

**STATE OF NORTH DAKOTA**  
***Information Technology Department***  
***Telecommunications Division***  
**600 E. Boulevard Ave, Dept. 112**  
**Bismarck, ND 58505-0100**



Request For Proposal (RFP)

RFP Title: Statewide Interoperability Radio Network Study

RFP Number: 112-1513

Date of Issue: September 29, 2015

Purpose of RFP: An in-depth study of the existing statewide public safety radio infrastructure.

Offerors are required to respond using this form.

**Procurement Officer: Brandy Peterson**

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1. Proposal Evaluation Form
2. Contract Form

## SECTION ONE - INTRODUCTION AND INSTRUCTIONS

### 1.01 Purpose of the RFP

The state of North Dakota acting through its Information Technology Department (the STATE) is seeking proposals from qualified Offerors to establish a contract for supplying the STATE with an in-depth study of the existing statewide public safety radio infrastructure, to include tower sites, which are owned, leased and in some cases shared with other private and public entities.

A Statewide Radio Communications Assessment and Evolution Study [www.nd.gov/itd/files/publications/nd-radio-systems-study.pdf](http://www.nd.gov/itd/files/publications/nd-radio-systems-study.pdf) was completed for the Statewide Interoperability Executive Committee (SIEC) in January 2015. The Offeror awarded a contract under this solicitation shall incorporate the previous study, expanding upon its findings to provide the STATE a vision and strategy for successfully implementing an integrated public safety land mobile radio network.

This study should look at the systems current overall functionality, provide an in depth analysis of current coverage and dispatch capabilities, capacity and network features, determine points of weakness, survey the geographic locations of infrastructure, make recommendations for improvement and identify potential options with regard to equipment and infrastructure enhancement.

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

The procurement officer is the point of contact for this RFP. Offerors shall direct all communications regarding this RFP to the procurement officer.

PROCUREMENT OFFICER: Brandy Peterson

PHONE: 701-328-1888

FAX: 701-328-3000

TTY Users call: 7-1-1

E-MAIL: [blpeterson@nd.gov](mailto:blpeterson@nd.gov)

Engaging in unauthorized communication or seeking to obtain information about an open solicitation with any state employee or official other than the responsible procurement officer or designee is sufficient grounds for suspension or debarment. [\[N.D.A.C. § 4-12-05-04\(7\)\]](#)

### 1.03 RFP Schedule

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

The approximate RFP schedule is as follows:

- |  |                    |
|--|--------------------|
| ● RFP Issued   | September 29, 2015 |
| ● Questions, clarification requests, or objections due by 3pm Central Time | October 8, 2015    |
| ● Responses to questions/RFP amendments (if required)                      | October 12, 2015   |
| ● Proposals due by 3pm Central Time  | October 22, 2015   |
| ● Proposal evaluation completed by approximately                           | November 6, 2015   |
| ● State issues Notice of Intent to Award a Contract approximately          | November 12, 2015  |
| ● State issues contract approximately                                      | November 19, 2015  |
| ● Contract start approximately   | December 1, 2015   |

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

Offerors must submit three/ (3) copies of its proposal in a sealed envelope or package.

Offerors must submit two/ (2) electronic copies of their proposal on a CD, DVD, or USB Flash Drive. Electronic versions of the cost proposal must be a separate file.

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

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

North Dakota Information Technology Department  
Network Services Division  
Attn: Brandy Peterson  
Request for Proposal (RFP): Statewide Interoperability Radio Network Study  
RFP Number: 112-1513  
1615 Capitol Way  
Bismarck, ND 58501

The STATE must receive proposals at the location specified no later than **3:00 P.M., CENTRAL**, Time on **October 22, 2015**. The STATE will not publicly read the proposals at the opening.

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

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

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

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

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

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

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

Events.

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

### **1.07 Bidders List Registration Requirements**

#### **VENDORS MUST BE REGISTERED BY TIME SET FOR PROPOSAL OPENING**

North Dakota law requires that every person or entity that desires to bid or submit a proposal for contracts for commodities or services be an approved vendor in order for the STATE to place the entity on the State of North Dakota's bidders list. An Offeror that is not registered by the deadline for receipt of proposal will be determined to be non-responsive and its proposal will be rejected.

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. Prospective Offerors may access the Procurement Vendor Database on-line to verify whether their firm is currently on the bidders list. The bidders list for this solicitation is commodity code(s) **918-32, 918-42, 918-58, 918-71, 918-90 and 918-95**.

The Procurement Vendor Database, registration instructions and forms are available on-line at: <http://www.nd.gov/spo/>. Contact the North Dakota Vendor Registry at 701-328-2683 or [spovendor@nd.gov](mailto:spovendor@nd.gov) for assistance.

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

The STATE will not hold a pre-proposal conference for this RFP. The STATE advises Offerors to carefully review the RFP and all attachments and submit all questions to the procurement officer by the deadline indicated for submission of questions in the schedule of events.

### **1.09 Letter of Interest**

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

[blpeterson@nd.gov](mailto:blpeterson@nd.gov)

Include the name of the firm, contact person, mailing address, telephone number, fax number, and e-mail address. The sole purpose of the letter of interest is to provide the STATE with a contact person to receive any notices related to the RFP. Submission of a letter of interest is not a requirement for submitting a proposal.

### **1.10 Notice Provided**

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

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

### **1.11 News Releases**

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

## SECTION TWO - BACKGROUND INFORMATION

### 2.01 Background Information

The STATE recently completed a Statewide Radio Communications Assessment and Evolution Study [www.nd.gov/itd/files/publications/nd-radio-systems-study.pdf](http://www.nd.gov/itd/files/publications/nd-radio-systems-study.pdf) to assess the current status of mission critical state and local Land Mobile Radio networks and to develop a strategic plan to enhance and evolve these networks into a an architecture that enhances public safety response statewide. For purposes of this RFP statewide refers to city, county, tribal and state public safety radio networks. The study is incorporated as reference to this RFP.

The STATE does have some information on the infrastructure and frequencies. The information will be made available to the awarded Offeror. The awarded Offeror will be required to sign a non-disclosure agreement prior to receiving the information.

The overall objectives are to:

- Review current state
- Address current infrastructure issues such as end of life equipment, firmware, tower capabilities
- Identify gaps of the current system
- Define future state
- Perform a financial analysis of current and future system
- Leverage current assets
- Achieve seamless interoperability across all city, county, tribal and state public safety radio network users and neighboring states

Senate Bill 2016 requires that the STATE, under the direction of the SIEC, shall determine the feasibility and desirability of implementing a statewide radio interoperability network. The STATE shall consult with representatives of political subdivisions and private entities affected by the implementation of the network to determine participation in the project. If the STATE determines it is feasible and desirable to proceed with the project, the STATE shall enter into agreements, including joint powers agreements, with affected entities to delineate the roles and responsibilities of each entity to implement the project. The agreements must detail estimated future project costs to be paid by each entity.

The STATE shall report to the appropriations committees of the sixty-fifth legislative assembly regarding the STATE'S evaluation of the project, participation by affected entities, and recommendations for proceeding with the project or discontinuing future participation.

**SECTION THREE -SCOPE OF WORK, CUSTOMER SERVICE, EXPERIENCE, AND QUALIFICATIONS REQUIREMENTS**

**3.01 Scope of Work**

All items listed in this section are requirements. If the Offeror is successful, the Offeror agrees that it shall comply with all requirements throughout the full term of the Contract. **Offerors must provide a full response to each requirement without cross referencing other sections of the proposal. Offerors must use the table format and maintain numbering provided by the STATE to respond to each requirement.**

In addition, the Offeror Response must include any specific references and/or supportive materials as described in the Offeror Response.

The STATE reserves the right to determine whether the supportive materials submitted by the Offeror demonstrate the Offeror will be able to comply with the Requirements.

No.	Scope of Work
1.	<p>Offerors must acknowledge they will provide substantive responses on how they would address this project, what additional tasks and deliverables they would deem appropriate to achieve the projects overall goals and what support they will need from the STATE to accomplish those objectives.</p> <p><u>Offeror Response:</u></p>
2.	<p>Offerors must describe in detail how a shared system infrastructure will be based on local and state communications needs. The study must specify the creation of new or enhanced statewide backbone to provide statewide coverage to state agencies. Additionally the study shall detail how the backbone shall provide coverage to satisfy the needs of the localities.</p> <p><u>Offeror Response:</u></p>
3.	<p>Offeror must describe in detail how the study will include city, county, tribal and state public safety radio networks users that operate within North Dakota. Consideration shall also be given to contiguous states.</p> <p>Offeror must also describe if the STATE should consider cooperation with other entities such as non-traditional emergency response agencies for the public and private sector. These would include, but not limited to: county engineers, human services, municipal utilities, rural electric cooperatives, energy companies, education (primary/secondary/post-secondary) institutions, public safety organizations, hospitals and the health network system, and other entities that are identified during the process.</p> <p><u>Offeror Response:</u></p>
4.	<p>Offerors must acknowledge they will take into consideration instate options that address fiscal constraints.</p> <p><u>Offeror Response:</u></p>
5.	<p><b>Project Kick Off Meeting</b></p> <p>Offerors must hold a project kick off meeting in order to obtain the necessary information on the current state, determine issues, needs and requirements for the study. Offerors must outline in</p>

	<p>detail their approach and plan for the kick off meeting.</p> <p><u>Offeror Response:</u></p>
6.	<p><b>Governance</b> Offerors must describe in detail their approach in facilitating a process with the STATE in developing a comprehensive governance model.</p> <p><u>Offeror Response:</u></p>
7.	<p><b>Current State</b> Offerors must describe in detail how they will provide an analysis on the current state of all the systems.</p> <p><u>Offeror Response:</u></p>
8.	<p><b>Coverage Review</b> Offerors describe in detail their approach to review the current coverage in the state. Offerors must describe in detail their ability to include graphic depictions of statewide radio coverage in its current state, locations of proposed tower sites, and any other infrastructure improvements.</p> <p><u>Offeror Response:</u></p>
9.	<p><b>Coverage Analysis</b> Offerors must describe in detail how they will analyze the radio system coverage in its entirety, outline areas of non-coverage, establish a map of towers already in existence and in use, establish a map of towers already in existence and those <b>not</b> in use by the STATE (sites which could be potential build-out locations), make recommendations for locations where future build-out sites would be located geographically and include a revised site map of the system showing the current and proposed sites.</p> <p>Offerors must also describe in detail their ability to provide a narrative of why the current system has weaknesses and how the recommended improvements would mitigate those weaknesses.</p> <p><u>Offeror Response:</u></p>
10.	<p><b>Coverage Expansion</b> Offerors must also describe in detail their approach to support a future request for proposal for infrastructure build-out at the recommended sites, or the negotiation of infrastructure on existing, unutilized tower sites. Land acquisition, lease negotiation, construction oversight, and overall project feasibility.</p> <p><u>Offeror Response:</u></p>
11.	<p><b>Frequency Analysis</b> Offerors must describe in detail their approach to recommend and assist the STATE with identifying frequencies that could be used for a statewide, dual band trunked system, develop a frequency plan to support a P25 trunked system statewide, and engineering and deployment of additional licensed frequency pairs in the VHF high band to support present operations and proposed system expansion.</p>

	<u>Offeror Response:</u>
12.	<p><b>Frequency Survey</b> Offerors must describe their approach to conduct a survey of existing frequencies.</p> <p>Offerors should describe how the STATE would be able provide assistance in the collection of the information in order to lower the cost.</p> <p><u>Offeror Response:</u></p>
13.	<p><b>Statewide Inventory - Optional</b> Offerors describe in detail their approach to conduct remote, on-site review and inspection of all statewide user equipment and infrastructure, collect data, review and interpret user provided documents as required. The Offeror can optionally suggest an alternative to collect this information.</p> <p>Offerors should describe how the STATE would be able provide assistance in the collection of the information in order to lower the cost.</p> <p><u>Offeror Response:</u></p>
14.	<p><b>Equipment</b> Offerors describe in detail the approach to track and address equipment issues such as, but not limited to end of life and firmware upgrades. The Offeror can optionally suggest an alternative to collect this information. At a minimum, Offerors must identify:</p> <ul style="list-style-type: none"> <li>a. Existing radios that could be upgraded to P25 trunking via firmware flash.</li> <li>b. What upgrades are recommended to existing equipment to maximize the life to the equipment and increase functionality.</li> <li>c. Potential impact and deadlines for firmware updates.</li> </ul> <p>Offerors should describe how the STATE would be able provide assistance in the collection of the information in order to lower the cost.</p> <p><u>Offeror Response:</u></p>
15.	<p><b>Voice</b> The Offeror must describe in detail how the network will operate in the VHF and with a 700/800MHz spectrum band as designated by the Federal Communications Commission for use by public safety.</p> <p>Offeror must describe in detail how the network will operate in overlay in Urban areas. Describe the voice and data capability of each band as it relate to this system. Consideration shall be given to the 700/800 MHz spectrum for capacity and operational needs.</p> <p>Offeror must acknowledge that the proposed solution will be a standards-based Project 25 trunked system that will allow for interoperability, expandability, and on scene radio to radio communications.</p> <p><u>Offeror Response:</u></p>

