

**North Dakota University System**  
The Theodore Roosevelt Center

291 Campus Drive  
Dickinson, ND 58601

**REQUEST FOR PROPOSAL (RFP)**

**RFP Title: Redesign of Theodore Roosevelt Center Website at Dickinson State University**

**RFP Number: CTS-23-017**

**Issued: January 4, 2024**

**TABLE OF CONTENTS**

**SECTION ONE – INSTRUCTIONS**..... 4

1.0 PURPOSE OF THE RFP..... 4

1.1 DEFINITIONS..... 4

1.2 PROCUREMENT OFFICER CONTACT INFORMATION..... 4

1.3 RFP SCHEDULE..... 4

1.4 ASSISTANCE TO INDIVIDUALS WITH A DISABILITY..... 5

1.5 SECRETARY OF STATE REGISTRATION REQUIREMENTS..... 5

1.6 BIDDERS LIST REGISTRATION..... 5

1.7 STATE PROCUREMENT WEBSITE – SPO ONLINE..... 6

1.8 DEADLINE FOR QUESTIONS AND OBJECTIONS..... 6

1.9 PREPROPOSAL CONFERENCE OR SITE INSPECTION..... 6

1.10 OFFER HELD FIRM..... 6

1.11 OFFEROR RESPONSIBLE FOR COSTS..... 6

1.12 TAXES..... 6

1.13 SOLICITATION CLOSING – LATE PROPOSALS REJECTED..... 7

1.14 AMENDMENT AND WITHDRAWAL OF PROPOSALS..... 7

1.15 PROPOSAL OPENING..... 7

1.16 PROPOSALS SUBJECT TO NORTH DAKOTA OPEN RECORD LAW..... 7

1.17 NEWS RELEASES..... 7

1.18 CONFLICT OF INTEREST..... 7

1.19 ATTEMPT TO INFLUENCE PROHIBITED..... 8

1.20 COLLUSION PROHIBITED..... 8

1.21 PROTEST AND APPEAL..... 8

**SECTION TWO – BACKGROUND**..... 8

2.0 BACKGROUND INFORMATION..... 8

2.1 BUDGET..... 8

**SECTION THREE – SCOPE OF WORK**..... 8

3.0 SCOPE OF WORK..... 9

3.1 APPLICABLE DIRECTIVES..... 9

3.2 INFORMATION TECHNOLOGY SOLUTION..... 9

3.3 PRODUCT SUPPORT AND CUSTOMER SERVICE REQUIREMENTS..... 18

3.4 OFFEROR EXPERIENCE AND QUALIFICATIONS MANDATORY REQUIREMENTS..... 23

**SECTION FOUR – PROPOSAL**..... 25

4.0 PROPOSAL PREPARATION..... 25

4.1 FORMAT & PROPOSAL SUBMISSION INSTRUCTIONS..... 25

**SECTION FIVE – PROPOSAL EVALUATION**..... 27

5.0 AWARD..... 27

5.1 RESPONSIVENESS..... 27

5.2 RESPONSIBILITY..... 27

5.3 EVALUATION CRITERIA..... 27

5.4 COST PROPOSAL EVALUATIONS..... 27

5.5 CLARIFICATIONS OF PROPOSALS – DISCUSSIONS..... 28

5.6 RIGHT OF REJECTION..... 28

5.7 BEST AND FINAL OFFERS..... 28

5.8 NEGOTIATIONS..... 28

5.9 NOTICE OF INTENT TO AWARD..... 29

5.10 CONTRACT APPROVAL..... 29

5.11 EVALUATION DEBRIEF..... 29

**SECTION SIX – CONTRACT INFORMATION**..... 30

6.0 NORTH DAKOTA CONTRACTUAL REQUIREMENTS – BACKGROUND..... 30

6.1 NDUS CONTRACT TERMS AND CONDITIONS – OFFEROR’S PROPOSED CHANGES..... 30

6.2 CONTRACTUAL TERMS AND CONDITIONS – NO MATERIAL CHANGES..... 30  
6.3 SCOPE OF WORK..... 32  
6.4 CONTRACT TERM..... 32  
6.5 COMPENSATION..... 32  
6.6 LIQUIDATED DAMAGES..... 32

**ATTACHMENTS**

- Attachment 1 Cost Proposal
- Attachment 2 Proposal Evaluation Process
- Attachment 3 Technology Contract
- Attachment 4 HECVATlite 3.02

## SECTION ONE – INSTRUCTIONS

### 1.0 PURPOSE OF THE RFP

The North Dakota University System, an entity governed by the North Dakota State Board of Higher Education (SBHE) and acting through its Core Technology Services (collectively, “NDUS”) is soliciting proposals for redesign or replacement of Theodore Roosevelt Center Website at Dickinson State University. The current database used is Pubman/Eforge. This will include design, development, migration, deployment, training, and trouble shooting and maintenance. It may include implementation of a new Content Management System (CMS).

### 1.1 DEFINITIONS

For the purposes of this RFP, the acronyms and defined terms are as follows:

Acronym or Term	Name or Definitions
ACR	Accessibility Conformance Report
CMS	Content Management System
Contractor	Entity that has an approved contract with the North Dakota University System
CT	Central Time Zone
CTS	Core Technology Services
Data	Means any information provided to, or collected, generated, stored, or processed by the system. Data includes user identification information and metadata which may contain Data or from which the NDUS’s Data may be ascertainable.
HECVAT	Higher Education Community Vendor Assessment Toolkit
NDUS	North Dakota University System
PCI	Purchasing Card Industry
RFP	Request for Proposal
TRC	Theodore Roosevelt Center
UX	User Experience
VPAT	Voluntary Product Accessibility Education

### 1.2 PROCUREMENT OFFICER CONTACT INFORMATION

The procurement officer is the point of contact for this RFP. Offerors shall direct all communications regarding this RFP to the procurement officer. Please do not add the procurement officer to any distribution list.

PROCUREMENT OFFICER: Janelle McGarry

EMAIL: [janelle.mcgarry@ndus.edu](mailto:janelle.mcgarry@ndus.edu)

PHONE: 701-792-6278

TTY Users call: 7-1-1

A person or firm interested in submitting a proposal should ensure all communications related to the procurement are only with the designated point of contact. This section does not restrict communication with state officials or any member of the legislative assembly unless the state official or member of the legislative assembly is involved directly with the procurement for which the person is interested or has submitted a bid or proposal ([N.D.C.C. § 54-44.4-01.1](#))

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\(7\)](#)]

### 1.3 RFP SCHEDULE

EVENT	DATE
RFP issued	January 4, 2024
Deadline for Submission of Questions and Objections	January 11, 2024 – 2:00 PM CT
Solicitation Amendment with Responses to Questions issued approximately (if required)	January 17, 2024
Deadline for Receipt of Proposals (Solicitation Closing)	February 1, 2024 – 2:00 PM CT
Initial evaluation completed by approximately	February 12, 2024
Proposal Evaluation completed by approximately	February 15, 2024
Notice of Intent to Award issued approximately	February 15, 2024
Secretary of State Registration if determined to be required.	Prior to Contract Signing
Contract executed approximately	March 31, 2024
Contract start approximately	April 1, 2024

### 1.4 ASSISTANCE TO INDIVIDUALS WITH A DISABILITY

Contact the procurement officer, as soon as possible, if an individual with a disability needs assistance with the RFP including any events in the RFP schedule so reasonable accommodations can be made.

