTH DAKOTA
AGENCY NAME
MAILING ADDRESS
CITY, STATE ZIP CODE
TELEPHONE, FAX NUMBER

NOTICE OF INTENT TO AWARD

DATE

SOLICITATION NUMBER AND TITLE: **INSERT**

OPENING DATE AND TIME: **INSERT**

The following vendors submitted responses to the above solicitation:

- **INSERT VENDOR NAME, CITY, STATE**

Responses were evaluated according to the criteria stated in the solicitation to select the offeror that submitted the most advantageous proposal. We announce our intent to award a contract to:

- **INSERT NAME OF SUCCESSFUL BIDDER(S)**

We would like to thank each vendor for your time and efforts in preparing a response to this solicitation.

The successful vendor 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.

We appreciate your interest in doing business with the State of North Dakota.

Sincerely,

INSERT NAME
Procurement Officer
PHONE: **INSERT**
FAX: **INSERT**
E-MAIL: **INSERT**

ATTACHMENT 6

CHECKLIST FOR OFFERORS

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