16.	<p><b>Network Design</b> Offerors must describe in detail a network solution that is a fault tolerant dedicated system including detail on the proposed redundancy. Offerors must provide an architectural design.</p> <p><u>Offeror Response:</u></p>
17.	<p><b>Implementation</b> Offeror must describe in detail a phased implementation process and prioritize the order of the deliverables. Such implementation components must include items such as, but not limited to urban vs. rural, mobile vs. portable, outdoor vs. indoor.</p> <p><u>Offeror Response:</u></p>
18.	<p>Offerors must describe in detail how the study will provide each entity with a migration path. This plan shall detail two options of migration.</p> <ol style="list-style-type: none"> <li>a. Move entirely to the newly designed statewide system.</li> <li>b. Keep their present equipment and use technologies to access the statewide system taking into consideration current infrastructure investments</li> </ol> <p><u>Offeror Response:</u></p>
19.	<p><b>Benefits Analysis</b> Offeror must describe in detail their plan to provide a benefits analysis of a new system. Offerors are also invited to provide sample use cases to show the different ways the proposed system could benefit all areas of public safety.</p> <p><u>Offeror Response:</u></p>
20.	<p><b>Financial Analysis</b> Offerors must describe in detail how they will provide a detailed financial analysis. The financial analysis must include the total cost of ownership for current systems and provide a comparison to the proposed future solution.</p> <p><u>Offeror Response:</u></p>
21.	<p><b>Cost Sharing Model</b> Offerors must describe in detail their plan to develop a comprehensive cost sharing model between city, county, tribal, and state entities. Offerors must also describe in detail how any entity may provide assets or resources as part of their portion of the cost sharing.</p> <p><u>Offeror Response:</u></p>
22.	<p><b>Cost Estimate</b> Offeror must describe in detail how the plan will include a detailed cost estimate for the implementation of the proposed design.</p> <p>It must also include a detailed schedule describing the tasks and sub-tasks that need to be completed in order to implement the proposed design. The implementation description shall specify proposed resolution and mitigation methods for identified issues and risks within the</p>

	<p>overall project. Additionally, recipients shall provide staffing plans including project managers and other key roles required to ensure the project's success.</p> <p><u>Offeror Response:</u></p>
23.	<p><b>Expectations of the STATE</b>  Offeror must identify any other expectations of the STATE needed to fulfill Offeror's proposal. Offeror's statement of work and cost proposal assumes that the STATE and its stakeholders will provide information and access to resources identified by Offeror to support various task activities and further assumes that the required stakeholders will be available to participate in the efforts outlined in the proposal. Such requests for information and availability for meetings shall not be unreasonably delayed to ensure the continuity and completion of the project.</p> <p><u>Offeror Response:</u></p>
24.	<p><b>STATE Staff</b>  Offeror must describe in detail the number of STATE staff required and the amount of time that your proposal requires from STATE staff to assist with the requirements in this RFP. Offeror must describe in detail any other city, county, tribal, or state staff they would like to have assist with the requirements in this RFP.</p> <p><u>Offeror Response:</u></p>
25.	<p><b>Stakeholder Outreach</b>  Offerors must describe in detail their approach to providing a stakeholder outreach plan and associated materials consisting of two separate elements.</p> <ol style="list-style-type: none"> <li>a. A description of the planning process and the benefits to be derived for all stakeholders.</li> <li>b. Detail the various elements of the plan and specify options on how the stakeholders can participate.</li> </ol> <p><u>Offeror Response:</u></p>
26.	<p><b>Agreements</b>  Offerors must explain in detail their experience and ability to assist the STATE in developing the necessary agreements to facilitate the use of existing assets and resources including the ability to operate, and maintain the public safety infrastructure. Offerors should also identify any potential barriers and possible remedies in developing the agreements.</p> <p><u>Offeror Response:</u></p>
27.	<p><b>Study Review</b>  The Offeror will be required to present a draft of the study to the STATE. The review shall provide an overview of the significant findings and recommendations from the study. The final version of the study and any additional materials shall be provided to the STATE at least two weeks prior to the submission of the final version of the study.</p> <p><u>Offeror Response:</u></p>
28.	<p><b>Executive Summary</b>  Offeror must describe in detail their ability to develop an executive summary.</p>

	<p>Offeror must acknowledge they will produce an executive summary that is realistic and recommendations focused on the project goals and objectives.</p> <p>Offeror must acknowledge that this report will become the property of the STATE and may be distributed to a wide variety of audiences. As such, the final delivery format will be defined to address the needs of the stakeholders and prospective audiences.</p> <p>A draft of the executive summary must be provided two weeks prior to the submission of the final version of the study.</p> <p><u>Offeror Response:</u></p>
29.	<p>Offerors are invited to propose any additional items that they feel should be included in the study to achieve the goals of the project.</p> <p><u>Offeror Response:</u></p>
30.	<p><b>Updates</b> Offerors must outline in detail the approach and work that will be done to update any documents that are developed as part of the requirements in this RFP. Any additional information will be incorporated into the documents will be supplement to the original documents.</p> <p><u>Offeror Response:</u></p>
31.	<p><b>Presentation</b> The Offeror must acknowledge that they may be required to assist the STATE with drafting and presenting the results to the State Legislative Committee.</p> <p>A draft of the presentation must be provided to the STATE two weeks before the presentation to the State Legislative Committee.</p> <p>The Offeror must acknowledge that the presentation will be held leading up to or during the 65<sup>th</sup> legislative assembly and they will be available during that time.</p> <p><u>Offeror Response:</u></p>
32.	<p><b>Project Schedule</b> The Offeror must describe in detail their plan to deliver the completed study by May 31, 2016. Offeror must submit a draft project schedule as part of its Proposal. The project schedule should at a minimum include the Offeror and STATE tasks and responsibilities.</p> <p><u>Offeror Response:</u></p>
33.	<p><b>Project Plan</b> The awarded Offeror will be required to assist the STATE in providing content for the following sections of the Project Plan regarding all services, tasks, and products delivered by the Offeror. Describe your experience with project management; specifically related to the following:</p>

	<ul style="list-style-type: none"> <li>• A mutually agreed upon detailed baseline scope and schedule for the project.</li> <li>• The management plans to control scope, schedule, cost and quality, including the variance.</li> <li>• The governance structure for the project.</li> <li>• An integrated change control process.</li> <li>• A process for accepting/approving deliverables including the signoff form to be used.</li> <li>• A human resource management plan.</li> <li>• A communication management plan.</li> <li>• A risk management plan.</li> <li>• An issue management plan.</li> <li>• A procurement management plan.</li> </ul>
	<u>Offeror Response:</u>
34.	<p><b>Statement of Work</b> Offerors must provide a draft Statement of Work following the format shown in Attachment 2. A negotiated Statement of Work will be part of the contract.</p>
	<u>Offeror Response:</u>
35.	<p>The Awardee may be invited by the STATE to provide professional and technical consulting services to assist the STATE in the implementation of the technical solution. Any costs associated must be outlined in the cost proposal.</p>
	<u>Offeror Response:</u>
36.	<p><b>Additional Services</b> Offerors are invited to outline in detail their capability to provide the STATE with professional and technical consulting services, as needed. Costs associated with additional services must be outlined in the cost proposal.</p>
	<u>Offeror Response:</u>
37.	<p>Due to the changing needs of the STATE, products and/or services may be added or cancelled during the term of the contract.</p>
	<u>Offeror Response:</u>
38.	<p><b>Value Add</b> Offerors are invited to provide detail and describe any services that are not part of the requirements in this RFP and demonstrate added value. Add lines below as needed.</p>
	<u>Offeror Response:</u>

### 3.02 Customer Service, Experience, and Qualifications Requirements

All items listed in this section are Customer Service, Experience, and Qualifications Requirements. If the Offeror is successful, the Offeror agrees that it shall comply with all product support, customer service, and experience requirements throughout the full term of the Contract. **Offerors must provide a full response to each requirement without cross referencing other sections of the proposal. Offerors must use the table format and maintain numbering provided by the STATE to respond to each requirement.**

No.	Customer Service, Experience, and Qualifications
1.	<p><b>Offeror Background Information</b> The Offeror shall provide the following general background information:</p> <ul style="list-style-type: none"> <li>• Name, address, telephone number, fax number and e-mail address of the Contractor including all d/b/a's or assumed names or other operating names of the Contractor and any local addresses and phone numbers.</li> <li>• The location(s) including address and telephone numbers of the offices and other facilities that relate to the Contractor's performance under the terms of this RFP</li> <li>• Name, address and telephone number of the Offeror's representative to contact regarding all contractual and technical matters concerning the Proposal</li> </ul> <p><u>Offeror Response:</u></p>
2.	<p><b>Experience</b> The Offeror must provide the following information regarding its experience:</p> <ol style="list-style-type: none"> <li>a. Number of years in business.</li> <li>b. Number of years' experience with providing the types of goods and/or services sought by the RFP.</li> <li>c. Offeror must provide detailed information on similar projects that they have completed in similar scope and size.</li> </ol> <p><u>Offeror Response:</u></p>
3.	<p><b>STATE Experience</b> Offeror must describe in detail any experience they have with the STATE.</p> <p><u>Offeror Response:</u></p>
4.	<p>Offeror must list and describe in detail projects similar to those sought by this RFP that the Offeror has provided to other businesses or governmental entities.</p> <p><u>Offeror Response:</u></p>
5.	<p><b>Project Manager</b> Offerors must provide:</p> <ol style="list-style-type: none"> <li>a. A dedicated project manager for all of the services outlined in this RFP.</li> <li>b. Education including degrees, relevant certifications and the institution from which they were obtained.</li> <li>c. Years of appropriate experience</li> <li>d. The dedicated project manager's name and resume, include their telephone numbers,</li> </ol>

	<p>and e-mail addresses.</p> <p>e. A project manager will be completely responsible for all scheduling, delivery of all services, and complete supervision for the services awarded.</p> <p>f. The STATE will not accept multiple managers or multiple positions of responsibility.</p> <p><u>Offeror Response:</u></p>
6.	<p><b>Qualifications</b></p> <p>The Offeror must provide narrative on <b>all other</b> key personnel who will be involved in providing the goods and/or services contemplated by this RFP. The personnel listed must be the people that will perform/provide goods and services for the State. Any changes in personnel during the project must be approved by the State. Additionally, replacement personnel must have comparable training, experience and ability as the person originally proposed for the job. The following information must be included in the narrative:</p> <ol style="list-style-type: none"> <li>a. Full name.</li> <li>b. Primary Function.</li> <li>c. Education including degrees, relevant certifications and the institution from which they were obtained.</li> <li>d. Years of appropriate experience</li> <li>e. Experience with the following: <ul style="list-style-type: none"> <li>o Public Safety networks and databases.</li> <li>o Mobile data networks.</li> <li>o Public safety communication systems.</li> <li>o Public safety mobile data networks.</li> <li>o Spectrum management and interference management experience, including spectrum management experience along the Canadian border.</li> </ul> </li> <li>f. Number of years employed with the company.</li> <li>g. Specify the employment status of the personnel (e.g., subcontractor, employee of the contractor)</li> <li>h. Location from where the personnel will perform applicable services (e.g., State facility, remote Contractor facility, off shore facility)</li> </ol> <p><u>Offeror Response:</u></p>
7.	<p>Offerors must outline the name, contact information and qualifications of any subcontractors who will be involved with this project the Offeror proposes to use and the nature of the goods and/or services the subcontractor would perform. Offeror may not assign or otherwise transfer or delegate any right or duty without STATE's express written consent.</p> <p><u>Offeror Response:</u></p>
8.	<p>The Awardee shall be required to sign a contract substantially similar to the contract attached to this RFP (Attachment 2). Offeror must acknowledge that the STATE and the awarded Offeror will execute one contract for the services necessary to deliver the proposed solution. In order for the STATE to consider changes to the contract, Offerors must request changes to the contract language in Attachment 2.</p> <p><u>Offeror Response:</u></p>

9.	<p>STATE may require Offeror's staff and subcontractors assigned by Offeror to perform work to submit to a criminal history record check in accordance with N.D.C.C. 54-59-20 and 12-60-24 that will include a fingerprint based background check. STATE shall have the right to reject any individual assigned to perform work if, in its sole discretion, it determines that the results of the criminal history record check make the individual unacceptable.</p>
	<p><u>Offeror Response:</u></p>
10.	<p><b>Contract Representation</b>  Offeror must provide a narrative of the dedicated contract representative and the support staff team. Information for the contract representative must include:</p> <ul style="list-style-type: none"> <li>a. name,</li> <li>b. phone number,</li> <li>c. e-mail address,</li> <li>d. mailing address and</li> <li>e. years of appropriate experience.</li> </ul> <p>Offerors must provide information on dedicated support or back-up staff including:</p> <ul style="list-style-type: none"> <li>a. names,</li> <li>b. titles,</li> <li>c. phone numbers,</li> <li>d. e-mail addresses and</li> <li>e. mailing addresses.</li> </ul> <p>Offerors must provide the names and titles, phone numbers, and e-mail and mailing addresses for the contract representative's chain of command within your company.</p>
11.	<p>Assigned contract representatives may be required to meet with the State on a regular basis, or when deemed necessary. The State may also require other support staff or team members identified on bidder's escalation lists to be available for these meetings. Please verify that your company can and will make these staff members available to meet with the State, given adequate notice.</p>
	<p><u>Offeror Response:</u></p>

## **SECTION FOUR - GENERAL CONTRACT INFORMATION**

### **4.01 Standard Contract Provisions**

The Awardee shall be required to sign a contract substantially similar to the contract attached to this RFP (Attachment 2). The Awardee must comply with the contract provisions set out in this attachment. Any objections to the contract provisions must be set out in the Offeror's proposal. The State may deem any failure to object to a contract provision as the Offeror's acceptance of that provision. The STATE shall not permit alteration of these provisions without prior written approval.