### 1.5 SECRETARY OF STATE REGISTRATION REQUIREMENTS

The North Dakota Secretary of State has registration requirements for individuals and businesses transacting business in North Dakota. If the successful offeror is determined to have a registration requirement with the North Dakota Secretary of State, they must be registered before the contract award and registration must remain active for the duration of the contract period (N.D.C.C. § 54-44.4-09.1)

- See the OMB Guidelines to Vendor Registry for more information.

Visit the Secretary of State's [Vendor Registration](#) webpage for information on registration requirements and fees. Visit [FirstStop](#), the Secretary of State's business and licensing software, for online form options.

- Check the [Business Records](#) database to see if a business is registered.
- Contact [Secretary of State's](#) office or 701.328.2900 (choose menu item 2, then option 1).
- If you need to register, fees apply.
- Vendors may need to obtain businesses licenses. See the [list of licenses required of businesses](#) in the state of North Dakota. The link includes information on who to contact, application fees, renewal dates and legal reference.

### 1.6 BIDDERS LIST REGISTRATION

Individuals or business entities desiring to be notified of bidding opportunities may apply to be placed on the Bidders List. Bidder (N.D.C.C. § 54-44.4-09). Bidders Lists are used to notify vendors when solicitations are issued on the State Procurement Office Online system (SPO Online). Placement on the Bidders List does not guarantee a vendor will receive notice of every solicitation (N.D.A.C. § 4-12-05-01). There are no fees to register as a bidder. The online application form requests contact information for the receiving solicitation notices. The Bidders List application and SPO Online system uses commodity codes to identify categories of goods, services, and information technology.

The commodity code used for this solicitation is: 915-96.

Visit the OMB website for instructions and the online Bidders List Application:

[Bidders List Registration Website](#)

For assistance with Bidders List Registration, contact State Procurement Help Desk at 701-328-1728 or [infospo@nd.gov](mailto:infospo@nd.gov).

### **1.7 STATE PROCUREMENT WEBSITE – SPO ONLINE**

This RFP and any related amendment and notices will be posted on the North Dakota Office of Management and Budget website - State Procurement Online system. Offerors are responsible for checking this website to obtain all information and documents related to this RFP:

<https://apps.nd.gov/csd/spo/services/bidder/main.htm>. Select “Recent Solicitations”. Recent Solicitations are listed by close date.

Notices related to this RFP will be sent to the Bidders List for the needed commodity or service and other known potential offerors.

Offerors not having completed the Bidders List registration may request to receive notices related to this RFP by contacting the procurement officer in writing with the following information: RFP title, business name, contact person, mailing address, telephone number, and email address.

### **1.8 DEADLINE FOR QUESTIONS AND OBJECTIONS**

Offerors should carefully review the RFP including all attachments. Offerors may ask questions to obtain clarification, request additional information, or object to material in the RFP. Questions and objections must be submitted to the procurement officer in writing by the deadline identified in the RFP schedule. The Procurement Officer may elect to respond to questions received after the deadline. If no deadline is specified, questions or objections must be received at least seven days prior to the proposal receipt deadline – Solicitation Closing.

Questions and objections should include a reference to the applicable RFP section or subsection. Email is the preferred method of submission with the RFP number cited in the email subject line.

Responses to questions and requests for clarifications will be distributed as a solicitation amendment unless the question can be answered by referring the offeror to a specific section of the RFP.

### **1.9 PREPROPOSAL CONFERENCE OR SITE INSPECTION**

The NDUS will not hold a preproposal conference or site inspection for this RFP.

### **1.10 OFFER HELD FIRM**

Offerors must hold proposals firm for at least 90 days from the deadline for receipt of proposals (Solicitation Closing). The NDUS may send a written request to all offerors to hold their offer firm for a longer period of time.

### **1.11 OFFEROR RESPONSIBLE FOR COSTS**

The offeror is responsible for all costs associated with the preparation, submittal, and evaluation of any proposal including any travel and per diem associated with demonstrations and presentations.

All proposals and other material submitted become the property of the NDUS and may be returned only at the NDUS's option.

### **1.12 TAXES**

The NDUS is not responsible for and will not pay itemized local, state, or federal taxes. Purchases of tangible personal property made by a state government agency are exempt from sales tax. The state sales tax exemption number is E-2001, and certificates will be furnished upon request by the purchasing agency. The contractor must provide a valid Vendor Tax Identification Number as a provision of the contract.

The purchasing agency will determine if services provided under this contract are 1099 reportable. The purchasing agency may require the contractor to submit a W9.

The state tax exemption number should not be used by contractors in the performance of a contract.

A contractor or service provider 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 materials, tangible personal property, 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 701-328-7088 or visit its website at <https://www.tax.nd.gov> for more information.

### **1.13 SOLICITATION CLOSING – LATE PROPOSALS REJECTED**

An offeror is responsible for ensuring its proposal is received by the NDUS prior to Solicitation Closing identified in the RFP schedule. A solicitation amendment will be issued if the proposal receipt deadline is changed. An offeror may contact the procurement officer to inquire whether its proposal has been received. Proposals delivered late will be rejected pursuant to [N.D.A.C. § 4-12-08-13](#).

### **1.14 AMENDMENT AND WITHDRAWAL OF PROPOSALS**

Offeror may amend, supplement, or withdraw proposal prior to the Solicitation closing deadline. No changes will be accepted after the Solicitation closing deadline. After the Solicitation closing deadline, Offeror may make a written request to withdraw proposal and provide evidence that a substantial mistake has been made, and the NDUS may permit withdrawal.

### **1.15 PROPOSAL OPENING**

A public opening will not be held.

### **1.16 PROPOSALS SUBJECT TO NORTH DAKOTA OPEN RECORD LAW**

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

Offerors may make a written request that trade secrets and other proprietary data contained in proposals be held confidential. Material considered confidential by the offeror must be clearly identified, and the offeror must include a brief statement that sets out the reasons for confidentiality. Offerors are instructed not to mark their entire proposal as "confidential." See the North Dakota Office of the [Attorney General website](#) for additional information.

