



Northern Plains UAS Test Center

Request for Proposal (RFP)

RFP Title: Unmanned Aircraft Systems (UAS) Network Public Relations/Marketing Communication Services

RFP Number: 53-2020

Date of Issue: October 10, 2019

Purpose of RFP: UND is seeking a qualified Offeror to provide public relations/marketing support and strategies.

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SECTION ONE INTRODUCTION AND INSTRUCTIONS

1.01

Purpose of the RFP

The University of North Dakota (UND) is soliciting proposals for Northern Plains UAS Test Site to secure a Public Relations/Marketing firm.

1.02

Contact Person, Telephone, Fax, E-mail

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

PROCUREMENT OFFICER: David Krause

PHONE: 701-777-2971

E-MAIL: david.krause@UND.edu

1.03

RFP Schedule

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

The approximate RFP schedule is as follows:

- RFP Issued: 10/10/2019
- Deadline for receipt of questions and objections related to the RFP: 10/18/2019
- Responses to questions / RFP amendments (if required) 10/23/2019
- Proposals due by: 11/1/2019 2:00PM CT
- Presentations: tentative week of 11/11/2019
- UND issues Notice of Intent to Award a Contract approximately: 11/18/2019
- UND issues contract approximately: 11/25/2019

1.04

Response instructions and Deadline for Receipt of Proposals

Offerors must electronically submit proposals through the State Procurement Online system (SPO Online) by the Solicitation Closing date and time.

1. This solicitation is posted on SPO Online at: <https://www.nd.gov/omb/vendor>
2. Click on "Bidding Opportunities." Go to "Recent Solicitations" and find this solicitation.
3. Use "Upload Response" to upload a maximum of five (5), clearly labeled documents before the deadline for receipt of proposals in the RFP Schedule.
4. Offerors must upload their Technical Proposal and Cost Proposal in separate files.
5. The maximum file size allowed is 50mb per file.
6. DO NOT submit documents that are embedded (zip files), movies, wmp, encrypted, or mp3 files.
7. All field entries must be alphanumeric. Dashes and underscores are allowed, however the system does not accept other special characters such as apostrophe, & symbol, quotation marks, etc.

8. Offerors will receive an email confirmation from infospo@nd.gov that the upload response was received including the "File Description" for the uploaded files. Review this email to ensure all files were successfully uploaded. If you do not receive an email confirmation, the upload was not successful, and you will need to upload the files again. If you do not receive an email confirmation after the reattempt, contact the Procurement Officer or the State Procurement Office at infospo@nd.gov or 701-328-2740.

Visit <https://www.nd.gov/omb/vendor/bidder-resources> for the SPO Electronic Response Job Aid which describes how to submit an electronic response.

Proposals will not be publicly read at the opening.

Proposals may not be delivered any other way other than specified above unless agreed to in writing by the procurement officer.

An offeror's failure to submit its proposal prior to the deadline will cause the proposal to be rejected. Late proposals or amendments will not be opened or accepted for evaluation.

1.05

Assistance to Offerors with a Disability

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

1.06

Deadline for Receipt of Questions and Objections

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

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

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

1.07

Approved Vendor Registration Requirements

The successful Offeror must register and become approved within 60 calendar days from the date of the Notice of Intent to Award – or order is placed, as may be extended by the Procurement Officer. If an Offeror fails to become registered, its proposal/bid will be considered non-responsive and rejected.

To register with the North Dakota Secretary of State (fees apply) - registration instructions and forms are available on-line at: www.nd.gov/spo/vendor. The successful bidder must register and become approved within sixty calendar days or shorter time specified in writing by the purchasing agency from the date of the Notice of Intent to Award. The bid may be rejected if the bidder fails to register within the specified time period.

1.08

Pre-proposal Conference

No pre-proposal conference will be held for this RFP. Offerors are advised 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

Amendments to the RFP

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

1.10

Notice Provided

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

This is used when using the States vendor list

1.11

Letter of Interest

Vendors interested in receiving any notices related to this RFP are invited to contact the procurement officer with the name of their firm, contact person, mailing address, telephone number, fax number, and e-mail address. The sole purpose of the letter of interest is to provide UND 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.

