

STATE OF NORTH DAKOTA

**Workforce Safety & Insurance
1600 E Century Ave Ste 1
Bismarck ND 58503**

Informal Request For Proposal

IRFP Title: Independent Medical Examination and Independent Medical Reviews

IRFP Number: 1484

Date of Issue: October 8, 2014

Purpose of IRFP: WSI is soliciting proposals from an independent third party to survey North Dakota providers capable of conducting independent medical examination and independent medical reviews.

Offerors Are Not Required To Return This Form.

Procurement Officer: ***Ellen Thompson***

BACKGROUND

The underlined language was established as a result of 2009 legislation. To comply with this new legislation, WSI intends to identify duly qualified and willing North Dakota providers capable of conducting quality independent medical examinations (IMEs) and independent medical reviews (IMRs).

North Dakota Century code 65-05-28. **Examination of injured employee - Paid expenses - No compensation paid if claimant refuses to reasonably participate** states:

3. The organization may at any time require an injured employee to submit to an independent medical examination or independent medical review by one or more duly qualified doctors designated or approved by the organization. The organization shall make a reasonable effort to designate a duly qualified doctor licensed in the state in which the employee resides to conduct the examination before designating a duly qualified doctor licensed in another state or shall make a reasonable effort to designate a duly qualified doctor licensed in a state other than the employee's state of residence if the examination is conducted at a site within two hundred seventy-five miles [442.57 kilometers] from the employee's residence. An independent medical examination and independent medical review must be for the purpose of review of the diagnosis, prognosis, treatment, or fees. An independent medical examination contemplates an actual examination of an injured employee, either in person or remotely if appropriate. An independent medical review contemplates a file review of an injured employee's records, including treatments and testing. The injured employee may have a duly qualified doctor designated by that employee present at the examination or later review the written report of the doctor performing the independent medical examination, if procured and paid for by that employee. Providing further that:
 - a. In case of any disagreement between doctors making an examination on the part of the organization and the injured employee's doctor, the organization shall appoint an impartial doctor duly qualified who shall make an examination and shall report to the organization.
 - b. The injured employee, in the discretion of the organization, may be paid reasonable travel and other per diem expenses under the guidelines of subsection 2. If the injured employee is working and loses gross wages from the injured employee's employer for attending the examination, the gross wages must be reimbursed as a miscellaneous expense upon receipt of a signed statement from the employer verifying the gross wage loss.

SCOPE OF WORK

Workforce Safety & Insurance (State) is soliciting proposals from an independent third party to survey medical providers within the state of North Dakota in order to identify duly qualified and willing North Dakota providers capable of conducting quality IMEs and IMRs. Competences for consideration of providers includes previous experience in conducting IMEs and IMRs; willingness to conduct IMEs and IMRs for WSI; understanding the necessity for the IME; willingness to critique and possibly criticize in-state colleagues; ability to produce written report (sample); ability to defend written results willingness to testify in legal proceeding resulting from IME findings; experience in testifying in legal proceedings; and time schedule supportive of scheduling IMEs and IMRs, developing and submitting written report to WSI.

Vendors will be asked to propose an action plan outlining their process of:

1. identifying providers
2. correspondence with providers
3. survey tool to be answered by providers
4. method(s) of contacting providers
5. reporting format to WSI of current status and final results of findings
6. timeline outlining the complete process.

Vendors will at a minimum:

- work with WSI staff to identify provider/provider groups/health systems to survey their participation in conducting quality IMEs and IMRs
- develop and issue a questionnaire, survey instrument, or other means of receiving a response from providers and the submission of sample/template IME and IMR report the provider has previously developed and used effectively
- follow-up process of providers not responding
- assemble data and responses
- make judgments and recommendations regarding willing provider's abilities to issue and defend opinions
- submit status and final reports detailing results to WSI

CONTRACT TERM, RENEWAL OPTIONS

The State intends to enter into a contract for a twelve month period. This contract offers no renewal periods.

INDEMNIFICATION AND INSURANCE REQUIREMENTS

Vendors must review the attached contract for indemnification, insurance requirements, and contract provisions. These provisions will be incorporated into the final contract (*see Attachment 2*).

Objections to any of the provisions 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 vendor 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. A vendor's failure to provide evidence of insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.

APPROXIMATE IRFP SCHEDULE

- IRFP Issued – **October 8, 2014**
- IRFP Receipt of Questions Due – **October 20, 2014 2:00 pm, CST**
- IRFP Questions and Answers Response by WSI – **October 27, 2014**
- Proposal due by – **November 3, 2014 2:00 pm, CST**
- Proposal Evaluation Committee evaluation completed by approximately – **November 14, 2014**
- State issues Notice of Intent to Award letter approximately – **November 17, 2014**
- State issue service contract approximately – **November 24, 2014**
- Contract start date – **December 1, 2014**

BUDGET

The estimated budget for completion of this project is UNDER \$25,000. Proposals priced at \$25,000 or more will be considered non-responsive.