The STATE instructs Offerors to contact the procurement officer in writing by the deadline set for questions (as identified in §1.03 RFP Schedule) with any concerns regarding the contract provisions.

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

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

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

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

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

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

- [a] if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and
- [b] if the result of the application of a supplemental term or condition included in the proposal would diminish the STATE's rights, the supplemental term or condition will be considered null and void.

### **4.05 Contract Approval**

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

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

During the course of this contract, the awardee may be required to perform additional work. That work shall be within the general scope of the initial contract. When additional work is required, the Integrated Change Control Process in section 24d of the contract shall be used.

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

The STATE incorporates indemnification and insurance provisions in Attachment 2 into the final contract. **The Offeror must submit objections to any of the provisions of the Indemnification and Insurance Requirements in writing to the attention of the procurement officer with the proposal submission.** The STATE shall not permit any alteration of these provisions without prior written approval from the STATE in consultation with the North Dakota Risk Management Division.

Upon receipt of the Notice of Intent to Award, the Awardee must obtain the required insurance coverage and provide the procurement officer with proof of coverage prior to contract approval. The coverage must be satisfactory to the STATE, in consultation with the North Dakota Risk Management Division. 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.

#### **4.08 Limited Liability**

The State's ability to agree to any limitation of liability is restricted by [N.D.C.C. 32-12.2-15](#).

#### **4.09 Informal Debriefing**

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

#### **4.10 Liquidated Damages**

Technology Services Contracts resulting from this RFP may include a clause setting forth an actual dollar amount designated as liquidated damages to ensure STATE remains whole in the case of delays in a project due to the CONTRACTOR's fault. Specific damages will be part of the negotiation process. The amount will be reasonable and not disproportionate to the damages anticipated at the point of the contract and will not serve in any way as a penalty.

## SECTION FIVE - EVALUATION CRITERIA AND CONTRACTOR SELECTION

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

#### 5.01 Proposal Evaluation Criteria/Categories

Sections Proposals will be scored in following major categories; each major category contains sub-categories to be scored. The categories and sub-categories, with their relative weights are as follows:

**1. Scope of Work**

*Thirty-five Percent (35%)* of the total possible evaluation points will be assigned to this criterion.

**2. Customer Service, Experience and Qualifications**

*Twenty-five Percent (25%)* of the total possible evaluation points will be assigned to this criterion.

**3. Financial Strength**

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

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

**4. Contract Cost**

*Thirty-five Percent (35%)* of the total possible evaluation points will be assigned to cost.

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

#### 5.02 Oral Presentations

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

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

#### 5.03 Site Inspection of Offeror's Facility

The STATE may conduct on-site visits to the Offeror's firm or Offeror's customer where the Offeror is performing a comparable service to evaluate the Offeror's capacity to perform the contract. An Offeror must agree, at risk of being found non-responsive and having its proposal

rejected, to provide the STATE reasonable access to relevant portions of its work sites. Individuals designated by the STATE will conduct the site inspection at the STATE's expense.

## SECTION SIX - PROPOSAL FORMAT AND CONTENT

### 6.01 Proposal Format

#### General Information

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

#### 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 and five content sections. Each section must be formatted as follows and include the information detailed below by providing comprehensive narrative statements and descriptions:

### 6.02 Proposal Content

#### Section One – Tab One

##### 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:
  - 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;
  - confirmation that the Offeror will comply with all provisions in this RFP;
  - 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);
  - 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.

## **Section Two – Tab Two**

### **Introductory/Affirmations Section**

Provide financial information in such a manner that the State can reasonably formulate a determination about the stability and financial strength of the organization. This must include but not be limited to information about:

- company size
- organization/date of incorporation
- ownership
- number of employees
- revenues for the last fiscal year, and,
- at least one of the following:
  - audited financial statements for the most recent 3 years;
  - a current Dun and Bradstreet Report that includes a financial analysis of the firm;
  - an Annual Report as verification of financial status provided it contains at a minimum a Compiled Income Statement and Balance Sheet verified by a Certified Public Accounting firm; or (The State reserves the right to contact the accounting firm if questions arise
  - tax returns and financial statements including income statements and balance sheets for the most recent 3 years, and any available credit reports.

Disclose any and all judgments, pending or expected litigation, or other real potential financial reversals, which might materially affect the viability or stability of the Offeror's organization; or certify that no such condition is known to exist.

The STATE may request reports on financial stability from independent financial rating services in order to further substantiate stability.

## **Section Three – Tab Three**

### **Scope of Work**

Provide all information as required and requested in the referenced RFP Section 3.01.

## **Section Four – Tab Four**

### **Customer Service, Experience, and Qualifications Requirements**

Provide all information as required and requested in the referenced RFP Section 3.02.

## **Section Five – Tab Five**

### **Required Enclosures**

Offerors must provide all other attachments, documents, samples, or other information referenced in the response to the RFP or as specifically required in this RFP.

### **Cost Proposal**

- Offerors must complete cost proposal all costs must be clearly outlined.
- All costs must be broken down by deliverable.
- All costs must be inclusive.
- Offerors must submit one copy of the cost proposals in a separate sealed envelope or package, clearly labeled “cost proposal.”
- The Offeror must state all costs associated with the contract in U.S. currency. The Offeror must identify any commodities the Offeror will import, and the price must include any applicable customs, brokerage agency fees, and duties.
- The Offeror must submit cost proposals with consideration to the STATE’S standard terms and conditions included in the attached sample contract.
- Offerors should describe any discounts terms for prompt payment. The STATE will not consider discounts for prompt payment when evaluating cost.

## **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 Offer Held firm**

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

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

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

### **7.06 Alternate Proposals**

Offerors may submit only one proposal for evaluation.

Alternate proposals (proposals that offer something different than what the STATE requested) will not be considered.

### **7.07 Subcontractors**

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

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

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

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

### **7.08 Joint Ventures**

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

### **7.09 Disclosure of Proposal Contents and Compliance with State's Open Records Laws**

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

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

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

### **7.10 Evaluation of Proposals**

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

presentations, or site inspections, if required in this RFP.

### **7.11 Right of Rejection**

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

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

The procurement officer may waive minor informalities that:

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

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

### **7.12 Clarification of Offers**

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

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

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

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

proposal as a result of these discussions, the Offeror must put the modifications in writing. If the STATE requests best and final offers, the STATE will evaluate the best and final offer submitted by the Offeror against the criteria stated in the RFP and any subsequent amendments to the RFP including the best and final offer request. If an Offeror does not submit a best and final offer, the STATE will consider its original proposal as its best and final offer.

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

#### **7.14 Negotiations**

Contract negotiations will be conducted in accordance with [N.D.A.C. § 4-12-12](#). The STATE may enter into negotiations with one or more offeror whose proposals received the highest scores and are reasonably susceptible for award. During negotiations, the STATE and offeror may agree to alter or otherwise change the terms and conditions and price of the proposed contract. Negotiation, if held, will be within the scope of the RFP and limited to those items that would not have an effect on the ranking of proposals.

Each offeror will be responsible for all costs it incurs as a result of negotiations, including any travel and per diem expenses.

Contract negotiations will be conducted primarily by e-mail, conference calls, or internet-based conference. Any on-site negotiation, if needed, will be held in Bismarck, ND.

The STATE may terminate negotiations, reject a proposal as nonresponsive, and continue or commence negotiations with other offerors reasonably susceptible for award, if the offeror:

- fails to provide necessary information for negotiation in a timely manner,
- fails to negotiate in good faith,
- is unable to successfully negotiate contract terms that are acceptable to the STATE, or
- indicates that it cannot perform the contract within the budgeted funds.

#### **7.15 Notice of Intent to Award**

After proposals have been evaluated and the successful offeror selected, notice of intent to award will be promptly issued to all offerors that submitted proposals. Upon issuance of this notice, the procurement file becomes an open record.

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

#### **7.16 Protest of Solicitation, Intent to Award or Award**

An interested party may protest a solicitation pursuant to [N.D.C.C. § 54-44.4-12](#) and [N.D.A.C. § 4-12-14-01](#). When a solicitation contains a deadline for submission of questions and requests for clarifications, protests of the solicitation will not be allowed if these faults have not been brought to the attention of the procurement officer before the specified deadline.

An offeror that has submitted a response to a solicitation and is aggrieved may protest an award or notice of intent to award pursuant to [N.D.C.C. § 54-44.4-12](#) and [N.D.A.C. § 4-12-14-02](#). The protest must be submitted in writing to the Procurement Officer within seven calendar days after issuance of the notice of intent to award.

The protestor may appeal the decision of the procurement officer to the Director of Office of

Management and Budget within seven calendar days after receiving notice of the decision pursuant to [N.D.C.C. § 54-44.4-12](#) and [N.D.A.C. §4-12-14-03](#). Contact 701-328-2740 or [infospo@nd.gov](mailto:infospo@nd.gov).

## SECTION EIGHT - ATTACHMENTS

### 8.01 Attachments

#### **Attachments**

1. Proposal Evaluation Form
2. Technology Services Contract

**ATTACHMENT 1  
PROPOSAL EVALUATION FORM**

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

**SCOPE OF WORK**

Weight **35 Percent**. Maximum Point Value for this Section

100 Points x **35 Percent = 35 Points**

Rating Scale ( <b>35 POINT</b> Maximum)	
Point Value	Explanation
<b>0</b>	None. Not addressed or response of no value
<b>1-9</b>	Fair. Limited applicability
<b>10-18</b>	Good. Some applicability
<b>19-27</b>	Very Good. Substantial applicability
<b>28-35</b>	Excellent. Total applicability

Proposals will be evaluated against the overall Scope of Work as outlined in Section 3.01.

**CUSTOMER SERVICE, EXPERIENCE, AND QUALIFICATIONS**

Weight **25 Percent**. Maximum Point Value for this Section

100 Points x **25 Percent = 25 Points**

Rating Scale ( <b>30 POINT</b> Maximum)	
Point Value	Explanation
<b>0</b>	None. Not addressed or response of no value
<b>1-6</b>	Fair. Limited applicability
<b>7-12</b>	Good. Some applicability
<b>13-19</b>	Very Good. Substantial applicability
<b>20-25</b>	Excellent. Total applicability

Proposals will be evaluated against the overall Customer Service, Experience, and Qualifications Requirements as outlined in Sections 3.02.

## FINANCIAL STRENGTH

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

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

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

Proposals will be evaluated against the overall Financial Requirements as outlined in Section 6.02.

## CONTRACT COST

Weight **35 Percent**. Maximum Point Value for this Section

100 Points x **35 Percent** = **35 Points**

### Applying Preference Laws

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

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

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

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

### Converting Cost to Points

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

#### Price of Lowest Cost Proposal

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

## Request for Proposal Evaluation Summary

Name of RFP:		
RFP Number:		
Vendor Being Evaluated:		
Evaluator Name:		
Date:		
<b>Technical Evaluation</b> <i>(Maximum <b>65 Points</b>)</i>	<b>Maximum Points by Category</b>	<b>Score</b>
1. Scope of Work	<b>35</b>	
2. Customer Service, Experience, and Qualifications	<b>25</b>	
3. Financial Strength	<b>5</b>	
<b>Cost Evaluation</b> <i>(Maximum <b>35 Points</b>)</i> Make adjustments for reciprocal preference, if necessary. See list of States Preference Laws: <a href="http://www.nd.gov/spo/">http://www.nd.gov/spo/</a> Calculated points awarded for price.		
4. Cost	<b>35</b>	
<b>Total</b>		

**ATTACHMENT 2  
STATEWIDE INTEROPERABILITY RADIO NETWORK STUDY  
TECHNOLOGY SERVICES CONTRACT**

**1. PARTIES**

The parties to this contract (Contract) are the state of North Dakota, acting through its Information Technology Department (STATE), and *Name of Business and type of business (e.g. legal name Delaware corporation or privately held company)* having its principal place of business at *principal business address* (CONTRACTOR).

**2. SCOPE OF WORK**

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, shall provide services to the STATE according to this Contract including any Statements of Work and attachments and documents mentioned in Section 38 of this Contract.