After award, proposals are no longer exempt and will be subject to the North Dakota open records law. Records are closed or confidential only if specifically stated in law. If a request for public information is received, the procurement officer, in consultation with the Office of the Attorney General, will determine whether the information is an exception to the North Dakota open records law, and the information will be processed appropriately.

### **1.17 NEWS RELEASES**

Offerors shall not make any news releases related to this RFP without prior approval of the NDUS.

### **1.18 CONFLICT OF INTEREST**

Under state laws and rules, a state employee or official shall not participate directly or indirectly in a procurement when the state employee or officials knows of a conflict of interest. Potential conflicts of interest include state employees or their immediate family members employed by the firm, seeking

employment with the firm, or with a financial interest in the firm. Potential conflicts of interest will be addressed in accordance with [SBHE Policy 308.4](#).

Persons employed by the North Dakota University System, or within one year thereafter, may be prohibited from acquiring a pecuniary interest in a public contract or transaction. Offerors should review [N.D.C.C. § 12.1-13-02](#) to ensure compliance and avoid such conflict(s) of interest.

### **1.19 ATTEMPT TO INFLUENCE PROHIBITED**

Offerors must not give or offer to give anything to a state employee or official anything that might influence or appear to influence procurement decisions. Suspected attempt to influence will be handled in accordance with [N.D.A.C. § 4-12-04-05](#).

### **1.20 COLLUSION PROHIBITED**

Offerors must prepare proposals independently, without collusion. Suspected collusion will be handled in accordance with [N.D.A.C. § 4-12-04-06](#).

### **1.21 PROTEST AND APPEAL**

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 objections, 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 \(1\)-\(3\)](#) and [N.D.A.C. § 4-12-14-02](#). The protest must be submitted in writing to the procurement officer during the protest period, which is seven calendar days beginning the day after the notice of intent to award is issued.

[N.D.C.C. § 54-44.4-12\(4\)](#) and [N.D.A.C. § 4-12-14-03](#) do not apply to this procurement.

The protestor may appeal the decision of the procurement officer by submitting a written statement explaining the basis for the appeal within seven (7) days to the Chief of Staff of the North Dakota University System. Upon receipt of an appeal complying with this Section, the Chancellor will request the appointment of an Administrative Law Judge to preside over the appeal.

## **SECTION TWO – BACKGROUND**

### **2.0 BACKGROUND INFORMATION**

The mission of the Theodore Roosevelt Center at Dickinson State University advances research and education on the life and legacy of America's 26th president, Theodore Roosevelt.

NDUS is conducting this solicitation because the Theodore Roosevelt Center's website ([TR Center - Theodore Roosevelt Center Home](#)) needs to be updated to enhance user experience and interface. The current website has been in place for approximately twelve years.

### **2.1 BUDGET**

The funds for payment of this contract are already appropriated and identified. The estimated budget for completion of this project is between \$30,000 and \$40,000.



## SECTION THREE – SCOPE OF WORK

Offerors must provide a point-by-point response to explain how the proposed solution will meet all the requirements and achieve the stated objectives described in this section. Be sure to complete the Vendor Rating box and provide a full detailed description of how your proposed solution meets this requirement. This description is a very important part of the evaluation process. The offeror's response should include all additional documentation, such as project management methodology and project schedule.

### 3.0 SCOPE OF WORK

The NDUS is soliciting proposals for the Theodore Roosevelt Center (TRC). TRC desires to make improvements to its website and CMS. The TRC website provides users with information about upcoming events, current scholarships, and is the gateway to the Digital Library, a growing collection of documents (approximately 350,000 with multiple points of metadata for each). Used primarily by researchers at all levels from elementary school to college professors, the Digital Library makes an analog president available digitally worldwide. The current website, designed more than a decade ago, is not easily accessible on mobile or other devices. In addition, improvements in the search functions are needed to improve UX. Designs will be considered that preserve all current information which may employ a new database and CMS.

### 3.1 APPLICABLE DIRECTIVES

This project is subject to the following laws and policies. Vendors are required to review and respond to their ability to meet these requirements.

- [N.D.C.C. Chapter 44-04](#) related to North Dakota's laws that all government records and meetings must be open to the public unless otherwise authorized by a specific law.
- [N.D.C.C. § 54-10-28](#) related to the state auditor's authority to conduct information technology compliance reviews.
- [SBHE Policy 1203.1 Digital Accessibility](#) **ADA/Product Accessibility Information** – All products must meet Federal accessibility guidelines. Please see section 3.2 Information Technology Solution-NDUS Accessibility Requirements for more information.
- PCI-DSS
  - Vendor must be compliant with the Payment Card Industry Data Security Standard (PCI-DSS) and must provide a current Attestation of Compliance (AoC) or Report on Compliance (RoC).
  - Vendor must be on the Visa Global Registry of Service Providers.
- If applicable, the payment system or associated application(s) must be PA-DSS validated.
- Site to meet all federally mandated access requirements.

**Offeror Response:**

### 3.2 INFORMATION TECHNOLOGY SOLUTION

#### A. BUSINESS REQUIREMENTS (BR)

NDUS has developed the following Requirements Matrix Table to describe the requirements for the proposed solution. The solution must be implemented with a minimum of all requirements rated with a priority of Core.

### Requirements Matrix Table

<b>Definition of 'Priority'</b>	
<b>Term</b>	<b>Definition</b>
<b>Core</b>	Requirements without which the product may as well not be developed at all; it will be of no use to most Customers without these.
<b>Desired</b>	Requirements that are the "bells and whistles" which may be precious to certain constituencies, but without which the product will function just fine.
A product must be delivered with all Core requirements represented.	
<b>Definition of 'Rating'</b>	
<b>Rating</b>	<b>Definition</b>
<b>A</b>	Functionality found within the base product and requires no customization or configuration.
<b>B</b>	Functionality is in the base product but requires configuration with no additional costs.
<b>C</b>	Functionality requires customization. Provide an explanation as to the complexity of the customization and a cost estimate.
<b>D</b>	Functionality is not in the system.

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 NDUS to respond to each requirement. Offeror must provide a Rating (A – D) after each requirement, as shown and described in the Requirements Matrix Table listed above.

In addition, the offeror Response must include any specific references and supportive materials as described in the offeror Response. The NDUS reserves the right to determine whether the supportive materials submitted by the offeror demonstrate the offeror will be able to comply with the Requirements.