SECTION TWO BACKGROUND INFORMATION

2.01

Background Information

North Dakota (ND) has been a consistent leader in the UAS industry over the last decade. With a system of commercial and military growth opportunities, the nation's first public-private UAS business park, the nation's first undergraduate program in UAS studies as well as the first FAA designated UAS Test Site - North Dakota has led the nation in UAS commercial development. Over a decade, the North Dakota UAS industry has grown from several dozen employees to over 1,000.

To ensure that North Dakota remains the top state in the UAS industry, the North Dakota legislature appropriated a \$33 million investment over the next two years. \$28 million of the \$33 will be dedicated to establishing the nation's first statewide Beyond Visual Line of Sight (BVLOS) UAS network, the remaining \$5 million will be allocated toward infrastructure growth at the Grand Sky UAS park as well as funding for the Northern Plains UAS Test Site.

2.02

Budget

UND has not established a budget for this contract.

SECTION THREE SCOPE OF WORK

3.01

Scope of Work

The following is a list of vendor specifications for the RFP.

Overview

The prospective vendor replying to this RFP will be or represent a firm, company or corporation possessing relevant experience and expertise in advancing national level Public Relations strategies. Supporting documentation must thoroughly describe how the vendor has supplied expertise for similar contracts and work related to planning, coordination, and implementation of Public Relations, and how vendor would approach the projects outlined in the Scope of Work. A proven experience in marketing the UAS or tech industries is required.

The Public Relations goal of the State of ND is to leverage earned media in target markets to promote ND's UAS industry as the nation's finest. Objectives include promoting:

1. The statewide BVLOS UAS network investment;
2. ND as a top-notch location to relocate one's business to commercialize, test, evaluate and operate.
3. The state's existing UAS business cluster to include Grand Sky facility, Test Site, and university UAS programs.
4. ND as a rapidly growing technology hub with a low cost of doing business and high-quality workforce.

Scope of Work

The Scope of Work is designed to encourage aggressive, proactive media outreach to increase visibility for North Dakota's UAS industry, its opportunities, investments and proximity to infrastructure and growth. It will include but not be limited to the following:

1. Executing targeted public relations campaigns to generate feature articles, event listings, and related publicity for events, promotions, and UAS activities (e.g., industry firsts, progress on network, etc.) targeting publicity in print, TV, radio and online outlets.
2. Provide recommendations on public relations strategies including branding.
3. Provide talking points, speeches, presentations and press releases.
4. Distribution of press releases.
5. Create and manage editorial calendar with timelines.
6. Proactively contact media as it relates to strategies and goals.
7. Assist in the strategy and implementation of social media marketing, including maintaining social media presence, website, publishing posts and monitoring feedback.
8. Provide reports on key performance indicators.
9. Writing, formatting (with photos) and distributing press releases to print, online, broadcast media.
10. Coordinating messaging with industry partners and arranging media interviews.
11. Planning press conferences and stunts when appropriate to drive coverage.
12. Tracking coverage and measuring overall efforts, delivering weekly reports and comprehensive reports monthly (including estimated number of impressions and media value).
13. Sending media clips on a regular basis; tracking coverage and measuring efforts.

3.02

Location of Work

The work is to be performed, completed, and managed at the following locations:

Remote/Offsite

The University *WILL NOT* provide workspace for the contractor.

3.03

Prior Experience

In order for offers to be considered responsive, offerors must meet the minimum prior experience requirements. An offeror's failure to meet these minimum prior experience requirements will cause its proposal to be considered non-responsive and its proposal will be rejected. The minimum experience requirements are: 3 years prior experience.

3.04

Required Licenses

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

3.05

Federal Requirements

The offeror must identify all known federal requirements that apply to the proposal, the evaluation, or the contract.

3.06

Service Timeframes

Provide a detailed description of the services to be performed based the Scope of Work and the average timeframes required to complete each. This should include:

- i. The account manager's name and specific staff assigned to the project;
- ii. The estimated number of staff hours to complete scope of work;
- iii. All personnel anticipated to be involved in each task.

SECTION FOUR GENERAL CONTRACT INFORMATION

4.01

Contract Type

Pricing, Firm-Fixed with Adjustment Provisions.

The total bid price is to include all discounts and deductions, and is to be less federal and state taxes, for which exemption certificates will be furnished upon request. Pricing will be firm for the first **12 months** of the contract period, after which time the contractor may submit a request for a price increase to the Procurement Officer. Requests for a price increase or decrease must include a copy of the manufacturer's official notice or other evidence that the increase or decrease is applicable to all customers. UND reserves the right to accept or reject, within 30 days, or cancel the contract. The price changes will become effective as set forth in a written amendment to the contract. All shipments are to be billed at prices in effect at the time of the order, not the date the shipment is made.