**3. COMPENSATION**

**a. 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 shall be paid according to the Compensation Details document attached as Exhibit B.

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 regardless of the difficulty, materials or equipment required, including fees, licenses, overhead, profit and all other direct and indirect costs or expenses incurred by CONTRACTOR except as provided by an amendment to this Contract.

**b. Retainage**

All deliverable payments shall be subject to *number*% retainage. Retained amounts due to CONTRACTOR shall be paid upon Final Acceptance.

**c. Invoicing**

The final cost set forth on each invoice shall be equivalent to the cost for each deliverable or service as specified in the Statement of Work. CONTRACTOR shall not submit an invoice for any deliverable or service specified in the Statement of Work that STATE has not fully accepted.

**d. Payment**

Payment made in accordance with this Compensation section shall constitute payment in full for the services and work performed and the deliverables provided under this Contract and CONTRACTOR shall not receive any additional compensation hereunder.

STATE shall make payment under this Contract within forty-five (45) calendar days after receipt of an approved invoice.

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 not to constitute allowable costs, on the basis of audits conducted in accordance with the terms of this Contract. At STATE's sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to CONTRACTOR.

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.

**e. Travel**

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

Payment for any travel expenses that exceed the travel budget as agreed upon by the parties must be approved by STATE's project manager.

**f. Prepayment**

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

**g. 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 CONTRACTOR.

**h. Taxpayer ID**

CONTRACTOR's federal employer ID number is: \_\_\_\_\_.

**i. Purchasing Card**

STATE may make a payment using a government credit card. CONTRACTOR will accept a government credit card without passing the processing fees for the government credit card back to STATE.

**4. EQUIPMENT, MATERIALS, AND WORKSPACE – RESOURCES PROVIDED BY PARTIES**

For periods during which the parties mutually agree that CONTRACTOR's assigned staff is on site:

- a. On site means statewide.
- b. STATE agrees to provide an adequate working space, when required.
- c. Equipment and software for on-site CONTRACTOR personnel is to be provided by CONTRACTOR.

When STATE and CONTRACTOR agree that remote access to systems is required, STATE shall provide the necessary supervised remote access security to enable CONTRACTOR access to the appropriate STATE systems.

**5. TERM OF CONTRACT**

This Contract begins on December 1, 2015 and ends on June 30, 2017.

**a. No Automatic Renewal**

This Contract will not automatically renew.

**b. Extension Option**

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

**c. Renewal Option**

STATE may renew this Contract upon satisfactory completion of the initial Contract term. STATE reserves the right to execute up to four (4) options to renew this Contract under the same terms and conditions for a period of twelve (12) months each.

**6. TIME IS OF THE ESSENCE**

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

**7. TERMINATION**

**a. Termination by Mutual Agreement**

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

**b. 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.

**c. Termination for Lack of Funding or Authority**

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

- 1) If funding from federal, state, or other sources is not obtained 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.

**d. Termination for Cause.**

STATE may terminate this Contract effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice:

- 1) If CONTRACTOR fails to provide services 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.

**8. SUSPENSION FOR CONVENIENCE**

STATE shall have the right at any time to order the services of CONTRACTOR fully or partially stopped for STATE's own convenience. STATE shall provide CONTRACTOR written notice of the reason for and duration of the suspension. The schedule shall be

delayed on a day-for-day basis to the extent STATE has issued a stop work order to CONTRACTOR and such stop work order is causing delays in completing services in accordance with the schedule. CONTRACTOR shall have the right to submit claims in accordance with the terms of this Contract as a result of stop work orders issued under this section.

## 9. 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.

## 10. LIQUIDATED DAMAGES

The parties agree that STATE may suffer damages due to a failure by CONTRACTOR to timely provide deliverables or services under this Contract. Because it is difficult to fix the actual damages sustained in the event of such delays, STATE and CONTRACTOR agree that the amount of damages will be determined as per this Section. In the event of any non-performance, delay or failure to meet an agreed-upon deadline, CONTRACTOR shall pay that amount as liquidated damages and not as a penalty. Amounts due to STATE as liquidated damages may be deducted by STATE from any amounts payable to CONTRACTOR, and any amount outstanding over and above the amounts deducted from the invoice will be promptly tendered by check from CONTRACTOR to STATE.

Delays due to causes of Force Majeure or due to the responsibility of STATE shall extend the time for performance on a day-for-day basis. STATE will not assess liquidated damages against CONTRACTOR when the delay in delivery or performance is beyond the control and without the fault or negligence of CONTRACTOR.

Delays due to causes of Force Majeure or due to the responsibility of STATE shall extend the time for performance on a day-for-day basis. STATE will not assess liquidated damages against CONTRACTOR when the delay in delivery or performance is beyond the control and without the fault or negligence of CONTRACTOR.

### a. Failure to Complete Deliverable on Schedule:

If CONTRACTOR fails to complete a Deliverable identified in **SOW or project schedule reference** by the specified deadline (or revised deadline as agreed upon between the parties through the Integrated Change Control Process), CONTRACTOR shall pay liquidated damages to STATE in the amount of \$ **amount** per calendar day for each day the Deliverable is delayed.

## 11. INJUNCTIVE RELIEF

CONTRACTOR shall immediately report to STATE any and all unauthorized disclosures or uses of STATE's Confidential Information or Proprietary Information of which CONTRACTOR or its staff is aware or has knowledge. CONTRACTOR acknowledges that any unauthorized publication or disclosure of STATE's Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to STATE. If CONTRACTOR should publish or disclose such Confidential Information or Proprietary Information without authorization, STATE shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. CONTRACTOR shall indemnify, defend, and hold harmless STATE from all damages, costs, liabilities, and expenses (including without limitation reasonable attorneys' fees) caused by or arising from CONTRACTOR's unauthorized notification or disclosure of STATE's

Confidential Information or Proprietary Information. As a condition to these indemnity obligations, STATE will provide CONTRACTOR with prompt notice of any claim of which STATE is aware and for which indemnification shall be sought under this Contract and shall cooperate in all reasonable respects with CONTRACTOR in connection with any such claim.

## **12. RIGHT OF SETOFF DAMAGES**

Amounts due STATE by CONTRACTOR, including liquidated or other damages, or claims for damages, may be deducted or set-off by STATE from any money payable to CONTRACTOR pursuant to this Contract.

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

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

## **14. RIGHT TO REMEDIES AND CUMULATION OF RIGHTS**

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

## **15. NON-WAIVER**

Either party's failure to exercise any of its rights under the Contract, including State's rights to enforce deadlines and the Time Is Of The Essence provision in paragraph 6 its delay in enforcing any right, or its waiver of its rights on any occasion, shall not constitute a waiver of such rights on any other occasion. No course of dealing by either party in exercising any of its rights shall constitute a waiver thereof. No waiver of any provision of the Contract shall be effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced.

## **16. INDEMNITY**

CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by CONTRACTOR to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. CONTRACTOR also agrees to 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 Contract.

## **17. INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION**

- a. CONTRACTOR, at its own expense, shall defend and indemnify STATE against claims that products furnished under this Contract infringe a United States patent or copyright or misappropriate trade secrets protected under United States law.
- b. As to any product which is subject to a claim of infringement or misappropriation, CONTRACTOR may (a) obtain the right of continued use of the product for STATE or (b) replace or modify the product to avoid the claim. If neither alternative is available on commercially reasonable terms then, at the request of CONTRACTOR, any applicable Software license and its charges will end, STATE will stop using the product, and will return the product to CONTRACTOR. Upon return of the product, CONTRACTOR will give STATE a credit for the price paid to CONTRACTOR, less a reasonable offset for use and obsolescence.

## **18. REPRESENTATION AND WARRANTIES**

CONTRACTOR represents and warrants to STATE that neither CONTRACTOR, in connection with performing the services in performance of this Contract, nor the completed product delivered by CONTRACTOR, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any person. CONTRACTOR further represents and warrants to STATE that it will not use any trade secrets or confidential or proprietary information owned by any third party in performing the services related to this Contract or in delivery of the completed product unless CONTRACTOR has the authority to license, use or provide those trade secrets or confidential or proprietary information to STATE.

CONTRACTOR further represents and warrants to STATE that neither CONTRACTOR nor any other company or individual performing services pursuant to this Contract is under any obligation to assign or give any work done under this Contract to any third party.

## **19. INSURANCE**

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

- a. 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
- b. 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
- c. Workers compensation coverage meeting all statutory requirements. The policy must provide coverage for all states of operation that apply to the performance of this Contract
- d. Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance
- e. 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 Contract period and for three (3) 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.

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

- a. 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.
- b. 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.
- c. The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- d. The state of North Dakota and its agencies, officers, and employees 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 that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the CONTRACTOR.
- e. The insurance required in this agreement, through a policy or endorsement, shall include:
  - 1) Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State
  - 2) 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 CONTRACTOR's insurance and shall not contribute with it
  - 3) Cross liability/severability of interest for all policies and endorsements
  - 4) 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
  - 5) 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
- f. 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.
- g. Failure to provide insurance as required in this agreement is a material breach of contract entitling STATE to terminate this agreement immediately.
- h. CONTRACTOR shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements.

## **20. 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.

## 21. 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.

## 22. TECHNOLOGY STANDARDS

CONTRACTOR shall comply with applicable STATE enterprise architecture technology standards. These standards can be found on STATE's website at <http://www.nd.gov/itd/standards>.

## 23. PERSONNEL

- a. STATE will designate a Project Manager to serve as the primary project manager for this Contract. If, during the course of the Contract, it becomes necessary for STATE to change the person assigned as STATE's Project Manager, STATE will notify CONTRACTOR in writing, pursuant to Notice section of this Contract.
- b. Unless STATE otherwise notifies CONTRACTOR, STATE's Project Manager shall carry out STATE's administrative and management functions under this Contract, shall be responsible for acceptance of the Contract deliverables, and shall provide support and overall direction to CONTRACTOR.
- c. CONTRACTOR will designate a Project Manager and provide individuals to meet the requirements and accomplish the work as stated in this Contract including any mutually agreed upon Statement of Work.
- d. CONTRACTOR agrees and understands that STATE's execution of the Contract is predicated, in part and among other considerations, on the utilization of the specific individuals and personnel qualifications as identified; primary being *name of appropriate personnel, if applicable*. Therefore, CONTRACTOR agrees that:
  - 1) Prior to assignment of personnel, CONTRACTOR shall obtain written approval from STATE for all personnel to be assigned to this project
  - 2) The personnel assigned must have the knowledge necessary to complete requirements as defined in the Contract.
  - 3) CONTRACTOR shall warrant that all personnel assigned to perform tasks in response to this Contract will remain assigned for the agreed-upon length of time.
  - 4) No replacement, reassignment or substitution of any assigned individuals and personnel qualifications shall be made without the prior written approval of STATE and that such replacement, reassignment or substitution shall be made at no additional cost to STATE.
  - 5) Any substitution made pursuant to this paragraph must be of equal or higher skills, knowledge, and abilities than those personnel originally proposed and that STATE's approval of a substitution is not construed as an acceptance of the substitution's

performance potential. STATE agrees that an approval of a substitution will not be unreasonably withheld.

- 6) CONTRACTOR shall assign personnel on a full-time basis. In the event that a work assignment does not justify full-time participation, CONTRACTOR shall assign personnel on a part-time basis with prior written approval of STATE's Project Manager. However, if the part-time assignments are specified in the Contract, no written approval from STATE's Project Manager is necessary except for substitution of CONTRACTOR personnel.
- e. Upon request by STATE, CONTRACTOR shall replace any CONTRACTOR personnel that STATE determines, in its sole discretion, to be unable to perform the responsibilities of the Contract acceptably, e.g., inappropriate or unprofessional personal conduct, professional inabilities, etc.
- f. STATE's working hours are Monday through Friday from 8:00 AM until 5:00 PM (CST or CDT) with one hour for lunch. STATE Project Manager may approve alternate work schedules.
- g. According to STATE policy, STATE personnel are only obligated to work a forty-hour workweek, Monday through Friday, and are allowed reasonable vacation, sick and educational absences.
- h. CONTRACTOR's personnel are not expected to work on State holidays or other mandatory leave days.
- i. CONTRACTOR agrees that STATE may require contracted staff and subcontractors assigned by CONTRACTOR to perform work under this Contract to submit to a criminal history record check in accordance with [N.D.C.C. § 54-59-20](#) and [§12-60-24](#). STATE shall have the right to reject any individual assigned to perform work under this Contract if, in its sole discretion, it determines that the results of the criminal history record check make the individual unacceptable.

## 24. PROJECT MANAGEMENT

### a. Reporting

- 1) CONTRACTOR personnel will be responsible for providing written, *weekly/every other week/monthly* time utilizations, for each individual, to STATE's Project Manager, or STATE's project staff, as STATE's Project Manager may assign.
- 2) Project Variance Reporting – CONTRACTOR must provide data to allow STATE's project manager to calculate cost and schedule variance in accordance with [N.D.C.C. § 54-59-23](#) as determined by STATE. If STATE's analysis shows a negative cost or schedule variance exceeding 20%, a subsequent report must also provide proposed corrective measures to address the issues.