**This is a very important part of the evaluation process.**

Offerors must provide a detailed response in the Requirements Matrix below explaining how the proposed solution will meet each requirement and provide an A-D Rating. **Any functionality requiring customization (C) must detail the extent of customization along with the level of effort needed by the NDUS. For all customizations, include a cost estimate in Attachment 1 - Cost Proposal.**  
**Be sure to place a rating in the Offeror Rating box.**

NDUS seeks a solution with the following required and desired features and functionality:

<b>ID</b>	<b>Description</b> All requirements are Core unless specifically identified as Desired.	<b>Offeror Rating</b> <b>(A, B, C, D)</b>
1	Please provide an overall description of your proposed system. <u><b>Offeror Response:</b></u>	
2	The website must be mobile responsive and designed to work across browsers and devices. <u><b>Offeror Response:</b></u>	
3	<p><b>Hosting Migration and Technical Support</b>                      TRC seeks to provide a user-friendly content management environment that is easily accessible to staff with little or no knowledge of HTML. The interface for editing pages should let users see their formatting changes in a WYSIWYG editor.</p> <p><b>Ideal outcomes and business objectives including:</b></p> <ul style="list-style-type: none"> <li>• Improved user experience</li> <li>• Ease of use in CMS for content contributors</li> <li>• Eliminate redundancy and simplify content</li> <li>• Alignment to brand</li> <li>• User friendly search capabilities</li> <li>• Improve/optimize load time</li> <li>• Customer to have ability to add announcements, date change, post events, etc.</li> <li>• Customer to have ability to update links. Describe the link management features within the solution &amp; how broken links can be managed.</li> </ul> <p><u><b>Offeror Response:</b></u></p>	
4	Multimedia (video, photo slideshows, podcasts) must be accommodated easily across page types. <u><b>Offeror Response:</b></u>	
5	Integration of social media.	

**This is a very important part of the evaluation process.**

Offerors must provide a detailed response in the Requirements Matrix below explaining how the proposed solution will meet each requirement and provide an A-D Rating. **Any functionality requiring customization (C) must detail the extent of customization along with the level of effort needed by the NDUS. For all customizations, include a cost estimate *in Attachment 1 - Cost Proposal*.**

**Be sure to place a rating in the Offeror Rating box.**

NDUS seeks a solution with the following required and desired features and functionality:

<b>ID</b>	<b>Description</b> All requirements are Core unless specifically identified as Desired.	<b>Offeror Rating</b> <b>(A, B, C, D)</b>
	<b><u>Offeror Response:</u></b>	
6	Content Migration from current website  <b><u>Offeror Response:</u></b>	
7	Knowledge of archive management systems.  <b><u>Offeror Response:</u></b>	

**This is a very important part of the evaluation process.**

Offerors must provide a detailed response in the Requirements Matrix below explaining how the proposed solution will meet each requirement and provide an A-D Rating. **Any functionality requiring customization (C) must detail the extent of customization along with the level of effort needed by the NDUS. For all customizations, include a cost estimate in Attachment 1 - Cost Proposal. Be sure to place a rating in the Offeror Rating box.**

NDUS seeks a solution with the following required and desired features and functionality:

<b>ID</b>	<b>Description</b> <b>All requirements are Core unless specifically identified as Desired.</b>	<b>Offeror Rating</b> <b>(A, B, C, D)</b>
8	<p><b>Desired</b> - Content to be updated in multiple places by modifying a single content instance. Such as the words in a text block can be changed where it appears in one place without changing it everywhere else.</p> <p><b><u>Offeror Response:</u></b></p>	
9	<p>Developing options for CSS (Cascading Style Sheets) or similar website architecture. Including, but not limited to headings, page formatting, bulleting, tables, accordions, and tabs.</p> <p><b><u>Offeror Response:</u></b></p>	
10	<p>Please describe content editing features.</p> <p>The following content editing features should be available to content editors. Please provide details as to how each of the following features is supported: Custom formatting such as bold, italics, bullet points, numbered lists, cross-linking content, accessible tables, easily set Headings/CSS elements, add images &amp; other forms of media.</p> <p><b><u>Offeror Response:</u></b></p>	
11	<p>Ability to leverage functions to provide an efficient user experience and adequately display/organize collections and database entries.</p> <p><b><u>Offeror Response:</u></b></p>	
12	<p>Ability to design templates to meet the following page types:</p> <ul style="list-style-type: none"> <li>• Blog Posts/Narratives</li> <li>• Encyclopedia/Dictionary</li> <li>• Upcoming Events Page with possibility of ticket sales</li> </ul>	

**This is a very important part of the evaluation process.**

Offerors must provide a detailed response in the Requirements Matrix below explaining how the proposed solution will meet each requirement and provide an A-D Rating. **Any functionality requiring customization (C) must detail the extent of customization along with the level of effort needed by the NDUS. For all customizations, include a cost estimate *in Attachment 1 - Cost Proposal*.**

**Be sure to place a rating in the Offeror Rating box.**

NDUS seeks a solution with the following required and desired features and functionality:

<b><u>ID</u></b>	<b><u>Description</u></b> All requirements are Core unless specifically identified as Desired.	<b><u>Offeror Rating</u></b> <b><u>(A, B, C, D)</u></b>
	<ul style="list-style-type: none"> <li>• News and Reports</li> <li>• Archival Collections Page</li> <li>• About Us/Mission</li> <li>• Search Results in User Friendly format</li> <li>• Timelines/Maps</li> <li>• Recent Updates</li> <li>• Citation Guides</li> <li>• Bibliography</li> <li>• Announcements</li> <li>• Research Suggestions</li> <li>• Volunteer/Internships/Jobs</li> <li>• Donations/Become a Member</li> <li>• Supporters/Funders</li> <li>• Partnerships</li> <li>• Policies</li> </ul>	

**This is a very important part of the evaluation process.**

Offerors must provide a detailed response in the Requirements Matrix below explaining how the proposed solution will meet each requirement and provide an A-D Rating. **Any functionality requiring customization (C) must detail the extent of customization along with the level of effort needed by the NDUS. For all customizations, include a cost estimate in Attachment 1 - Cost Proposal.**  
**Be sure to place a rating in the Offeror Rating box.**

NDUS seeks a solution with the following required and desired features and functionality:

<b>ID</b>	<b>Description</b> All requirements are Core unless specifically identified as Desired.	<b>Offeror Rating</b> <b>(A, B, C, D)</b>
	<b><u>Offeror Response:</u></b>	
13	Ensure proper installation of analytics and tracking plug-ins.	
	<b><u>Offeror Response:</u></b>	
14	<b>Desired</b> - Solution to support the spell checking of content with custom dictionaries.	
	<b><u>Offeror Response:</u></b>	
15	<b>Desired</b> - An integrated website calendar with the ability to share events.	
	<b><u>Offeror Response:</u></b>	
16	Offeror to provide professional services and facilitate installation & customization.	
	<b><u>Offeror Response:</u></b>	
17	Provide advice on navigation and information architecture.	
	<b><u>Offeror Response:</u></b>	
18	Provide a schedule for revisions and quality assurance testing prior to website launch.	