4.02

Payment Terms

Payment will be made within thirty days after receipt of a correct invoice. All invoices and payment inquiries must be directed via email to:

Procurement & Payment Services at:

APIInvoice@UND.edu

Prepayment - UND will not make any advance payments before performance by contractor under this Contract.

Prompt Payment Discount Terms offered by the Contractor may be taken by UND if payment is made within the specified terms.

4.03

Travel

CONTRACTOR acknowledges travel costs are covered by the Contractual Amount and will not invoice UND for travel costs.

4.04

Term of Contract

This Contract begins on its effective date, and ends on 12 months from effective date.

a. Renewal Option

UND may renew this Contract upon satisfactory completion of the initial Contract term. UND reserves the right to execute up to 2 option to renew this Contract under the same terms and conditions for a period of 12 months each.

b. Renegotiation Option

In view of the fact that it is unknown how long the products and services will be employed by UND and that UND will require ongoing maintenance and support of the products for as long as the system is operational, after completion of the initial term of the Contract including any extensions and renewals, UND and contractor may renegotiate the Contract upon mutual agreement of the parties.

4.05

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.

4.06

Proposal as a Part of the Contract

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

4.07

Termination of Contract

- a. **Termination without cause.** This contract may be terminated by mutual consent of both parties, or by either party upon 30 days' written notice.
- b. **Termination by Mutual Agreement.** This contract may be terminated by mutual consent of both parties executed in writing.
- c. **Early Termination in the Public Interest.** UND is entering into this contract for the purpose of carrying out the public policy of the University of North Dakota, as determined by its governor, legislative assembly, the State Board of Higher Education, and courts. If this contract ceases to further the public policy of UND, in its sole discretion, UND may terminate this Contract in whole or in part by written notice to contractor.
- d. **Termination for Lack of Funding or Authority.** UND 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. Continuation of this contract beyond June 30 of any odd-numbered year is contingent on continued legislative appropriation of funds for the purposes of this Agreement. If those appropriations are not forthcoming, UND will notify contractor as soon as possible and the contract will terminate on June 30 of that year.
 - 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.UND will not be penalized or incur any liability because of termination of this Contract as provided in this subsection.
Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.
- e. **Termination for Cause.** UND 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 the University; 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 the UND provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

- f. **Termination, Deliveries.** If the contract is terminated for any reason, the contractor is responsible for delivery of all commodities and services ordered prior to the termination, unless those orders had been canceled by UND.

4.08

Force Majeure

Neither party will 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 promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

4.09

Indemnification and Insurance Requirements

Indemnification

Contractor agrees to defend, indemnify, and hold harmless UND and its officers and employees, from and against claims based on the vicarious liability of UND, but not against claims based on UND's contributory, comparative, or sole negligence, or intentional misconduct. If applicable, 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 UND under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for UND is necessary. Any attorney appointed to represent UND must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under section 54-12-08 of the North Dakota Century Code (N.D.C.C.). Contractor also agrees to defend, indemnify, and hold UND harmless for all costs, expenses and attorneys' fees incurred if UND prevails in an action against Contractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Insurance

- A. Contractor shall secure and keep in force during the term of this agreement and Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:
 1. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per occurrence.
 2. Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
 3. 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.
- B. The insurance coverages listed above must meet the following additional requirements:
 1. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.
 2. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "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 UND. The policies shall be in form and terms approved by the UND.
 3. The duty to defend, indemnify, and hold harmless the UND under this agreement shall not be limited by the insurance required in this agreement.
 4. The University of North Dakota and its agencies, officers, and employees (UND) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The UND 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.
 5. The insurance required in this agreement, through a policy or endorsement, shall include a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the UND;

4. The Contractor shall furnish a certificate of insurance to the undersigned UND representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
5. Failure to provide insurance as required in this agreement is a material breach of contract entitling the UND to terminate this agreement immediately.
6. Contractor shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements. An updated, current certificate of insurance shall be provided in the event of any change to a policy.