### b. Integrated Change Control Process

CONTRACTOR and STATE will utilize an integrated change control process to manage changes during the life of a project.

- 1) A change request must be in writing to document the potential change. The write-up for the proposed change must be submitted to CONTRACTOR and STATE's project managers who will in turn provide it to relevant parties for assessment.

- 2) All change requests will be logged and tracked. STATE's project manager will record the request in the project repository and will update the repository throughout the process.
- 3) The change will be reviewed and, if acceptable to STATE, CONTRACTOR will submit to STATE an estimate of the impact to cost, schedule, scope, and quality.
- 4) CONTRACTOR will continue performing the services in accordance with the original Contract unless otherwise agreed upon by STATE's project manager. Work shall not commence on any new activities related to the change request until all parties agree in writing.
- 5) CONTRACTOR's project manager and STATE's project manager will adapt the Project Plan to incorporate approved changes.
- 6) Each change request duly authorized in writing by the parties shall be incorporated into and considered part of the Contract.
- 7) During the course of the Contract, if CONTRACTOR determines or could reasonably determine any STATE actions or directions constitute a requirement to perform additional work, CONTRACTOR shall notify STATE within thirty (30) calendar days that STATE has requested CONTRACTOR to perform additional work in the form of a change request utilizing the process above. CONTRACTOR understands that it waives the right to request additional time and reimbursable costs if CONTRACTOR fails to notify STATE within thirty (30) calendar days of determining or reasonably being able to determine that any STATE actions or directions constitute a requirement to perform additional work under the Contract.

**c. Deliverable Acceptance**

- 1) Upon completion of a deliverable, CONTRACTOR will furnish STATE with the deliverable and associated documentation, the expected performance, and agreed upon Acceptance Criteria.
- 2) After receipt of items in Paragraph 27(c)(1), STATE will have five (5) working days or a different period of time as is agreed to by the parties, in which to accept or reject each item in writing. STATE will accept by signature. If STATE rejects it, STATE will specify in writing its grounds for rejection and CONTRACTOR shall use its best efforts to revise any issues for the deliverables to be acceptable to STATE within the following five (5) working days. If STATE rejects it a second time, STATE will have the option of repeating the procedure as described in this acceptance statement above, escalating the issue to the Executive Steering Committee, or terminating this Contract upon written notice to CONTRACTOR.

**d. Final Acceptance**

- 1) The successful completion of all deliverables as stated in the Statement of Work in accordance with the deliverable acceptance process AND
- 2) The final delivered product fully implemented in STATE's live production environment AND
- 3) STATE has sixty (60) calendar days thereafter in which to accept or reject it in writing. If STATE rejects it, STATE shall specify in writing its grounds for rejection and CONTRACTOR shall use its best efforts to make the product conform to the requirements of this Contract as soon as possible and at no additional cost to STATE. CONTRACTOR shall continue to use its best efforts to make the product

conform to the requirements of this Contract until STATE accepts the product or terminates this Contract upon written notice to CONTRACTOR.

**25. PRODUCT CONFORMITY**

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

**26. NOTICE**

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

STATE	CONTRACTOR
Name	Name
Title	Title
Address	Address
City, State, Zip	City, State, Zip

Notice provided under this provision does not meet the notice requirements for monetary claims against STATE found at [N.D.C.C § 32-12.2-04](#).

**27. 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.

**28. 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.

## **29. 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.

## **30. ASSIGNMENT AND SUBCONTRACTS**

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE's express written consent. CONTRACTOR may, however, 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 the authority to Contract for or incur obligations on behalf of STATE.

## **31. 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.

## **32. MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS**

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

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

- a. The terms of this Contract as may be amended;
- b. STATE's Solicitation Amendment #1 to Request for Proposal ("RFP") number \_\_\_\_\_ dated \_\_\_\_\_;
- c. STATE's Request for Proposal ("RFP") number \_\_\_\_\_, dated \_\_\_\_\_;
- d. CONTRACTOR's proposal dated \_\_\_\_\_ in response to RFP number \_\_\_\_\_.

## **33. UNANTICIPATED AMENDMENTS**

If additional work is required within the scope of this Contract due to a legitimate unforeseen circumstance, STATE shall provide CONTRACTOR a written description of the additional work and request CONTRACTOR to submit a proposal for accomplishing the scope of work. CONTRACTOR will not commence additional work until STATE until all parties agree in writing.

#### **34. SEVERABILITY**

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

#### **35. APPLICABLE LAW AND VENUE**

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

#### **36. 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.

#### **37. ATTORNEY FEES AND COSTS**

In the event a lawsuit is instituted by STATE to obtain performance 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.

#### **38. NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

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

#### **39. 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.

#### **40. RIGHT TO INSPECT PLACE OF BUSINESS**

At reasonable times, STATE may inspect those areas of CONTRACTOR'S place of business that relate to the performance of this Contract. If STATE makes an inspection, CONTRACTOR must provide reasonable assistance.

#### **41. F.O.B. POINT AND FREIGHT**

All commodities purchased through this Contract shall 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 shall pass to STATE at destination, and the vendor shall be responsible for any freight claims.

**42. EFFECTIVENESS OF CONTRACT**

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

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.  
SIGNATURE PAGE FOLLOWS.**

<b>CONTRACTOR</b>
<i>Insert Contractor</i>
<b>BY:</b>
<b>Printed Name:</b>
<b>Title:</b>
<b>Date:</b>

<b>STATE OF NORTH DAKOTA</b>
<i>Acting through its <b>Insert Agency</b></i>
<b>BY:</b>
<b>Printed Name:</b>
<b>Title:</b>
<b>Date:</b>

## EXHIBIT A – Statement of Work

### 1. ACCEPTANCE PROCESS:

Upon completion of a deliverable, the parties shall follow the acceptance process in accordance with the Contract.

### 2. DELIVERABLE 1: PROJECT KICKOFF MEETING

#### a. Description:

CONTRACTOR shall coordinate with STATE to schedule an Initial Kickoff Meeting in **City Name**, ND, with the core planning team. CONTRACTOR Project Manager shall lead the meeting. The Initial Kickoff Meeting must facilitate the introduction of CONTRACTOR and STATE Core Project Team members and level-set understanding and awareness of project objectives, scope, governance, schedule and project risks and issues.

- 1) CONTRACTOR shall provide content to STATE for a detailed agenda in advance of the meeting, STATE shall finalize and send the agenda to invitees.
- 2) CONTRACTOR and STATE Project Manager shall introduce Project Sponsors, Project Steering Committee, core STATE and CONTRACTOR stakeholders.
- 3) CONTRACTOR and STATE shall facilitate the meeting, discuss and further define the following:
  - i. Effective project communication
  - ii. Project vision, background, purpose and objectives
  - iii. Project governance structure, project roles and responsibilities
  - iv. Preliminary Project Plan including scope and schedule
  - v. Initial risk assessment

#### b. Expectations of STATE:

- 1) STATE shall coordinate the logistics and co-facilitate the Kickoff Meeting.
- 2) STATE Project Sponsor and Project Team members shall participate in Kickoff Meeting.

#### c. Completion Date:

CONTRACTOR shall work with STATE to schedule the Kickoff Meeting within five (5) working days after the signing of the Contract to schedule the Kickoff Meeting. The Kickoff Meeting deliverable is due on **MM/DD/20YY**.

#### d. Acceptance Criteria:

For the acceptance of this deliverable to occur, the Project Kickoff Meeting results in:

- 1) Facilitation of Kickoff Meeting utilizing a clearly defined agenda
- 2) An introduction of critical CONTRACTOR and STATE resources assigned to the project
- 3) Review of Project Charter to include project governance and structure, roles and responsibilities, project purpose, objectives and scope

- 4) Review of communications approach and structure
- 5) Review and discussion of project risks and issues
- 6) Delivery of electronic feedback of meeting from CONTRACTOR

### 3. DELIVERABLE 2: PROJECT PLAN

#### a. Description:

CONTRACTOR shall participate, contribute, and collaborate with STATE, led by STATE's Project Manager, to develop a baseline Project Plan that provides, at a minimum, the following:

- 1) Management plans to control scope, schedule, cost and quality
- 2) An integrated change control process
- 3) A human resource management plan
- 4) A communication management plan
- 5) A risk management plan
- 6) An issue management plan
- 7) A procurement management plan
- 8) A detailed project schedule

#### b. Expectations of STATE:

- 1) STATE'S Project Manager shall be responsible for the final product.
- 2) The Project Plan shall follow STATE template.

#### c. Completion Date:

CONTRACTOR shall work with STATE within five (5) working days after the signing of the Contract to create the Project Plan. The Final Project Plan deliverable is due on MM/DD/20YY.

#### d. Acceptance Criteria:

For the acceptance of this deliverable to occur, CONTRACTOR shall provide content to the STATE for the following sections of the Project Plan regarding all services, tasks, and products delivered by CONTRACTOR:

- 1) A mutually agreed upon detailed baseline scope and schedule for the project
- 2) Management plans to control scope, schedule, cost and quality, including the variance
- 3) The governance structure for the project
- 4) Quality assurance and quality control plans
- 5) An integrated change control process
- 6) A human resource management plan
- 7) A communication management plan
- 8) A risk management plan
- 9) An issue management plan

- 10) A procurement management plan
- 11) An implementation and transition plan
- 12) A system performance plan
- 13) A system security plan

*Note: For additional deliverables use the following deliverable as a guideline.*

#### **4. DELIVERABLE 3: TEMPLATE**

**a. Description:**

**b. Expectations of STATE:**

- 1)

**c. Completion Date:**

- 1)

**d. Acceptance Criteria:**

For the acceptance of this deliverable to occur, the following criteria shall be met:

- 1)

**EXHIBIT B – Compensation Details**

**1. PROJECT DELIVERABLE PAYMENT SCHEDULE:**

*Note: The Project Kickoff meeting and the Project Plan dates should be defined by the Contract signing and entered into the table. All deliverables with payments associated to them must be in the following table.*

The following table defines all payment points. After completion of the Project Plan, this table will be amended with all dates filled in.

#	Deliverable	Start	Finish	Deliverable Value	To be Retained (XX%)	Invoice
1	Project Kickoff Meeting	<i>date</i>	<i>date</i>	<i>\$amount</i>	<i>\$amount</i>	<i>\$amount</i>
2	Project Plan	<i>date</i>	<i>date</i>	<i>\$amount</i>	<i>\$amount</i>	<i>\$amount</i>
3				<i>\$amount</i>	<i>\$amount</i>	<i>\$amount</i>
4				<i>\$amount</i>	<i>\$amount</i>	<i>\$amount</i>
<b>X</b>	Final Acceptance			<i>\$Total Retained</i>	<i>\$amount</i>	<i>\$Total Retained</i>
<b>Project Deliverable Total</b>						<b><i>\$amount</i></b>

**2. TRAVEL BUDGET**

*Note: If travel expenses will be paid outside of fixed price or deliverable pay points, include this section. Depending upon the complexity of the project this section could range from a simple statement that the budgeted travel amount is \$amount to a complex table like the one below.*

#	Key Task/Deliverable	Date	# of Trips	# of People Traveling	Budgeted Amount per Person	Total Budgeted Amount
1	Project Kickoff Meeting	<i>date</i>	<i>#</i>	<i>#</i>	<i>\$amount</i>	<i>\$amount</i>
2	Project Plan	<i>date</i>	<i>#</i>	<i>#</i>	<i>\$amount</i>	<i>\$amount</i>
3				<i>#</i>	<i>\$amount</i>	<i>\$amount</i>
4				<i>#</i>	<i>\$amount</i>	<i>\$amount</i>
<b>X</b>	Final Acceptance			<i>#</i>	<i>\$amount</i>	<i>\$amount</i>
<b>Travel Budget Total</b>						<b><i>\$amount</i></b>

**3. PROFESSIONAL SERVICES**

*Note: If professional services are paid as a service and not a deliverable, include this table. If professional services are included in the project deliverables delete this section prior to attaching to RFP.*

Category	Value
Project Management	<i>\$amount</i>
	<i>\$amount</i>
<b>Professional Services Total</b>	<b><i>\$amount</i></b>

**4. PROJECT TOTAL**

*Note: This is a summary total of all the totals in the above tables.*

The total budget for the project portion of this Contract is \$*amount*

**5. ONGOING SOFTWARE LICENSE, MAINTENANCE SERVICES OR BOTH**

*Note: If software license or maintenance services are included in the original Contract term, include in this table. This table should be updated to match your cost proposal.*

<b>Time Period</b>	<b>Dollar Amount</b>
Year One, <i>Month Day, Year</i> through <i>Month Day, Year</i>	<i>\$amount</i>
Year Two, <i>Month Day, Year</i> through <i>Month Day, Year</i>	<i>\$amount</i>
Year Three, <i>Month Day, Year</i> through <i>Month Day, Year</i>	<i>\$amount</i>
Year Four, <i>Month Day, Year</i> through <i>Month Day, Year</i>	<i>\$amount</i>

*Note: For additional payment information related to the Contractual Amount add details to this attachment.*

## STATEWIDE INTEROPERABILITY RADIO NETWORK STUDY CONTRACT

### 1. PARTIES

The parties to this contract (Contract) are the state of North Dakota, acting through its Information Technology Department (STATE), and Televate, LLC a privately held company having its principal place of business at 8229 Boone Boulevard, Suite 720, Vienna, VA 22182 (CONTRACTOR).