EVALUATION CRITERIA AND CONTRACTOR SELECTION (see Attachment 1)

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

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

Methodology and Management Plan Used for the Project – Forty Percent (40%) of the total possible evaluation points will be assigned to this criterion.

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

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

Any prompt payment discounts terms proposed by the vendor 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 IRFP.

The IRFP will be evaluated in accordance with the evaluation criteria stated in this Informal IRFP in accordance with North Dakota Century Code Chapter 54-44.4 and North Dakota Administrative Rules 4-12 and Office of Management and Budget State Purchasing Guidelines as found on www.nd.gov/spo/

PROPOSAL FORMAT

Vendors must respond to this IRFP by fax, mail or email with the following information.

1. **Introduction** – Proposals must include the complete name and address of vendor'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 vendor will comply with all provisions in this IRFP. 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. A vendor'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.

2. **Understanding of the Project** – Vendors must provide comprehensive narrative statements that illustrate their understanding of the requirements of the project, deliverables, project schedule, and contract terms and conditions. Vendors must also identify any pertinent issues and potential problems related to the project.
3. **Methodology and Management Plan Used for the Project** – Vendors must provide comprehensive narrative statements that set out the methodology it intends to employ and the management plan for the project. Vendors must illustrate how the methodology and management will serve to accomplish the work and furnish the deliverables described in the scope of work within the State's project schedule.

4. **Experience and Qualifications** – Vendors must describe the experience of their firm in completing similar projects. Additionally, vendors must provide information specific to the personnel assigned to accomplish the work called for in this IRFP. Vendors 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.
- Vendor must provide three (3) reference names and phone numbers for similar projects the vendor's firm has completed. The State reserves the right to contact any references provided by the vendor. Vendors are invited to provide letters of reference from previous clients. Subcontractors are not allowed with this IRFP.
5. **Cost Proposal** – Cost proposals must include an itemized list of all direct and indirect costs associated with the performance of the contract, including total number of hours at various hourly rates, direct expenses, and supplies. All costs associated with the contract must be stated in U.S. currency.

Any prompt payment discounts terms offered by the vendor are not taken into consideration in evaluating cost. However, the cost proposals of nonresident vendors 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.

RETURN MAILING ADDRESS AND DEADLINE FOR RECEIPT OF PROPOSALS

Vendors must submit a proposal by mail, fax, or electronically to the below address.

Workforce Safety & Insurance
Attn: Ellen Thompson
Informal Request for Proposal (IRFP): IME & IMR
IRFP Number: 1484
1600 E Century Ave Ste 1
Bismarck ND 58503

Email: ethompson@nd.gov
Phone: 701-328-5959
Fax: 701-328-6009

Proposals must be received by the purchasing agency at the location specified no later than **2:00 PM/CST on November 3, 2014.** Proposals will not be publicly read at the opening.

Vendors 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. A vendor'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.

ATTACHMENTS

1. Proposal Evaluation Form
2. Sample Contract

ATTACHMENT 1

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 vendor'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 IRFP 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., vendor 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

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

Understanding of the Project

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

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

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] Has the offeror demonstrated an understanding of the deliverables the State expects it to provide?

EVALUATOR'S NOTES _____

[c] Has the offeror demonstrated an understanding of the State's time schedule and can meet it?

EVALUATOR'S NOTES _____

EVALUATOR'S POINT TOTAL _____

Methodology Used for the Project

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

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

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 IRFP?

EVALUATOR'S NOTES _____

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

EVALUATOR'S NOTES _____

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

EVALUATOR'S NOTES _____

EVALUATOR'S POINT TOTAL _____

Management Plan for the Project

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

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

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 IRFP?

EVALUATOR'S NOTES _____

[b] Does it appear that offeror can meet the schedule set out in the IRFP?

EVALUATOR'S NOTES _____

[c] Has the contractor gone beyond the minimum tasks necessary to meet the objectives of the IRFP?

EVALUATOR'S NOTES _____

EVALUATOR'S POINT TOTAL _____

Experience and Qualifications

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

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

Questions regarding the firm.

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

EVALUATOR'S NOTES _____

[c] How successful is the general history of the firm regarding timely and successful completion of projects?

EVALUATOR'S NOTES _____

EVALUATOR'S POINT TOTAL _____

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.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

**Request for Proposal
Evaluation Summary**

Name of RFP:		
RFP Number		
Vendor Being Evaluated:		
Evaluator Name:		
Date:		
Technical Evaluation (Maximum 60 Points)	Maximum Points by Category	Score
1. Understanding of the Project	5	
2. Methodology Used for the Project:	20	
3. Management Plan for the Project:	20	
4. Experience and Qualifications:	15	
Cost Evaluation (Maximum 40 Points) 1. Make adjustments for reciprocal preference, if necessary. See list of States Preference Laws: http://www.oregon.gov/DAS/SSD/SPO/reciprocal_detail.shtml 2. Calculated points awarded for price. <u>Price of Lowest Cost Proposal</u> Price of Proposal Being Rated X 40 points = Awarded Points		
5. Cost	40	
Total		

ATTACHMENT 2

CONTRACT

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

SCOPE OF WORK

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

COMPENSATION

Contractual Amount

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

The Contractual Amount is firm for the duration of the Contract and constitutes the entire compensation due CONTRACTOR for performance of its obligations under this Contract, unless amended, regardless of the difficulty, materials or equipment required, including fees, licenses, overhead, profit and all other direct and indirect costs incurred by CONTRACTOR, except as provided by an amendment to this Contract.