Objections to any of the provisions of the Indemnification and Insurance Requirements must be made in writing to the attention of the procurement officer by the time and date set for receipt of questions. No alteration of these provisions will be permitted without prior written approval from UND.

UPON RECEIPT OF THE NOTICE OF INTENT TO AWARD, THE SUCCESSFUL OFFEROR MUST OBTAIN THE REQUIRED INSURANCE COVERAGE AND PROVIDE PROCUREMENT WITH PROOF OF COVERAGE PRIOR TO CONTRACT APPROVAL. THE COVERAGE MUST BE SATISFACTORY TO UND. AN OFFEROR'S FAILURE TO PROVIDE EVIDENCE OF INSURANCE COVERAGE IS A MATERIAL BREACH AND GROUNDS FOR WITHDRAWAL OF THE AWARD OR TERMINATION OF THE CONTRACT.

4.10

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 UND 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 UND will be the sole property of UND, and Contractor hereby assigns and transfers all its right, title, and interest therein to UND. CONTRACTOR will execute all necessary documents to enable UND to protect UND's intellectual property rights under this section.

4.11

Work Product, Equipment and Materials

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

4.12

New Equipment, Used Equipment, Refurbished Equipment and Materials Certification

Unless otherwise indicated in the detailed specifications of this solicitation, all equipment and materials will be new and under current production for use in the United States. All equipment and assemblies of equipment will be in full compliance with all current applicable standards established by federal, state, and local governments. The equipment must be listed and labeled by a nationally recognized testing laboratory (NRTL) or certified by field evaluation and labeled by a NRTL. All costs associated with required listings will be included in the bid price. Each piece of equipment or assembly of equipment offered in the response to this bid will be either listed and labeled or certified and labeled prior to shipment by the successful bidder.

4.13

Confidentiality

Contractor will not use or disclose any information it receives from UND under this Contract that UND 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 UND. UND will not disclose any information it receives from Contractor that Contractor has previously identified as confidential and that UND 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 UND and Contractor to maintain confidentiality of information under this section continues beyond the term of this Contract.

4.14

Inspection and Investigations

UND reserves the right to conduct inspections and investigations related to the bidder and offered commodities or services, including but not limited to the firm, its facility, personnel, qualifications, and the commodities and/or services offered to make determinations regarding compliance with the contractor requirements and responsibility of the contractor. All material and workmanship will be subject to inspection and testing by UND either at the point of manufacturer, place of storage, or upon receipt.

4.15

Compliance With Public Records Law

The contract is subject to North Dakota's public records law.

4.16

Independent Entity

Contractor, its employees, agents, and representatives under this Contract are not UND employees 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. No part of this contract shall be construed to represent the creation of an employer/employee relationship.

4.17

Assignments and Subcontracts

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

4.18

Spoilation – Preservation of Evidence

Contractor agrees to promptly notify UND of all potential claims which arise from or result from this contract. Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant UND the opportunity to review and inspect such evidence, including the scene of the accident.

4.19

Severability

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

4.20

Applicable Law and Venue

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be brought in the Northeast Central Judicial District Court of Grand Forks County, North Dakota. UND does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. UND does not waive any right to a jury trial.

4.21

Nondiscrimination and Compliance with Laws. The contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including Title VI of the Civil Rights Act of 1964 and other laws concerning fair employment and employment of the

handicapped, and concerning the treatment of all employees without regard to race, color, religion, sex, national origin, or physical handicap. Any subletting or subcontracting by the contractor subjects the subcontractors to this provision. Contractor will have and keep current at all times during the term of this Contract all licenses and permits required by law.

4.22

Audit

UND will have full access at all times to all of the contractor's records, regardless of physical form, that relate to this Contract. Contractor will maintain all such records for at least three years following completion of this contract.

4.23

On-Campus Parking

All contractors, delivery persons, and vendors parking on campus are required to either: obtain a UND parking permit; park in the visitor pay lot; utilize the pay-as-you-go option at the parking ramp; or park at a meter while conducting business at UND. Those who purchase a delivery/vendor permit are entitled to park in service vehicle zones. It is the responsibility of the vehicle driver to park legally and obey all parking restrictions on campus. Further parking information will be provided upon request. Applications for construction, delivery, and vendor permits can be printed off the UND Parking Services website <http://UND.edu/parking/permits/other> or picked up in UND Parking Services located in the Transportation Building
3925 Campus Rd.