### 2. SCOPE OF WORK

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, shall provide services to the STATE according to this Contract including any Statements of Work and attachments and documents mentioned in Section 38 of this Contract.

### 3. COMPENSATION

#### a. Contractual Amount

STATE shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed \$579,148.00 (Contractual Amount). The Contractual Amount shall be paid according to the Compensation Details document attached as Exhibit B.

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 regardless of the difficulty, materials or equipment required, including fees, licenses, overhead, profit and all other direct and indirect costs or expenses incurred by CONTRACTOR except as provided by a change order via the integrated change control process or an amendment to this Contract.

#### b. Retainage

All deliverable payments shall be subject to 10% retainage. Retained amounts due to CONTRACTOR shall be paid upon Final Acceptance.

#### c. Invoicing

The final cost set forth on each invoice shall be equivalent to the cost for each deliverable or service as specified in the Statement of Work. CONTRACTOR shall not submit an invoice for any deliverable or service specified in the Statement of Work that STATE has not fully accepted.

#### d. Payment

Payment made in accordance with this Compensation section shall constitute payment in full for the services and work performed and the deliverables provided under this Contract and CONTRACTOR shall not receive any additional compensation hereunder.

STATE shall make payment under this Contract within forty-five (45) calendar days after receipt of an approved invoice.

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 not to constitute allowable costs, on the basis of audits conducted in accordance with the terms of this Contract. At STATE's sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to CONTRACTOR.

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.

e. **Travel**

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

Payment for any travel expenses that exceed the travel budget as agreed upon by the parties must be approved by STATE's project manager.

f. **Prepayment**

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

g. **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 CONTRACTOR.

h. **Taxpayer ID**

CONTRACTOR's federal employer ID number is: 31-1808846.

i. **Purchasing Card**

STATE may make a payment using a government credit card. CONTRACTOR will accept a government credit card without passing the processing fees for the government credit card back to STATE.

**4. EQUIPMENT, MATERIALS, AND WORKSPACE – RESOURCES PROVIDED BY PARTIES**

For periods during which the parties mutually agree that CONTRACTOR's assigned staff is on site:

- a. On site means statewide.
- b. STATE agrees to provide an adequate working space, when required.
- c. Equipment and software for on-site CONTRACTOR personnel is to be provided by CONTRACTOR.

When STATE and CONTRACTOR agree that remote access to systems is required, STATE shall provide the necessary supervised remote access security to enable CONTRACTOR access to the appropriate STATE systems.

**5. TERM OF CONTRACT**

This Contract begins on December 1, 2015 and ends on June 30, 2017.

a. **No Automatic Renewal**

This Contract will not automatically renew.

**b. Extension Option**

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

**c. Renewal Option**

STATE may renew this Contract upon satisfactory completion of the initial Contract term. STATE reserves the right to execute up to four (4) options to renew this Contract under the same terms and conditions for a period of twelve (12) months each.

**6. TIME IS OF THE ESSENCE**

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

**7. TERMINATION**

**a. Termination by Mutual Agreement**

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

**b. 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.

**c. Termination for Lack of Funding or Authority**

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

- 1) If funding from federal, state, or other sources is not obtained 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.

**d. Termination for Cause.**

STATE may terminate this Contract effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice:

- 1) If CONTRACTOR fails to provide services 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.

## **8. SUSPENSION FOR CONVENIENCE**

STATE shall have the right at any time to order the services of CONTRACTOR fully or partially stopped for STATE's own convenience. STATE shall provide CONTRACTOR written notice of the reason for and duration of the suspension. The schedule shall be delayed on a day-for-day basis to the extent STATE has issued a stop work order to CONTRACTOR and such stop work order is causing delays in completing services in accordance with the schedule. CONTRACTOR shall have the right to submit claims in accordance with the terms of this Contract as a result of stop work orders issued under this section.

## **9. 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.

## **10. LIQUIDATED DAMAGES**

The parties agree that STATE may suffer damages due to a failure by CONTRACTOR to timely provide deliverables or services under this Contract. Because it is difficult to fix the actual damages sustained in the event of such delays, STATE and CONTRACTOR agree that the amount of damages will be determined as per this Section. In the event of any non-performance, delay or failure to meet an agreed-up deadline, CONTRACTOR shall pay that amount as liquidated damages and not as a penalty. Amounts due to STATE as liquidated damages may be deducted by STATE from any amounts payable to CONTRACTOR, and any amount outstanding over and above the amounts deducted from the invoice will be promptly tendered by check from CONTRACTOR to STATE.

Delays due to causes of Force Majeure or due to the responsibility of STATE shall extend the time for performance on a day-for-day basis. STATE will not assess liquidated damages against CONTRACTOR when the delay in delivery or performance is beyond the control and without the fault or negligence of CONTRACTOR.

Delays due to causes of Force Majeure or due to the responsibility of STATE shall extend the time for performance on a day-for-day basis. STATE will not assess liquidated damages against CONTRACTOR when the delay in delivery or performance is beyond the control and without the fault or negligence of CONTRACTOR.

### **a. Failure to Complete Deliverable on Schedule:**

If CONTRACTOR fails to complete a Deliverable identified in SOW by the specified deadline (or revised deadline as agreed upon between the parties through the Integrated Change Control Process), CONTRACTOR shall pay liquidated damages to STATE in the amount of \$100.00 per calendar day for each day the Deliverable is delayed.

## **11. INJUNCTIVE RELIEF**

CONTRACTOR shall immediately report to STATE any and all unauthorized disclosures or uses of STATE's Confidential Information or Proprietary Information of which CONTRACTOR or its staff is aware or has knowledge. CONTRACTOR acknowledges that any unauthorized publication or disclosure of STATE's Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to STATE. If CONTRACTOR should publish or disclose such Confidential Information or Proprietary Information without authorization, STATE shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. CONTRACTOR shall indemnify, defend, and hold harmless STATE from all damages, costs, liabilities, and expenses (including without limitation reasonable attorneys' fees) caused by or arising from CONTRACTOR's unauthorized notification or disclosure of STATE's Confidential Information or Proprietary Information. As a condition to these indemnity obligations, STATE will provide CONTRACTOR with prompt notice of any claim of which STATE is aware and for which indemnification shall be sought under this Contract and shall cooperate in all reasonable respects with CONTRACTOR in connection with any such claim.

## **12. RIGHT OF SETOFF DAMAGES**

Amounts due STATE by CONTRACTOR, including liquidated or other damages, or claims for damages, may be deducted or set-off by STATE from any money payable to CONTRACTOR pursuant to this Contract.

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

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

## **14. RIGHT TO REMEDIES AND CUMULATION OF RIGHTS**

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

## **15. NON-WAIVER**

Either party's failure to exercise any of its rights under the Contract, including State's rights to enforce deadlines and the Time Is Of The Essence provision in paragraph 6 its delay in enforcing any right, or its waiver of its rights on any occasion, shall not constitute a waiver of such rights on any other occasion. No course of dealing by either party in exercising any of its rights shall constitute a waiver thereof. No waiver of any provision of the Contract shall be effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced.

## **16. INDEMNITY**

CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by CONTRACTOR to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. CONTRACTOR also agrees to 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 Contract.

## **17. INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION**

- a. CONTRACTOR, at its own expense, shall defend and indemnify STATE against claims that products furnished under this Contract infringe a United States patent or copyright or misappropriate trade secrets protected under United States law.
- b. As to any product which is subject to a claim of infringement or misappropriation, CONTRACTOR may (a) obtain the right of continued use of the product for STATE or (b) replace or modify the product to avoid the claim. If neither alternative is available on commercially reasonable terms then, at the request of CONTRACTOR, any applicable Software license and its charges will end, STATE will stop using the product, and will return the product to CONTRACTOR. Upon return of the product, CONTRACTOR will give STATE a credit for the price paid to CONTRACTOR, less a reasonable offset for use and obsolescence.

## **18. REPRESENTATION AND WARRANTIES**

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

## 19. INSURANCE

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

- a. 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
- b. 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
- c. Workers compensation coverage meeting all statutory requirements. The policy must provide coverage for all states of operation that apply to the performance of this Contract
- d. Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance
- e. 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 Contract period and for three (3) 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.

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

- a. 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.
- b. 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.
- c. The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- d. The state of North Dakota and its agencies, officers, and employees 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 that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the CONTRACTOR.

- e. The insurance required in this agreement, through a policy or endorsement, shall include:
  - 1) Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State
  - 2) 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 CONTRACTOR's insurance and shall not contribute with it
  - 3) Cross liability/severability of interest for all policies and endorsements
  - 4) 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
  - 5) 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
- f. 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.
- g. Failure to provide insurance as required in this agreement is a material breach of contract entitling STATE to terminate this agreement immediately.
- h. CONTRACTOR shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements.

## **20. 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.

## **21. 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.

## 22. PERSONNEL

- a. STATE will designate a Project Manager to serve as the primary project manager for this Contract. If, during the course of the Contract, it becomes necessary for STATE to change the person assigned as STATE's Project Manager, STATE will notify CONTRACTOR in writing, pursuant to Notice section of this Contract.
- b. Unless STATE otherwise notifies CONTRACTOR, STATE's Project Manager shall carry out STATE's administrative and management functions under this Contract, shall be responsible for acceptance of the Contract deliverables, and shall provide support and overall direction to CONTRACTOR.
- c. CONTRACTOR will designate a Project Manager and provide individuals to meet the requirements and accomplish the work as stated in this Contract, including any mutually agreed upon Statement of Work.
- d. CONTRACTOR agrees and understands that STATE's execution of the Contract is predicated, in part and among other considerations, on the utilization of the specific individuals and personnel qualifications as identified; primary being Omna Solomon,. Therefore, CONTRACTOR agrees that:
  - 1) Prior to assignment of personnel, CONTRACTOR shall obtain written approval from STATE for all personnel to be assigned to this project
  - 2) The personnel assigned must have the knowledge necessary to complete requirements as defined in the Contract.
  - 3) CONTRACTOR shall warrant that all personnel assigned to perform tasks in response to this Contract will remain assigned for the agreed-upon length of time.
  - 4) No replacement, reassignment or substitution of any assigned individuals and personnel qualifications shall be made without the prior written approval of STATE and that such replacement, reassignment or substitution shall be made at no additional cost to STATE.
  - 5) Any substitution made pursuant to this paragraph must be of equal or higher skills, knowledge, and abilities than those personnel originally proposed and that STATE's approval of a substitution is not construed as an acceptance of the substitution's performance potential. STATE agrees that an approval of a substitution will not be unreasonably withheld.
  - 6) CONTRACTOR shall assign personnel on a full-time basis. In the event that a work assignment does not justify full-time participation, CONTRACTOR shall assign personnel on a part-time basis with prior written approval of STATE's Project Manager. However, if the part-time assignments are specified in the Contract, no written approval from STATE's Project Manager is necessary except for substitution of CONTRACTOR personnel.
- e. Upon request by STATE, CONTRACTOR shall replace any CONTRACTOR personnel that STATE determines, in its sole discretion, to be unable to perform the responsibilities of the Contract acceptably, e.g., inappropriate or unprofessional personal conduct, professional inabilities, etc.
- f. STATE's working hours are Monday through Friday from 8:00 AM until 5:00 PM (CST or CDT) with one hour for lunch. STATE Project Manager may approve alternate work schedules.

- g. According to STATE policy, STATE personnel are only obligated to work a forty-hour workweek, Monday through Friday, and are allowed reasonable vacation, sick and educational absences.
- h. CONTRACTOR's personnel are not expected to work on State holidays or other mandatory leave days.
- i. CONTRACTOR agrees that STATE may require contracted staff and subcontractors assigned by CONTRACTOR to perform work under this Contract to submit to a criminal history record check in accordance with N.D.C.C. § 54-59-20 and §12-60-24. STATE shall have the right to reject any individual assigned to perform work under this Contract if, in its sole discretion, it determines that the results of the criminal history record check make the individual unacceptable.

## **23. PROJECT MANAGEMENT**

### **a. Reporting**

- 1) CONTRACTOR personnel will be responsible for providing written, weekly reports of CONTRACTOR's progress on the project and meeting the objective/deliverables as stated in the Scope of Work, to STATE's Project Manager, or STATE's project staff, as STATE's Project Manager may assign. Each report must contain a description of the current status of the project, the tasks on which time was spent, the estimated progress to be made in the next reporting period, and the problems encountered the proposed solutions to them and their effect, if any, on the project budget/schedule.
- 2) Project Variance Reporting – CONTRACTOR must provide data to allow STATE's project manager to calculate cost and schedule variance in accordance with N.D.C.C. § 54-59-23 as determined by STATE. If STATE's analysis shows a negative cost or schedule variance exceeding 20%, a subsequent report must also provide proposed corrective measures to address the issues.