**This is a very important part of the evaluation process.**

Offerors must provide a detailed response in the Requirements Matrix below explaining how the proposed solution will meet each requirement and provide an A-D Rating. **Any functionality requiring customization (C) must detail the extent of customization along with the level of effort needed by the NDUS. For all customizations, include a cost estimate *in Attachment 1 - Cost Proposal*.**

**Be sure to place a rating in the Offeror Rating box.**

NDUS seeks a solution with the following required and desired features and functionality:

<b>ID</b>	<b>Description</b> All requirements are Core unless specifically identified as Desired.	<b>Offeror Rating</b> <b>(A, B, C, D)</b>
	<b><u>Offeror Response:</u></b>	
19	Provide solutions that directly affect search engine optimization and user experience including desktop/mobile speed, dynamic mobile compatibility, touchscreen readiness, accessibility. <b><u>Offeror Response:</u></b>	
20	Provide necessary training to website administrators and end content contributors. <b><u>Offeror Response:</u></b>	
21	Provide recommendation to centralized or decentralized storage and backup methods or preferences. <b><u>Offeror Response:</u></b>	
22	What is your proposed implementation timeline? <b><u>Offeror Response:</u></b>	



**B. VALUE ADDED FEATURES**

The proposed solution may include value-added features. Value-added features include any functionality, products, services, optional modules, or upgrades that are not part of the IT requirements in this RFP. Describe any additional functionality, products, optional modules, upgrades, or services that you offer and are not a part of the RFP requirements that you believe would add value to your proposed work on this project. This is the location where offerors may include their catalog, along with discount off catalog price, as noted in number 1, below.

The Offeror shall list the cost of value-added features **separately in the cost proposal**.

NDUS shall not consider these costs as part of cost evaluation scoring.

The NDUS reserves the right to include value-added features from the proposals during contract negotiations.

<p><i>Offeror Response:</i></p>
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**C. NDUS ACCESSIBILITY REQUIREMENT**

Please provide a detailed response to the questions below. These questions can be found as well in the HECVAT documentation. Please include VPAT or other documentation certifying compliance with the World Wide Web standards defined in the Federal Rehabilitation Act Section 508, which have been adopted by NDUS’s governing Board. [VPAT](#) report format is preferred, in order to improve evaluation consistency.

Question	Offeror Response
DOCU-12: Has a VPAT or ACR been created or updated for the product and version under consideration within the past year?	
ITAC-01: Has a third-party accessibility expert conducted an accessibility audit of the most recent version of your product?	
ITAC-02: Do you have a documented and implemented process for verifying accessibility conformance?	
ITAC-08: Can all functions of the application or service be performed using only the keyboard?	
ITAC-09: Does your product rely on activating a special "accessibility mode," a "lite version," or accessing an alternate interface for accessibility purposes?	
The CMS should enhance the TRC	

Question	Offeror Response
ability to provide an easy-to-use, fully featured, accessible environment for website visitors. This includes a fully responsive design and adherence to WCAG 2.1	

**D. NDUS ENTERPRISE ARCHITECTURAL REQUIREMENTS**

Standards and Guidelines

The proposed information technology solution is required to comply with the NDUS’s information technology standards and guidelines unless an exemption is obtained. NDUS Policies and Procedures are found here: [Policies](#) and [Procedures](#) Security standards are available upon request by contacting the procurement officer for this RFP.

Hosting – Approval Required for Vendor Hosted Solutions.

The NDUS will consider a vendor-hosted solution; however, award of a contract for any vendor hosted solution will be contingent upon approval of a hosting exemption. State law, [N.D.C.C. § 15-10-44.1](#) requires institutions to use a SBHE approved vendor to host all information technology systems unless a hosting exemption is granted. If the hosting exemption is not approved, the NDUS reserves the right to reject the proposal as being not responsive to this hosting approval requirement.

**E. LICENSING**

The contractor will provide NDUS with all applicable licenses related to the proposed solution.

Please describe the licensing scheme, including third-party licensing, if applicable, and the pass through of such licenses. The costs should be identified by the institution(s) in the Cost Proposal. It is NDUS’s expectation that the vendor will use the total purchase to determine any tiered pricing.

*Offeror Response:*

**F. LOCATION OF WORK – TRAVEL**

No on-site work is required.

*Offeror Response:*

**G. RISK MANAGEMENT**

The contractor will take appropriate measures to ensure the safety of its employees, state employees, the public, and property. The contractor must identify any additional safety risks associated with the project.

*Offeror Response:*

Describe any risks you feel could impact a fully successful completion of the project. Describe what measures will be taken to avoid or minimize these risks. Identify any additional measures the NDUS can take to mitigate these risks.

**Offeror Response:**

#### H. PROJECT MANAGEMENT

**The Technology Contract - Attachment 3** includes provisions related to Project Management.

Describe your project management methodology and strategy, and how they align with your proposed solution.

**Offeror Response:**

#### I. CONTRACT DELIVERABLES AND ESTIMATED SCHEDULE

Offeror must provide a proposed project schedule, as part of file 2 (see Section 4.1) in their response. The schedule should be based upon previous deployments of similar size and scope and should be customized to this procurement.

Offerors should include any additional information that would be helpful to evaluate their proposed schedule. The proposed project schedule must cover both offeror and NDUS tasks and responsibilities. Describe any expectations from the NDUS related to each deliverable or milestone. Please describe your go-live approach i.e., staged, big bang, etc. that you have found to be best for your solution in a multicampus deployment.

The schedule must contain a timeline in the number of days or weeks with start and stop milestones for key project phases. The schedule must also include the number of NDUS staff required to perform work in the proposed schedule.

Vendor should detail a list of deliverables they plan to provide outside of the website (strategy documents, content inventory, sitemaps, wireframes, mockup/prototypes, user and developer documentation, etc.).

Upon award, the successful offeror's proposed project schedule will be reviewed and refined during the planning phase.

**Offeror Response:**

### 3.3 PRODUCT SUPPORT AND CUSTOMER SERVICE REQUIREMENTS

All items listed in this section are product support and customer service requirements. If the offeror is successful, the offeror agrees that it shall comply with all product support and customer service 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 NDUS to respond to each requirement.

### 3.3A WARRANTY

CONTRACTOR must provide a minimum 60-day warranty for the proposed solution. The Technology Contract – Attachment 3 includes provisions related to warranties. The NDUS will consider options for additional warranty coverage.

All costs associated with warranties must be clearly outlined in the cost proposal.

ID	Requirement	Offeror Response
W1	What is the warranty period and what is covered under the warranty?	
W2	Describe any differences between warranty benefits and software maintenance benefits.	
W3	Provide the warranty language that the proposal suggests for incorporation into the Contract.	
W4	Provide any warranty exclusions.	

### 3.3B SOFTWARE MAINTENANCE

The Contract – Attachment 3 includes provisions related to Software Support – Service Level Requirements. NDUS will consider the offeror’s options for technical support.