4.24

Standard Contract Provisions

The successful offeror will be required to sign and submit the contract attached to this RFP in Attachment 2. The contractor must comply with the contract provisions set out in this attachment. Any objections to the contract provisions must be set out in the offeror's proposal. No alteration of these provisions will be permitted without prior written approval from UND.

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

4.25

Additional Terms and Conditions

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

4.26

Supplemental Terms and Conditions

Proposals including supplemental terms and conditions will be accepted, but supplemental conditions that conflict with those contained in this RFP or that diminish UNDS right's under any contract resulting from the RFP will be considered null and void. UND 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 UND's rights would be diminished as a result of application of a supplemental term or condition included in the proposal, the supplemental term or condition will be considered null and void.

4.27

Contract Approval

This RFP does not, by itself, obligate UND. UND's obligation will commence when the contract is executed. Upon written notice to the Contractor, UND may set a different starting date for the contract. UND 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 UND.

4.28

Contract Changes - Unanticipated Amendments

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

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

4.29

Taxes and Taxpayer Identification

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

A contractor performing any contract, including service contracts, for the United States Government, State of North Dakota, counties, cities, school districts, park board or any other political subdivisions within North Dakota is not exempt from payment of sales or use tax on material and supplies used or consumed in carrying out contracts. In these cases, the contractor is required to file returns and pay sales and use tax just as required for contracts with private parties.

A contractor performing any contract, including a service contract, within North Dakota is also subject to the corporation income tax, individual income tax, and withholding tax reporting requirements, whether the contract is performed by a corporation, partnership, or other business entity, or as an employee of the contractor. In the case of employees performing the services in the state, the contractor is required to withhold state income tax from the employees' compensation and remit to the state as required by law. Contact the North Dakota Tax Department at 701-328-1248 or visit its web site for more information

4.30

F.O.B. Point and Freight

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

4.31

Right to Inspect Place of Business

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

4.32

Inspection & Modification - Reimbursement for Unacceptable Deliverables

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

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

4.33

Informal Debriefing

When the contract is completed, an informal debriefing may be performed at the discretion of the procurement officer. If performed, the scope of the debriefing will be limited to the work performed by the contractor. The debriefing time and location will be negotiated between UND and contractor.

**SECTION FIVE
EVALUATION CRITERIA AND CONTRACTOR SELECTION**

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

5.01 Evaluation Criteria and Award

An RFP evaluation team will evaluate proposals to select the most advantageous proposal. Proposals will be initially reviewed to ensure the mandatory requirements are met, and non-responsive proposals will be rejected. Mandatory requirements include:

A 100-point scale will be used to evaluate responsive proposals.

80 Points – Technical Proposal

- 35 Points - Experience and Qualifications
 - Experience of the Offeror performing similar work
 - Experience and qualifications of the project team
 - Ability to meet all requirements
 - References

- 45 Points – Approach to Work
 - Ability to meet objectives and scope of work
 - Proposed turnaround schedule and availability
 - Response to Contract Terms and Conditions

20 Points – Cost Proposal

- 20 Points – Cost Proposal
 - Firm Cost proposal for scope of work

5.02

Supplementary Information

UND may request supplementary information, including possible background checks, as is sufficient, in the opinion of UND, to assure UND that the Offeror's competence, business organization, and financial resources are adequate to successfully perform the work.

5.03

Contract Cost

Twenty (20) of the total possible evaluation points will be assigned to cost.

Any prompt payment discount terms proposed by the Offeror will not be considered in evaluating cost.

Reciprocal Preference Law

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 Procurement Officer will determine whether the Offeror's state of residence has a preference law for vendors resident in that state. The cost proposal of the nonresident Offeror will be increased by the same percentage of preference given to vendors resident in that state.

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

Contact the Procurement Officer for additional information related to preference laws.

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

5.04

Verbal 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 will be required to make a verbal presentation of the proposed solution for the evaluation team. Team is allowed to adjust scoring after presentations.

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

SECTION SIX PROPOSAL FORMAT AND CONTENT

6.01

Proposal Format and Content

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

6.02

Introduction

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

Proposals must confirm that the offeror will comply with all provisions in this RFP. The proposal must disclose any instances in which 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 University of North Dakota).

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

6.03

Understanding of the Project

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

6.04

Experience and Qualifications

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

1. title;
2. resume;
3. description of the type of work the individual will perform; and
4. the number of estimated hours for each individual named above.