### **b. Integrated Change Control Process**

CONTRACTOR and STATE will utilize an integrated change control process to manage changes during the life of a project.

- 1) A change request must be in writing to document the potential change. The write-up for the proposed change must be submitted to CONTRACTOR and STATE's project managers who will in turn provide it to relevant parties for assessment.
- 2) All change requests will be logged and tracked. STATE's project manager will record the request in the project repository and will update the repository throughout the process.
- 3) The change will be reviewed and, if acceptable to STATE, CONTRACTOR will submit to STATE an estimate of the impact to cost, schedule, scope, and quality.
- 4) CONTRACTOR will continue performing the services in accordance with the original Contract unless otherwise agreed upon by STATE's project manager. Work shall not commence on any new activities related to the change request until all parties agree in writing.
- 5) CONTRACTOR's project manager and STATE's project manager will adapt the Project Plan to incorporate approved changes.

- 6) Each change request duly authorized in writing by the parties shall be incorporated into and considered part of the Contract.
- 7) During the course of the Contract, if CONTRACTOR determines or could reasonably determine any STATE actions or directions constitute a requirement to perform additional work, CONTRACTOR shall notify STATE within thirty (30) calendar days that STATE has requested CONTRACTOR to perform additional work in the form of a change request utilizing the process above. CONTRACTOR understands that it waives the right to request additional time and reimbursable costs if CONTRACTOR fails to notify STATE within thirty (30) calendar days of determining or reasonably being able to determine that any STATE actions or directions constitute a requirement to perform additional work under the Contract.

**c. Deliverable Acceptance**

- 1) Upon completion of a deliverable, CONTRACTOR will furnish STATE with the deliverable and associated documentation, the expected performance, and agreed upon Acceptance Criteria.
- 2) After receipt of items in Paragraph 27(c)(1), STATE will have ten (10) working days or a different period of time as is agreed to by the parties, in which to accept or reject each item in writing. STATE will accept by signature. If STATE rejects it, STATE will specify in writing its grounds for rejection and CONTRACTOR shall use its best efforts to revise any issues for the deliverables to be acceptable to STATE within the following ten (10) working days. If STATE rejects it a second time, STATE will have the option of repeating the procedure as described in this acceptance statement above, escalating the issue to the Statewide Interoperability Executive Committee (SIEC), or terminating this Contract upon written notice to CONTRACTOR.

**d. Final Acceptance**

- 1) The successful completion of all deliverables as stated in the Statement of Work in accordance with the deliverable acceptance process AND
- 2) The final delivered product fully implemented in STATE's live production environment AND
- 3) STATE has sixty (60) calendar days thereafter in which to accept or reject it in writing. If STATE rejects it, STATE shall specify in writing its grounds for rejection and CONTRACTOR shall use its best efforts to make the product conform to the requirements of this Contract as soon as possible and at no additional cost to STATE. CONTRACTOR shall continue to use its best efforts to make the product conform to the requirements of this Contract until STATE accepts the product or terminates this Contract upon written notice to CONTRACTOR.

## 24. PRODUCT CONFORMITY

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

## 25. NOTICE

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

STATE	CONTRACTOR
Greg Hoffman	A. Richard Burke
Director, Administrative Services	Managing Partner
4201 Normandy Street	8229 Boone Blvd., Suite 720
Bismarck, ND 58503	Vienna, VA 22182

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

## 26. 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.

## 27. 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.

## **28. 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.

## **29. ASSIGNMENT AND SUBCONTRACTS**

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE's express written consent. CONTRACTOR may, however, 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 the authority to Contract for or incur obligations on behalf of STATE.

## **30. 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.

## **31. 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 #2 to Request for Proposal ("RFP") number 112-1513 dated October 21, 2015;
- c. STATE's Solicitation Amendment #1 to Request for Proposal ("RFP") number 112-1513 dated October 12, 2015;
- d. STATE's Request for Proposal ("RFP") number 112-1513, dated September 29, 2015;
- e. CONTRACTOR's proposal dated October 22, 2015 in response to RFP number 112-1513.

## **32. UNANTICIPATED AMENDMENTS**

If additional work is required within the scope of this Contract due to a legitimate unforeseen circumstance, STATE shall provide CONTRACTOR a written description of the additional work and request CONTRACTOR to submit a proposal for accomplishing the scope of work. CONTRACTOR will not commence additional work for STATE until all parties agree in writing.

### **33. SEVERABILITY**

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

### **34. APPLICABLE LAW AND VENUE**

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

### **35. 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.

### **36. ATTORNEY FEES AND COSTS**

In the event a lawsuit is instituted by STATE to obtain performance 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.

### **37. NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

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

### **38. 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.

### **39. RIGHT TO INSPECT PLACE OF BUSINESS**

At reasonable times, STATE may inspect those areas of CONTRACTOR'S place of business that relate to the performance of this Contract. If STATE makes an inspection, CONTRACTOR must provide reasonable assistance.

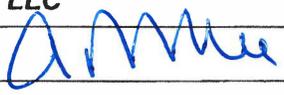
### **40. F.O.B. POINT AND FREIGHT**

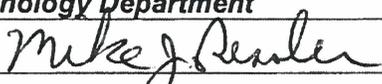
All commodities purchased through this Contract shall be Free on Board ("F.O.B.") final destination, freight prepaid. Unless specifically stated otherwise, all prices offered must include the delivery costs to any location within the state of North Dakota. Title shall pass to STATE at destination, and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

**41. EFFECTIVENESS OF CONTRACT**

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

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.  
SIGNATURE PAGE FOLLOWS.**

<b>CONTRACTOR</b>
<b>Televate, LLC</b>
BY: 
Printed Name: A. Richard Burke
Title: Managing Partner
Date: 12/8/2015

<b>STATE OF NORTH DAKOTA</b>
<b>Acting through its Information Technology Department</b>
BY: 
Printed Name: Mike J. Ressler
Title: Chief Information Officer
Date: 12/7/15

## EXHIBIT A – Statement of Work

### 1. ACCEPTANCE PROCESS:

Upon completion of a deliverable, the parties shall follow the acceptance process in accordance with the Contract.

### 2. ADDITIONAL DEFINITIONS

- a. The term STATEWIDE, shown as intended for use in this statement of work, will hereafter refer to the sum total of state agencies and organizations, county, city, municipal, tribal and private entities

### 3. DELIVERABLE 1: PROJECT KICKOFF MEETING

#### a. Description:

CONTRACTOR shall coordinate with STATE to schedule an Initial Kickoff Meeting in Bismarck, ND, with the core planning team.

#### b. Expectations of CONTRACTOR:

- 1) CONTRACTOR Project Manager shall lead the meeting.
- 2) The Initial Kickoff Meeting must facilitate the introduction of CONTRACTOR and STATE Core Project Team members and level-set understanding and awareness of project objectives, scope, governance, schedule and project risks and issues.
- 3) CONTRACTOR shall provide content to STATE for a detailed agenda in advance of the meeting, STATE shall finalize and send the agenda to invitees.
- 4) CONTRACTOR and STATE Project Manager shall introduce the sponsor, Executive Committee, and core STATE and CONTRACTOR stakeholders.
- 5) CONTRACTOR and STATE shall facilitate the meeting, discuss and further define the following:
  - i. Effective project communication
  - ii. Project intent, mission, vision, goals, background, purpose and objectives
  - iii. Project governance structure, project roles and responsibilities
  - iv. Preliminary Project Plan including scope and schedule
  - v. Initial risk assessment

#### c. Expectations of STATE:

- 1) STATE shall coordinate the logistics and co-facilitate the Kickoff Meeting.
- 2) STATE Project Sponsor and Project Team members shall participate in Kickoff Meeting.

#### d. Completion Date:

CONTRACTOR shall work with STATE to schedule the Kickoff Meeting within five (5) working days after the signing of the Contract. The Kickoff Meeting deliverable is due ten working days after the Kickoff Meeting.

**e. Acceptance Criteria:**

For the acceptance of this deliverable to occur, the Project Kickoff Meeting shall result in:

- 1) Facilitation of Kickoff Meeting utilizing a clearly defined agenda
- 2) An introduction of critical CONTRACTOR and STATE resources assigned to the project
- 3) Review of Project Charter to include project governance and structure, roles and responsibilities, project purpose, objectives and scope
- 4) Review of communications approach and structure
- 5) Review and discussion of project risks and issues
- 6) Delivery of meeting minutes with incorporated STATE electronic feedback from CONTRACTOR; submission in digital form mutually agreed to by STATE and CONTRACTOR is acceptable

**4. DELIVERABLE 2: PROJECT PLAN**

**a. Description:**

CONTRACTOR shall participate, contribute, and collaborate with STATE, led by STATE's Project Manager, to develop a baseline Project Plan

**b. Expectations of CONTRACTOR:**

At a minimum, CONTRACTOR shall deliver:

- 1) Detailed CONTRACTOR schedule
- 2) Mutually agreed to inputs to a project plan addressing the following:
  - (a) Management plans to control scope, schedule, cost and quality
  - (b) An integrated change control process
  - (c) A human resource management plan
  - (d) A communication management plan; this includes internal (project and SIEC) and external (outside project and SIEC) communications
  - (e) A risk management plan
  - (f) An issue management plan
  - (g) A procurement management plan
  - (h) A detailed project schedule

**c. Expectations of STATE:**

- 1) STATE'S Project Manager shall be responsible for the final product.
- 2) The Project Plan shall follow STATE template.

**d. Completion Date:**

CONTRACTOR shall work with STATE within ten (10) STATE working days after the signing of the Contract to create the Project Plan. The Final Project Plan deliverable is due within twenty (20) STATE working days of the Kickoff Meeting.

**e. Acceptance Criteria:**

For the acceptance of this deliverable to occur, CONTRACTOR shall provide content to the STATE for the following sections of the Project Plan regarding all services, tasks, and products delivered by CONTRACTOR and assist the Project Manager through obtaining acceptance:

- 1) A mutually agreed upon detailed baseline schedule for the project
- 2) An SIEC approved project plan addressing the following at a minimum:
  - (a) Key milestones, phases, and Deliverables
  - (b) A detailed project scope baseline with incorporated contract scope requirements
  - (c) Management plans to control scope, schedule, cost and quality, including the variance
  - (d) The governance structure for the project
  - (e) Quality assurance and quality control plans
  - (f) An integrated change control process
  - (g) A human resource management plan
  - (h) A communication management plan
  - (i) A risk management plan
  - (j) An issue management plan
  - (k) A procurement management plan

**5. DELIVERABLE 3: COVERAGE ANALYSIS AND DESIGN**

**a. Description:**

Contractor shall provide a COVERAGE ANALYSIS ASSESSMENT and DESIGN RECOMMENDATION

**b. Expectations of CONTRACTOR:**

- 1) CONTRACTOR shall review the current public safety radio system coverage in the state to include all stakeholder reported and publicly documented radio systems currently employed by state, county, municipality, and tribal entities within the State of North Dakota; in cases where CONTRACTOR is unable to obtain relevant data, CONTRACTOR will review the circumstances with STATE for consideration of relief from this requirement with changes documented in accordance with the integrated change control process
- 2) CONTRACTOR shall analyze the radio system coverage in its entirety
- 3) CONTRACTOR shall outline areas of non-coverage as determined through radio propagation prediction software coverage simulation

- 4) CONTRACTOR shall establish a map of towers already in existence and in use by the STATE as reported by stakeholders and through publicly available sources
- 5) CONTRACTOR shall establish a map of towers leveraging STATE and non-STATE towers already in existence as reported by stakeholders and through publicly available sources to provide optimal coverage
- 6) CONTRACTOR shall make recommendations for locations where future build-out sites would be located; include a revised site map of the system showing the current and proposed sites.
- 7) CONTRACTOR shall recommend any other radio equipment infrastructure improvements
- 8) CONTRACTOR shall develop a hybrid VHF and 700/800 MHz radio network deployment strategy based on the agreed upon underlying radio network architecture

**c. Expectations of STATE:**

- 1) STATE shall support NEEDS ASSESSMENT by providing a list of state, county, municipality, and tribal stakeholders to include into the NEEDS ASSESSMENT and to assist in outreach to encourage stakeholder participation
- 2) STATE shall validate DESIGN CRITERIA based on mutually agreeable criteria established by the STATE and CONTRACTOR

**d. Completion Date:**

- 1) Draft Design March 15, 2015
- 2) Draft 2 and Final Design April 15, 2015

**e. Acceptance Criteria:**

For the acceptance of this deliverable to occur, the following criteria shall be met:

- 1) SIEC acceptance of a coverage design addressing the needs of STATE and local Users

**6. DELIVERABLE 4: CURRENT SYSTEMS ASSESSMENT**

**a. Description:**

CONTRACTOR shall provide an analysis on the current state of all stakeholder reported and publicly available state, county, municipality, and tribal entity radio systems.