Describe your service level agreement (SLA), including such items as call-back time, response time for fixes, methods of contact, and escalation processes. Offerors may submit their standard SLA as an attachment to their proposal. Some items to consider in your response that may be relevant:

ID	Requirement	Offeror Response
M1	Are upgrade/maintenance fees included in the licensing costs?	
M2	Describe in detail the process on how software upgrades/maintenance is handled.	
M3	How do you communicate your release notes to administrators?	
M4	Describe any requirements for software upgrade/maintenance, such as testing. Include the estimated level-of-effort required to perform an upgrade/maintenance?	
M5	Describe your major and minor release cycles.	
M6	What is the typical down time required for major and minor upgrades?	
M7	Describe when the maintenance payment is going to happen in the project schedule.	
M8	How are the customizations or configurations maintained during an upgrade?	
M9	If database schema extension is required to meet the business need, how does this impact the upgrade/patch process?	
M10	Is there a test system for helping with upgrades and troubleshooting that is identical to the Production system?	

### 3.3C TECHNICAL SUPPORT

The Technology Contract – Attachment 3 includes provisions related to Software Support – Service Level Requirement. The NDUS will consider options for additional levels of technical support. Describe in detail the following:

ID	Requirement	Offeror Response
T1	What are your technical support options? a. Offeror should anticipate that service level agreements shall be required and specified by the NDUS prior to final contract award. b. Offeror to propose its recommended Service Levels and describe the value to the NDUS.	
T2	Is documentation available for the system administrator and support for end users (i.e., online knowledge base help and user's manuals, etc.)? Please explain.	
T3	Provide your problem resolution process diagram.	
T4	Is your support staff located at a call center? If so, where?	
T5	What are your support hours?	
T6	Describe if you meet the response times listed in the Technology Contract – Attachment 3. Do you offer anything above those listed?	
T7	Provide help desk employees' qualifications.	

### 3.3D CUSTOMER SERVICE, SALES SUPPORT

The NDUS requires contractor to provide customer service and sales support.

Describe the related customer service and sales support that your firm provides in conjunction with the products and/or services you are proposing. Some items to consider in your response that may be relevant:

ID	Requirement	Offeror Response
C1	Account representative experience with the products and services being offered.	
C2	Vendor process for handling customer inquiries and response time.	
C3	Ongoing product updates and strategic planning	
C4	Reports related to technical support performance under the contract	
C5	A process for sales and customer support of the contract	
C6	Initial training and start-up services as applicable	
C7	Ongoing training programs	

### 3.4 OFFEROR EXPERIENCE AND QUALIFICATIONS MANDATORY REQUIREMENTS

MINIMUM QUALIFICATIONS				
<p>Offerors must meet the following mandatory experience and qualifications requirements. Provide a statement how your company meets the mandatory items listed below.</p>				
ID	Requirement	Offeror Response		
Q1	Offeror must have performed similar work for a comparably sized entity.			
Q2	Offeror must have successfully implemented a similar solution for at least one entity and satisfactorily performing for at least six months.			
Q3	Offeror must have at least three years professional experience performing similar website redesign projects.			
Q4	Describe the number of years the offeror has provided the type of work requested in this RFP. Describe specific experience of their firm in completing similar projects. Provide a description of the project, approximate time frame of the project, and contact information for the customer.			
REFERENCES				
<p>Provide three references for similar projects the offeror has completed. Offerors must include the name of a contact person, address, e-mail, and telephone number. Offerors are instructed to notify the reference that the NDUS will be contacting them. Evaluation will be impacted if the NDUS is unable to contact the reference or the reference does not timely provide the requested information.</p>				
#	Name	Address	Email	Phone
1				
2				
3				



**PROJECT TEAM**

Please provide the following information about the proposed project team you will use to deliver your proposed solution.

P1	Subcontractors. 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. Provide a statement that the offeror will ensure that the subcontractor has or will obtain any required licenses and registrations, including registration with the North Dakota Secretary of State.	
P2	Joint Venture. If submitting a proposal as a joint venture, offeror must submit a copy of the joint venture agreement that identifies the parties involved and its rights and responsibilities regarding performance and payment.	
P3	<p>Please use the space below to provide a narrative or organizational chart that describes the organization of the proposed project team. Provide information for key project team members, including:</p> <ul style="list-style-type: none"><li>• Description of anticipated work they will perform and approximate estimated hours.</li><li>• Provide names and titles of team members dedicated to this project.</li><li>• Resume or description of the relevant education, training, experience, skills, and qualifications.</li></ul>	

## SECTION FOUR – PROPOSAL

### 4.0 PROPOSAL PREPARATION

The NDUS discourages overly lengthy and costly proposals. An offeror must prepare its proposal using the prescribed proposal format and provide all the requested information; this will enable the proposal to be evaluated fairly and completely. If an offeror submits more than one proposal, each proposal must be prepared in accordance with these instructions.

Each proposal will include a Technical Proposal and a Cost Proposal prepared in accordance with these instructions. The Technical Proposal and a Cost Proposal must be submitted as separate documents, clearly labeled with the name of the offeror, and marked “Technical Proposal” and “Cost Proposal.” Costs must not be revealed in the Technical Proposal. Options may be discussed in the technical proposal, but all cost information must be in the Cost Proposal only. DO NOT submit documents that are embedded into proposal documents or that contain links to documents on an external website.

### 4.1 FORMAT & PROPOSAL SUBMISSION INSTRUCTIONS

**Format:** Each proposal will include a technical proposal and a cost proposal prepared in accordance with these instructions.

File 1 – Cover Letter and any RFP amendment acknowledgements. Cover letter shall be signed by an individual with authority to bind the offeror that includes the following:

1. The name of the offeror, name of the person to contact regarding the proposal, email address, telephone number, and mailing address.
2. A statement that the offeror has read and agrees to comply with the requirements stated in this Request for Proposal.
3. A statement that the offeror’s proposal accurately describes the information technology solution and services being offered to the NDUS.
4. A statement indicating whether the offeror or its employees or subcontractors working on the contract have an apparent or actual conflict of interest. (Offerors are instructed to review the “Conflict of Interest” provisions in the RFP Section 1 “Instructions.”)
5. Provide a statement indicating that their proposal does not contain any confidential information, OR

Make a written request to hold confidential any trade secrets and other proprietary data contained in its proposal. Offeror must clearly identify the material considered confidential and explain why the material is confidential, with reference to [N.D.C.C. ch. 44-04](#). Pricing will be open to the public in almost every circumstance. See the North Dakota Office of the Attorney General website for additional information. <https://www.ag.nd.gov/OpenRecords/ORM.htm>

File 2 – Section 3 of the RFP with offerors responses.

File 3 – Technology Contract – Attachment 3 with offerors responses.