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

Offerors must provide three (3) reference names, email and phone numbers for similar projects the offeror's firm has completed. UND reserves the right to contact any references provided by the offeror. Offerors are invited to provide letters of reference from previous clients.

6.05

Approach to Work

Offerors must provide a point-by point response to explain how your services will meet all the requirements and achieve the stated objectives described in RFP Section 3, Scope of Work. Provide any additional information to fully explain the services being proposed. Note: A key aspect to focus on is increased outreach to target audiences (e.g., UAS industry to relocate to ND, in-State UAS network customers).

Service Timeframes

Provide a detailed description of the services to be performed based on proposed approach to the Scope of Work and the average timeframes required to complete each. This should include:

1. The account manager's name and specific staff assigned to the project;
2. The estimated number of staff hours to complete scope of work;
3. All personnel anticipated to be involved in each task.

6.06**Cost Proposal**

Provide detailed costs for the services to be performed by the vendor based on proposed approach to the Scope of Work.

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

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

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

6.07**Required Enclosures**

Offerors must provide all copies of all required certifications specifically required in this RFP.

SECTION SEVEN STANDARD PROPOSAL INFORMATION

7.01

Authorized Signature

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

7.02

UND Not Responsible for Preparation Costs

UND 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 University of North Dakota). UND 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. UND's determination regarding any questions of conflict of interest is final.

7.04

Offeror's Certification

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

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

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

7.05

Offer Held firm

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

7.06

Amendments to Proposals and Withdrawals of Proposals

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

7.07

Alternate Proposals

Offerors may submit more than one proposal for evaluation.

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

7.08

Subcontractors

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

If a proposal with subcontractors is selected, the offeror must provide the following information concerning each prospective subcontractor within five working days from the date of UNDs request:

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

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

7.09

Joint Ventures

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

7.10

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

All proposals and other material submitted become the property of UND and may be returned only at UND's option. All proposals and related information, including detailed cost information, are exempt records and will be held in confidence until all of the proposals have been received and opened by the public entity or until all oral presentations regarding the proposals, if any, have been heard by the public entity, in accordance with N.D.C.C. § 44-04-18.4(6).

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

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

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

7.11

Evaluation of Proposals

All proposals will be reviewed to determine if they are responsive to the requirements of this solicitation. The procurement officer or an evaluation team will evaluate responsive proposals. The evaluation will be based solely on the evaluation factors set forth in this RFP. The evaluation will consider information

obtained subsequent to any discussions with offerors determined to be reasonable for award and any demonstrations, verbal presentations, or site inspections, if required in this RFP.

7.12

Right of Rejection

UND reserves the right to reject any proposals, in whole or in part. Proposals received from debarred or suspended vendors will be rejected. The procurement office may reject any proposal that is not responsive to all of the material and substantial terms, conditions, and performance requirements of the RFP. UND also reserves the right to refrain from making an award if it determines it to be in its best interest.

UND reserves the right to waive minor informalities in bid responses. Minor informalities are insignificant omissions or nonjudgmental mistakes that are matters of form rather than substance, evident from the RFP document, with a negligible effect on price, quantity, quality, delivery, or contractual conditions that can be waived or corrected without prejudice to other bidders.

7.13

Clarification of Offers

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

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

7.14

Discussions and Best and Final Offers

UND may conduct discussions or request best and final offers with offerors that have submitted proposals determined to be reasonably susceptible for award. UND 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 team. If modifications to the proposal are made as a result of these discussions, the modifications must be put in writing.

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

7.15

Preference Laws

The preference given to a resident North Dakota offeror will be equal to the preference given or required by the state of the nonresident bidder. A "resident" North Dakota bidder, offeror, seller, or contractor is one that has maintained a bona fide place of business within this State for at least one year prior to the date on which a contract was awarded. For a listing of state preference laws, visit the following website: <http://www.nd.gov/spo/legal/resources/> or contact the North Dakota State Procurement Office at 701-328-2740.

7.16

Contract Negotiation

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

terminate negotiations and negotiate with the offeror of the next highest-ranked proposal.