**b. Expectations of CONTRACTOR:**

- 1) CONTRACTOR shall collect data STATEWIDE as reported and made available from participating data owners
- 2) CONTRACTOR shall assess the state of equipment to determine current functionality, usage and end of life by model type and years in service
- 3) CONTRACTOR shall assess current equipment for ability to update in support of a P25 trunked radio communications capability

**c. Expectations of STATE:**

- 1) STATE shall support data collection by providing access to available STATE agency radio data and in encouraging STATEWIDE agency participation and data sharing

**d. Completion Date:**

- 1) March 31, 2016

**e. Acceptance Criteria:**

For the acceptance of this deliverable to occur, the following criteria shall be met: Comprehensive assessment and report detailing the state of current systems, suitability to update and end of life assessment based on the radio system data as reported by stakeholders and publically available.

**7. DELIVERABLE 5: GOVERNANCE STUDY, AGREEMENTS AND MOUS**

**a. Description:**

Contractor shall provide a Report analyzing current governance structures, and provide recommendations

**b. Expectations of CONTRACTOR:**

- 1) CONTRACTOR shall prepare options for establishing a STATEWIDE Radio System Governance structure
- 2) CONTRACTOR shall prepare shared system usage MOUs
- 3) CONTRACTOR shall provide cost sharing models

**c. Expectations of STATE:**

1. STATE shall support this task through the direct participation of SIEC members, providing access to STATE legal staff supporting this task and by encouraging state, county, municipality, private and tribal entity participation and associated information sharing
2. STATE shall support CONTRACTOR development of MOUs
3. STATE shall provide ongoing review, input, certification, suggestion regarding governance recommendations

**d. Completion Date:**

- 1) Draft Document - April 30, 2016
- 2) Final Report – May 31, 2016

**e. Acceptance Criteria:**

For the acceptance of this deliverable to occur, the following criteria shall be met: Governance and Cost Sharing Model agreed upon by SIEC

## 8. DELIVERABLE 6: STAKHOLDER OUTREACH

### a. Description:

CONTRACTOR shall prepare a stakeholder outreach plan and external communications materials, and collaboratively work with STATE to engage stakeholders STATEWIDE

### b. Expectations of CONTRACTOR:

- 1) Upon mutual agreement, CONTRACTOR shall provide a stakeholder outreach plan and associated materials, to include, but not limited to presentations, flyers and contact materials.
  - a. Newsletters – produce six (6) monthly newsletters
  - b. Web Material – as mutually agreed to in the project schedule until completion of deliverable period of performance
- 2) CONTRACTOR shall execute an outreach program to engage stakeholders STATEWIDE
  - a. Regional Meetings eight (8) and State Agency meetings two (2) – End of Month March 2016 or completion of the associated tasks in the mutually agreed to baseline schedule

### c. Expectations of STATE:

- 1) STATE shall approve the outreach plan, encourage STATEWIDE participation and participate in outreach activities as deemed appropriate to advance associated outreach goals and objectives meetings.

STATE shall provide meeting space at STATE owned facilities and assist in obtaining meeting facilities STATEWIDE as may be required
- 2) STATE shall provide a Website and content management.

### d. Completion Date:

- 1) May 31, 2016

### e. Acceptance Criteria:

For the acceptance of this deliverable to occur, the following criteria shall be met:

- 1) SIEC acceptance of Newsletter and Web Material format and delivery of content
- 2) Complete Regional Meetings, document and deliver meeting minutes in a mutually agreed-to electronic format for review, and incorporate changes as mutually agreed to by key attendees from the SIEC or designated representatives

## 9. DELIVERABLE 7: FREQUENCY SURVEY AND ANALYSIS REPORT

### a. Description:

Execute a survey of frequencies utilized by STATEWIDE public safety entities, conduct an analysis of available STATE and non-STATE frequencies viable and reasonably usable and submit a report detailing the method, options and recommendations

**b. Expectations of CONTRACTOR:**

- 1) CONTRACTOR shall conduct and provide a report documenting a VHF and 700/800 MHz Frequency Search and Analysis
- 2) CONTRACTOR shall conduct a survey of frequencies in use
- 3) CONTRACTOR shall perform Capacity and Frequency Planning
- 4) CONTRACTOR shall identify frequencies that could be used for STATEWIDE interoperable public safety radio communications
- 5) CONTRACTOR shall develop a frequency plan to support a STATEWIDE P25 trunked system

**c. Expectations of STATE:**

- 1) STATE shall provide and validate CONTRACTOR frequency planning documentation

**d. Completion Date:**

- 1) Draft Document – April 30, 2016
- 2) Final Report – May 31, 2016

**e. Acceptance Criteria:**

For the acceptance of this deliverable to occur, the following criteria shall be met:

- 1) SIEC acceptance of a comprehensive frequency analysis report
- 2) CONTRACTOR shall demonstrate frequency plan and availability can meet requirement and architecture criteria

**10. DELIVERABLE 8: SUBSCRIBER AND SITE DATA COLLECTION**

**a. Description:**

Conduct a review and inspection of STATEWIDE user equipment and infrastructure to collect and collate data.

**b. Expectations of CONTRACTOR:**

- 1) CONTRACTOR shall conduct remote, and on-site review and inspection of all STATEWIDE user equipment and infrastructure as reported by state, county, municipality, and tribal entities and as publicly available
- 2) CONTRACTOR shall collect data, review and interpret user provided documents as required
- 3) CONTRACTOR shall track and address equipment issues such as, but not limited to end of life and firmware upgrades.
- 4) CONTRACTOR shall develop a database of existing state, county, municipality, and tribal radio tower and other radio antenna counting facilities that could potentially be integrated into the future radio network

**c. Expectations of STATE:**

- 1) STATE shall provide access to existing radio subscriber and existing radio tower documentation and encourage county, municipality, and tribal entities to provide similar documentation
- 2) STATE shall provide technical and project management resources to support data collection and validation

**d. Completion Date:**

- 1) Draft Document – March 15, 2016
- 2) Final Database – April 30, 2016

**e. Acceptance Criteria:**

For the acceptance of this deliverable to occur, the following criteria shall be met:

- 1) Contractor shall provide a subscriber *RADIO and state, county, municipality, and tribal entity TOWER Database* based on stakeholder provided and publicly available information

**11. DELIVERABLE 9: COMPREHENSIVE STATEWIDE RADIO AND DISPATCH SYSTEM ARCHITECTURE / DESIGN AND PHASED IMPLEMENTATION STRATEGY**

**a. Description:**

Develop and deliver a comprehensive, redundant, statewide radio architecture/design, including a benefits analysis comparing different models. The submission shall include scenario-based models demonstrating the different ways the proposed system could benefit all areas of public safety, to include day-to-day interoperability, mutual aid interoperability, and task force interoperability at a minimum. Finally, CONTRACTOR shall deliver a migration path for each entity and recommendations for a phased implementation strategy.

**b. Expectations of CONTRACTOR:**

- 1) CONTRACTOR shall provide market research documenting commercially available options for a STATEWIDE radio and dispatch system
- 2) CONTRACTOR shall provide benefits analysis comparing different models and systems
- 3) CONTRACTOR shall provide comprehensive redundant STATEWIDE radio system requirements, processes, and architecture
- 4) CONTRACTOR shall provide scenarios demonstrating the different ways a proposed system could benefit all areas of public safety; at a minimum, include scenarios for large scale and small incident events addressing day-to-day interoperability, mutual aid interoperability, and task force interoperability and include all STATEWIDE radio model types as well as control centers
- 5) CONTRACTOR shall provide a detailed migration path for rural, suburban and urban groups in a STATEWIDE system

- 6) CONTRACTOR shall provide a phased implementation strategy and operational model

**c. Expectations of STATE:**

- 1) STATE shall participate in meetings to define requirements, processes, and architecture by dedicating time and in providing subject matter experts
- 2) STATE shall validate documented requirements
- 3) STATE shall review and verify CONTRACTOR delivered processes, operational model, and architecture
- 4) STATE shall build consensus with CONTRACTOR support on a solution including tasks from this deliverable and the proposed governance model from Deliverable 5

**d. Completion Date:**

- 1) Draft Document - April 30, 2016
- 2) Final Report – May 31, 2016

**e. Acceptance Criteria:**

For the acceptance of this deliverable to occur, the following criteria shall be met:

SIEC acceptance of the results of all work outlined in the description that meet the following criteria for a final STATEWIDE radio solution:

- 1) Accepted requirements
- 2) Verified processes, operational model, and architecture
- 3) Recommendation addressing a holistic system capability STATEWIDE; includes all mutually agreed to radio model types and associated control centers

**12. DELIVERABLE 10: COST ESTIMATES, PRICING ANALYSIS, BUSINESS CASE STUDY**

**a. Description:**

Prepare and deliver a detailed financial analysis and business case study report addressing the total cost of ownership for a STATEWIDE solution

**b. Expectations of CONTRACTOR:**

- 1) CONTRACTOR shall provide an in-depth financial analysis; must include the total cost of ownership
- 2) CONTRACTOR shall provide a detailed cost estimate for implementation of the proposed governance model, requirements, processes, operations model, and architecture (hereafter referred to as the "SOLUTION")

**c. Expectations of STATE:**

STATE shall participate in meetings to refine recommended SOLUTION Costs

**d. Completion Date:**

- 1) Draft Document - April 30, 2016

2) Final Report – May 31, 2016

**e. Acceptance Criteria:**

For the acceptance of this deliverable to occur, the following criteria shall be met:

SIEC acceptance of a detailed SOLUTION describing the total cost of ownership Estimate for implementation of the associated Analysis in a mutually agreed format and form

**13. DELIVERABLE 11: REPORTS AND PRESENTATIONS**

**a. Description:**

Prepare a final report and associated presentation materials detailing results and recommendations

**b. Expectations of CONTRACTOR:**

- 1) CONTRACTOR shall deliver a final radio study draft
- 2) CONTRACTOR shall deliver a final radio study
- 3) CONTRACTOR shall deliver a presentation to SIEC

**c. Expectations of STATE:**

- 1) Provide feedback on draft and report structure

**d. Completion Date:**

- 1) Draft Document – May 1, 2016
- 2) Final Report – May 31, 2016

**e. Acceptance Criteria:**

For the acceptance of this deliverable to occur, the following criteria shall be met:

STATE acceptance of a completed STATEWIDE Radio Feasibility Study Report and presentation.

**EXHIBIT B – Compensation Details**

**1. PROJECT DELIVERABLE PAYMENT SCHEDULE:**

The following table defines all payment points. After completion of the Project Plan, this table will be amended with all dates filled in.

#	Deliverable	Start	Finish	Deliverable Value	To be Retained (10%)	Invoice
1	Project Kickoff Meeting	TBD	TBD	\$12,023.46	\$1,202.35	\$10,821.11
2	Project Plan	TBD	TBD	\$4,955.50	\$495.55	\$4,459.95
3	Coverage Analysis and Design	12/15/2015	4/15/2016	\$31,711.46	\$3,171.15	\$28,540.31
4	Current Systems Assessment	12/15/2015	3/31/2016	\$17,500.00	\$1,750.00	\$15,750.00
5	Governance Study, Agreements and MOUs	12/15/2015	5/31/2016			
	5.1 Governance Report	12/15/2015	5/31/2016	\$29,248.42	\$2,924.84	\$26,323.58
	5.2 MOUs and Agreements	12/15/2016	5/31/2016	\$29,248.42	\$2,924.84	\$26,323.58
	5.3 Business Model & Cost Sharing	12/15/2016	5/31/2016	\$29,248.42	\$2,924.84	\$26,323.58
6	Stakeholder Outreach	12/15/2015	5/31/2016	\$69,546.97	\$6,954.70	\$62,592.27
7	Frequency Survey and Analysis Report	12/15/2015	5/31/2016			
	Draft Document	12/15/2015	4/30/2016	\$41,796.37	\$4,179.64	\$37,616.73
	Final Report	5/1/2016	5/31/2016	\$41,796.37	\$4,179.64	\$37,616.73
8	Subscriber and Site Data Collection	12/1/2015	4/30/2016			
	Draft Document	12/1/2015	3/15/2016	\$57,363.38	\$5,736.34	\$51,627.04
	Final Database	3/16/2016	4/30/2016	\$59,863.38	\$5,986.34	\$53,877.04
9	Comprehensive Statewide Radio and Dispatch System Architecture/Design and Phased Implementation Strategy	12/15/2015	5/31/2016	\$27,825.60	\$2,782.56	\$25,043.04
10	Cost Estimates, Pricing Analysis, Business Case Study	3/1/2016	5/31/2016	\$21,220.76	\$2,122.08	\$19,098.68
11	Reports and Presentations	4/15/2016	5/31/2016	\$55,553.22	\$5,555.32	\$49,997.90
12	Final Acceptance					\$52,890.17

**2. PROFESSIONAL SERVICES**

Category	Value
Project Management	\$ 50,246.26
<b>Professional Services Total</b>	<b>\$ 50,246.26</b>

**3. PROJECT TOTAL**

The total budget for the project portion of this Contract is \$579,148.00.