1. This procurement will use NDUS’s Technology Contract. Offerors are not to submit their own standard terms and conditions with their proposals. The offeror should address the specific language in the attached contract and submit any proposed changes or additional terms and conditions an offeror seeks to present for consideration by the NDUS. Offerors are instructed not to include cost information in the Technology Contract.
2. If the proposal includes any proposed additional terms and conditions, such as software licensing agreement, maintenance agreement, or third-party agreements, these agreements must be included in the proposal. These additional terms and conditions should not duplicate terms in the Technology Contract.

File 4 – ADA/Product Accessibility documentation and any supplementary information the offeror wishes to provide as noted in Section 3.1 NDUS Accessibility Requirements.

## File 5 – Cost Proposal

Cost proposals must provide the total proposed cost for completing the requirements of this RFP. Include a detailed itemization of the cost proposal (e.g., breakdown of the project costs, direct and indirect expenses, total number of hours at various hourly rates, overhead, travel, etc.).

All costs 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.

The offeror should describe any discount terms for prompt payment. Discounts for prompt payment will not be considered in evaluating costs.

Provide costs associated with any Value-Added Features included in your proposal response. Provide details related to initial costs, reoccurring costs, and options.

The offeror must complete the Cost Proposal – Attachment 1 or prepare a cost proposal following the same format.

**Costs must not be revealed in the technical proposal.** Options may be discussed in the technical proposal, but all cost information must be in the cost proposal only.

**Submission Instructions:** Offerors must electronically submit proposals through the State Procurement Online system (SPO Online) by the Solicitation Closing deadline.

Visit <https://www.omb.nd.gov/sites/www/files/documents/doing-business-with-the-state/procurement/spo-electronic-response-external-job-aid.pdf> for the SPO Electronic Response Job Aid which describes how to submit an electronic response.

This solicitation is posted on SPO Online at: <https://apps.nd.gov/csd/spo/services/bidder/main.htm>

Click on “Recent Solicitations” and find this solicitation. Solicitations are listed by close date.

Use “Upload Response” to upload a maximum of five (5), clearly labeled documents before the deadline for receipt of proposals in the RFP Schedule.

The maximum file size allowed is 50mb per file.

There is a 50-character file name limitation for the document being uploaded.

There is a 75-character limit in the TITLE field within SPO Online.

All SPO Online 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.

DO NOT submit documents that are embedded (zip files), movies, wmp, encrypted, or mp3 files.

Offerors will receive an email confirmation from [infospo@nd.gov](mailto: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 the offeror DOES NOT receive an email confirmation, the upload was not successful, and you will need to upload the files again. If offeror does not receive an email confirmation after the reattempt, contact the Procurement Officer or the State Procurement Office at [infospo@nd.gov](mailto:infospo@nd.gov) or 701-328-4912.

## SECTION FIVE – PROPOSAL EVALUATION

### 5.0 AWARD

The NDUS intends to award a contract to the responsible offeror whose proposal is determined to be responsive to the requirements of the solicitation and is determined to be most advantageous in consideration of the RFP evaluation criteria.

### 5.1 RESPONSIVENESS

All proposals will be evaluated to determine if they are responsive to the requirements of the solicitation. The NDUS reserves the right to waive minor informalities in accordance with [N.D.A.C. chapter 4-12-10](#). Minor informalities are insignificant omissions or nonjudgmental mistakes that are matters of form rather than substance, evident from RFP document, with a negligible effect on price, quantity, quality, delivery, or contractual conditions that can be waived or corrected without prejudice to other offerors.

Responsive proposals will be evaluated by the procurement officer or evaluation committee using the evaluation criteria stated in the RFP.

### 5.2 RESPONSIBILITY

The NDUS may, at any time, may make a supplementary investigation as to the responsibility of any offeror in accordance with [N.D.A.C. § 4-12-11-04](#). This investigation may include, but is not limited to, financial responsibility, performance record, or other matters related to the offeror's probable ability to deliver if a contract is awarded to the offeror. The NDUS reserves the right to contact references, other customers, including state and local government agencies, regarding past experience with the offeror. If it is determined that an offeror appears not to be sufficiently responsible, the proposal will be rejected.

### 5.3 EVALUATION CRITERIA

Proposals will be evaluated using a 100-point scale. The evaluation committee will award points based on the questions in the Proposal Evaluation Process – Attachment 2. The technical proposals evaluation score and cost proposal evaluation score will be added to determine the total evaluation score. After the initial evaluation, the evaluation committee may determine which proposals are reasonably susceptible for award and short-list the evaluation process to only those offerors. The final evaluation score will consider information received by the NDUS, including but not limited to, discussions with offerors, demonstrations, presentations, site visits, reference checks, and best and final offers.

The evaluation criteria and relative weight is as follows:

#### Technical Proposal Evaluation: 70 Points

- A. Information Technology Solution –40 Points
- B. Product Support and Customer Service –10 Points
- C. Experience and Qualifications –20 Points

#### Cost Proposal Evaluation: 30 Points

### 5.4 COST PROPOSAL EVALUATIONS

The NDUS will calculate evaluation points awarded to cost proposals. Any prompt payment discount terms proposed by the offeror will not be considered in evaluating cost.

The reciprocal preference law, N.D.C.C. § 44-08-01, was repealed effective August 1, 2023. NDUS will apply all North Dakota preference laws as applicable. For more information, refer to the Guidelines to North Dakota Purchasing Preference Laws.

The cost amount used for evaluation may also be affected by the application of other costs required to implement the proposed solution to determine the total cost of the solution (i.e., cost for CTS to host the proposed solution).

The cost proposal with the lowest cost will receive the maximum number of points. Points awarded to other cost proposals will be calculated as follows:

$$\frac{\text{Price of Lowest Cost Proposal}}{\text{Price of Proposal Being Rated}} \times \text{Total Points for Cost Available} = \text{Points}$$

## **5.5 CLARIFICATIONS OF PROPOSALS – DISCUSSIONS**

In order to determine if a proposal is reasonably susceptible for award, communications by the procurement officer or evaluation committee are permitted with an offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal and determine responsiveness to the RFP requirements. Discussions will be limited to the specific section of the RFP or proposal indicated by the NDUS.

In conducting discussions, there may be no disclosure of any information derived from proposals submitted by competing offerors. Clarifications may not result in a material or substantive change to the proposal.

Discussions are generally conducted by telephone or internet-based conference.

## **5.6 RIGHT OF REJECTION**

The NDUS reserves the right to reject any proposals, in whole or in part. Proposals received from suspended or debarred bidders will be rejected. Proposals determined to be nonresponsive to the requirements of the RFP will be rejected. The NDUS reserves the right to reject the proposal of an offeror determined to be not responsible. The NDUS reserves the right to refrain from making an award if determined to be in its best interest.

## **5.7 BEST AND FINAL OFFERS**

The NDUS is not obligated to request best and final offers; therefore, offerors should submit their best terms (technical and cost) in response to this RFP.