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

7.17

Failure to Negotiate

If the selected offeror:

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

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

7.18

Notice of Intent to Award - Offeror Notification of Selection

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

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

SECTION EIGHT ATTACHMENTS

8.01 Attachments

Attachments

1. Offeror Checklist
2. Contract Form

ATTACHMENT 1

CHECKLIST FOR OFFERORS

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

**ATTACHMENT 2
UND SERVICES CONTRACT**

The parties to this contract (Contract) are the University of North Dakota (UND), and *Name of Business a type of business (e.g. Delaware corporation or privately held company)* having its principal place of business at *principal business address* (CONTRACTOR);

1. SCOPE OF WORK

CONTRACTOR, in exchange for the compensation paid by the University of North Dakota under this Contract, will provide the following services:

A scope of work will be developed based upon the requirements in the RFP and the successful offeror's proposal.

2. COMPENSATION

a. Contractual Amount

UND will pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed *<amount>* (Contractual Amount). The Contractual Amount is firm for the duration of the Contract and constitutes the entire compensation due CONTRACTOR for performance of its obligations under this Contract, unless amended, regardless of the difficulty, materials, or equipment required, including fees, licenses, overhead, profit, and all other direct and indirect costs incurred by CONTRACTOR, except as provided by an amendment to this Contract.

b. Payment

Payment will be made within thirty days after receipt of a correct invoice. All invoices and payment inquiries must be directed via email to:

Procurement & Payment Services at:
und.accountingservices@email.und.edu

or mailed to:

Procurement & Payment Services,
Twamley Hall, Room 115
264 Centennial Drive Stop 8356
Grand Forks, ND 58202-8356

Prompt Payment Discount - Terms offered by the CONTRACTOR may be taken by UND if payment is made within the specified terms.

c. Travel

CONTRACTOR acknowledges travel costs are covered by the Contractual Amount and will not invoice UND for travel costs.

d. Prepayment

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

e. Payment of Taxes by UND

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

f. **Taxpayer ID**

The CONTRACTOR will provide its federal employer ID number to UND before any payments will be made by UND.

g. **Purchasing Card**

UND may make a payment using a University purchasing card. CONTRACTOR will accept a University purchasing card without passing the processing fees for the University purchasing card back to UND.

3. TERM OF CONTRACT

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

Renewal Option

UND may renew this Contract upon satisfactory completion of the initial Contract term. UND reserves the right to execute up to _____ options to renew this Contract under the same terms and conditions for a period of _____ months each.

4. 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.

5. TERMINATION

a. **Termination without cause**

This contract may be terminated by mutual consent of both parties, or by either party upon 30 days' written notice.

a. **Termination by Mutual Agreement**

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

b. **Early Termination in the Public Interest**

UND is entering into this Contract for the purpose of carrying out the public policy of the State of North Dakota, as determined by its Governor, Legislative Assembly and Courts. If this Contract ceases to further the public policy of the State of North Dakota, UND, in its sole discretion, by written notice to CONTRACTOR, may terminate this Contract in whole or in part.

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

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

- 1) 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.

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. UND will not be penalized or incur any liability because of termination of this Contract as provided in this subsection.

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.**

UND 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 UND; 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.

e. Termination, Deliveries

If the contract is terminated for any reason, the CONTRACTOR is responsible for delivery of all commodities and services ordered prior to the termination, unless those orders had been canceled by UND.

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

6. FORCE MAJEURE

Neither party will 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 promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

7. INDEMNITY

CONTRACTOR agrees to defend, indemnify, and hold harmless UND and its officers and employees, from and against claims based on the vicarious liability of UND, but not against claims based on UND's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by CONTRACTOR to UND under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for UND is necessary. Any attorney appointed to represent UND 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 UND harmless for all costs, expenses and attorneys' fees incurred if UND prevails in an action against CONTRACTOR in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

8. INSURANCE

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

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$500,000 per occurrence.
- 4) Workers compensation coverage meeting all statutory requirements.

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

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. The amount of any deductible or self-retention is subject to approval by the State.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement.
- 4) Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.

5) Contractor shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements.

9. WORKS FOR HIRE

CONTRACTOR acknowledges that all work(s) under this Contract is a "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to UND 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 UND will be the sole property of UND, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to UND. CONTRACTOR will execute all necessary documents to enable UND to protect UNDS intellectual property rights under this section.