Payment

- 1) Payment made in accordance with this Compensation section shall constitute payment in full for the services and work performed and the deliverables and work(s) provided under this Contract and CONTRACTOR shall not receive any additional compensation hereunder.
- 2) STATE shall make payment under this Contract within forty-five (45) calendar days after receipt of a correct invoice.
- 3) Payment of an invoice by STATE will not prejudice STATE's right to object to or question that or any other invoice or matter in relation thereto. CONTRACTOR's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by STATE, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute allowable costs. At STATE's sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to CONTRACTOR.
- 4) For any amounts that are or will become due and payable to STATE by CONTRACTOR, STATE reserves the right to deduct the amount owed from payments that are or will become due and payable to CONTRACTOR under this Contract.

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

Prepayment

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

Payment of Taxes by STATE

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

Taxpayer ID

CONTRACTOR'S federal employer ID number is: _____.

TERM OF CONTRACT

This Contract begins on *[Month, Day], 20[Year] or its effective date*, and ends on [Month, Day], 20[Year].

No Automatic Renewal

This Contract will not automatically renew.

TERMINATION

Termination by Mutual Agreement

This Contract may be terminated by mutual consent of both parties executed in writing.

Termination without Cause

STATE may terminate this Contract in whole or in part when it has determined that continuing the Contract is no longer necessary or would not produce beneficial results commensurate with the further expenditure of public funds.

Termination for Lack of Funding or Authority

STATE by written notice to CONTRACTOR, may terminate the whole or any part of this Contract under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.

3) If any license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed. Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

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.

FORCE MAJEURE

Neither party shall be held responsible for delay or default caused by fire, riot, terrorism, acts of God or war if the event is beyond the party's reasonable control and the affected party gives notice to the other party immediately upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

INDEMNITY

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

INSURANCE

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

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Professional errors and omissions with minimum limits of \$1,000,000 per occurrence and in the aggregate, Contractor shall continuously maintain such coverage during the contact period and for three years thereafter. In the event of a change or cancellation of coverage, Contractor shall purchase an extended reporting period to meet the time periods required in this section.
- 3) 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.
- 4) 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 Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement.
- 4) Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.
- 5) Contractor shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements.

WORKS FOR HIRE

CONTRACTOR acknowledges that all work(s) under this Contract is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to STATE all rights and interests CONTRACTOR may have in the work(s) it prepares under this Contract, including any right to derivative use of the work(s). All software and related materials developed by CONTRACTOR in performance of this Contract for STATE shall be the sole property of STATE, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to STATE. CONTRACTOR shall execute all necessary documents to enable STATE to protect STATE's intellectual property rights under this section.

WORK PRODUCT

All work product, equipment or materials created for STATE or purchased by STATE under this Contract belong to STATE and must be immediately delivered to STATE at STATE'S request upon termination of this Contract.

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:

STATE

Name
Title
Address
City, State, Zip

CONTRACTOR

Name
Title
Address
City, State, Zip

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.

CONFIDENTIALITY

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

COMPLIANCE WITH PUBLIC RECORDS LAWS

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 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 public records law. CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to the request.

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.

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.

SPOILIATION – PRESERVATION OF EVIDENCE

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

MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS

This Contract, including the following documents, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Contract, the documents must control in this order of precedence:

- a. The terms of this Contract as may be amended;
- b. STATE's Solicitation Amendment #1 to Informal Request for Proposal ("IRFP") number _____ dated _____;
- c. STATE's Informal Request for Proposal ("IRFP") number _____, dated _____;
- d. CONTRACTOR's proposal dated _____ in response to IRFP number _____.
- e. All terms and conditions contained in any end user agreements (e.g., automated click-throughs, shrink wrap, or browse wrap) are specifically excluded and null and void, and shall not alter the terms of this Contract.

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.

APPLICABLE LAW AND VENUE

This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

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.

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.

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.

STATE AUDIT

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors. CONTRACTOR shall maintain all of these records for at least three (3) years following completion of this Contract and be able to provide them at any reasonable time. STATE, State Auditor, or Auditor's designee shall provide reasonable notice.

EFFECTIVENESS OF CONTRACT

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

CONTRACTOR

STATE OF NORTH DAKOTA
Acting through Workforce Safety
& Insurance
(agency)

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____