10. NOTICE

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

| UND | CONTRACTOR |
|-------------------------|-------------------------|
| <i>Name</i> | <i>Name</i> |
| <i>Title</i> | <i>Title</i> |
| <i>Address</i> | <i>Address</i> |
| <i>City, State, Zip</i> | <i>City, State, Zip</i> |

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

11. CONFIDENTIALITY

CONTRACTOR will not use or disclose any information it receives from UND under this Contract that UND 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 UND. UND will not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that UND 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 UND and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Contract.

12. INSPECTION AND INVESTIGATIONS

UND reserves the right to conduct inspections and investigations related to the offered commodities or services, including but not limited to the firm, its facility, personnel, qualifications, and the commodities and/or services offered to make determinations regarding compliance with the CONTRACTOR requirements and responsibility of the CONTRACTOR. All material and workmanship will be subject to inspection and testing by UND either at the point of manufacturer, place of storage, or upon receipt.

13. COMPLIANCE WITH PUBLIC RECORDS LAWS

This contract is subject to North Dakota's public records law.

14. INDEPENDENT ENTITY

CONTRACTOR, its employees, agents, and representatives under this Contract are not UND employees 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. No part of this contract shall be construed to represent the creation of an employer/employee relationship.

15. ASSIGNMENT AND SUBCONTRACTS

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

16. SPOILIATION – PRESERVATION OF EVIDENCE

CONTRACTOR agrees to promptly notify UND of all potential claims which arise from or result from this contract. CONTRACTOR further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant UND the opportunity to review and inspect such evidence, including the scene of the accident.

17. 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. UNDs Solicitation Amendment #1 to Request for Proposal ("RFP") number _____ dated _____;
- c. UNDs Request for Proposal ("RFP") number _____, dated _____;
- d. CONTRACTOR's proposal dated _____ in response to RFP number _____.
- e. All terms and conditions contained in any automated end-user agreements (e.g., click-throughs, shrink wrap, or browse wrap) are specifically excluded and null and void, and will not alter the terms of this Contract.

18. SEVERABILITY

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

19. APPLICABLE LAW AND VENUE

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be brought in the Northeast Central Judicial District Court of Grand Forks County, North Dakota. UND does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. UND does not waive any right to a jury trial.

20. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

The CONTRACTOR must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including Title VI of the Civil Rights Act of 1964 and other laws concerning fair employment and employment of the handicapped, and concerning the treatment of all employees without regard to race, color, religion, sex, national origin, or physical handicap. Any subletting or subcontracting by the contractor will subject the subcontractor(s) to the same provision. CONTRACTOR will have and keep current at all times during the term of this Contract all licenses and permits required by law.

21. AUDIT

UND will have full access at all times to all of the CONTRACTOR's records that relate to this contract, regardless of physical form. CONTRACTOR will maintain all such records for at least three years following completion of this contract.

22. ADDITIONAL TERMS

Any additional or different terms or conditions which may appear in any other communication from CONTRACTOR are hereby expressly objected to and shall not be effective or binding unless specifically agreed to in writing by UND and no such additional or different terms or conditions in any printed form of CONTRACTOR shall become a part of this Contract despite UND's acceptance of goods or services unless such acceptance specifically, in writing, recognizes or assents to their inclusion. Mere signature by UND on a purchase order or other document provided by CONTRACTOR in the performance of this Contract does not constitute acceptance by UND of the terms and conditions of such document.

23. ON-CAMPUS PARKING

All contractors, delivery persons, and vendors parking on campus are required to either: obtain a UND parking permit; park in the visitor pay lot; utilize the pay-as-you-go option at the parking ramp; or park at a meter while conducting business at UND. Those who purchase a delivery/vendor permit are entitled to park in service vehicle zones. It is the responsibility of the vehicle driver to park legally and obey all parking restrictions on campus. Further parking information will be provided upon request. Applications for construction, delivery, and vendor permits can be printed off the UND Parking Services website <http://UND.edu/parking/permits/other> or picked up in UND Parking Services located in the Transportation Building 3925 Campus Rd.

24. EFFECTIVENESS OF CONTRACT

This Contract is not effective until fully executed by both parties. If no start date is specified in the Term of Contract, the most recent date of the signatures of the parties will be deemed the Effective Date.

| CONTRACTOR | UND |
|-------------------|----------------------------|
| <insert business> | University of North Dakota |
| BY: <Signature> | BY: <Signature> |
| <Printed Name> | <Printed Name> |
| <Title> | <Title> |
| Date: | Date: |