If the NDUS determines there is a need for any additional information, substantial clarification or changes to the RFP or proposals, the NDUS may request for best and final offers from offerors that have submitted proposals determined to be reasonably susceptible for award. The best and final offer request will describe the additional information, clarification, or change being requested.

A date and time will be established for receipt of revised proposals. If an offeror does not submit a best and final offer, the NDUS shall consider its original proposal as its best and final offer.

Best and final offers will be evaluated using the evaluation criteria stated in the RFP. The NDUS may request more than one Best and Final Offer.

## **5.8 NEGOTIATIONS**

Contract negotiations will be conducted in accordance with [N.D.A.C. § 4-12-12](#). The NDUS may enter into negotiations with one or more offerors whose proposals received the highest scores and are reasonably susceptible for award. During negotiations, the NDUS and the offeror may agree to alter or otherwise change the terms and conditions of the proposed contract. Negotiation, if held, will be within the scope of the RFP.

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 email, conference calls, or internet-based conference. Any on-site negotiation, if needed, will be held in Grand Forks, ND.

The NDUS 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 NDUS, or
- indicates that it cannot perform the contract within the budgeted funds.

## **5.9 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 NDUS sign the contract.

## **5.10 CONTRACT APPROVAL**

This RFP does not, by itself, obligate the NDUS. The NDUS's obligation shall commence when the NDUS signs the contract. Upon written notice to the contractor, the NDUS may set a different starting date for the contract. The NDUS shall 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 NDUS.

## **5.11 EVALUATION DEBRIEF**

After the notice of intent to award is issued, offerors may contact the Procurement Officer to schedule an evaluation debrief. The debrief will provide information about the evaluation process and proposal scores.

## SECTION SIX – CONTRACT INFORMATION

### 6.0 NORTH DAKOTA CONTRACTUAL REQUIREMENTS – BACKGROUND

As a public institution and government entity of the North Dakota University System (NDUS), there are a number of statutes, rules, and policies (Requirements) that may restrict or prevent the NDUS from entering into certain types of contracts or certain contractual terms and conditions, some of these Requirements are non-negotiable.

While these Requirements occasionally make the process of negotiating a contract with NDUS more challenging than negotiating with a private industry business, these are not unique to any one institution of the North Dakota University System. These Requirements apply to all public institutions and government entities of the state of North Dakota. Although some are unique to North Dakota, the majority of these Requirements are common to public institutions and government entities throughout the United States.

### 6.1 NDUS CONTRACT TERMS AND CONDITIONS – OFFEROR’S PROPOSED CHANGES

The NDUS intends to execute a contract substantially similar to the Technology Contract – Attachment 3. The contractor must comply with the terms and conditions set forth in the attached contract. North Dakota procurement statutes, rules, and policies allow some negotiation of the terms and conditions. No changes to the terms and conditions will be permitted without prior written approval from the NDUS.

Pursuant to [N.D.A.C. § 4-12-11-06](#), proposals subject to conditions imposed by the offeror may be rejected as nonresponsive, as determined by the NDUS.

Proposed terms and conditions that conflict with those contained in the attached contract or that diminish the NDUS’s rights under the contract shall be considered null and void. The terms and conditions in the attached contract shall prevail in the event a conflict arises between a term or condition in the proposal and a term or condition in the attached contract.

Part or all of this RFP and offeror’s proposal may be incorporated into the attached contract.

The NDUS may deem any failure to object to a contract provision as the offeror’s acceptance of that provision.

### 6.2 CONTRACTUAL TERMS AND CONDITIONS – NO MATERIAL CHANGES

#### INDEMNIFICATION AND INSURANCE

[N.D.C.C. § 32-12.2-17](#) requires that the Office of Management and Budget establish guidelines for indemnification and insurance provisions in state contracts. The indemnification and insurance requirements contained in the attached contract are pursuant to those guidelines. The NDUS shall not be deemed to have accepted any alteration of these provisions without prior written approval to the offeror from the NDUS acting in consultation with the North Dakota Risk Management Division.

#### Indemnification

Indemnification is a contractual clause by which one party to a contract asks the other party to defend it against any claims of third parties who might be injured as a result of something that occurs while the parties are performing their duties and obligations under the contract. Without specific authority to do so, the NDUS institutions cannot enter into agreements indemnifying contractors, or any other entity, against third party claims.

Any clause that has the intent of seeking indemnification from the NDUS, whether or not the clause contains the words “indemnity” or “indemnify,” are not clauses to which the NDUS may agree.

The NDUS will also not agree to clauses to indemnify a contractor “to the extent permitted by law.” This is because the NDUS knows that the extent to which the law permits it to indemnify contractors is no extent whatsoever, and as a result would be disingenuous for the NDUS to

imply in a contract that there might be some set of circumstances under which the NDUS would defend the contractor against a third-party claim(s). Simply put, the NDUS is not going to agree to something it knows it cannot do. In this circumstance an “extent” clause is merely an invitation to litigate the matter in the event a third-party claim(s) arises, and the NDUS does not enter into agreements that invite litigation.

Do not ask the NDUS to indemnify you against third party claims because it is a contractual obligation to which the NDUS cannot agree.

While the NDUS may limit the liability of a contractor in claims between the NDUS and the contractor, the NDUS does not have authority to limit a contractor’s liability for claims brought by a third party. In the event a contract contains a limitation of liability clause, the contract’s Indemnification clause and obligation of the contractor cannot be subject to that limitation of liability clause. See *6.2(B) for Limitation of Liability*

### Insurance

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

## LIMITATION OF LIABILITY

The NDUS may negotiate Limitation of Liability pursuant to N.D.C.C. § 32-12.2-15 “Contracts limiting liability to the [NDUS]”.

Notwithstanding any provision in [N.D.C.C. Ch. 32-12.2](#) to the contrary, an agency may agree to limit the liability of a contractor to the NDUS if:

1. the agency determines such services or products cannot be effectively obtained without such limitation; and
2. the limitation does not pose any significant risk of loss to the NDUS; and
3. the limitation is in the best interests of the NDUS.

The agency, in consultation with the OMB and the attorney general's office, shall prepare a written documentation before agreeing to any liability limitation.

An agency's authority to agree to a limitation of liability is limited to contracts for the purchase or lease of, or services related to, software, communication, electronic equipment, and economic forecasting.

1. An agency may limit its ability to recover indirect consequential damages.
2. If the extent of potential direct loss is unknown, an agency may agree to limit direct damages to a reasonably estimated amount commensurate with the foreseeable risk of loss to the NDUS. The amount must be equal to twice the total value of the contract unless all parties to the contract agree to an alternative amount. Any agreed upon amount that is less than twice the value of the contract must be approved by the director of the OMB. The liquidated damages and retainage provisions for delay, missed deadlines, and other breaches are not subject to a general limitation on direct or indirect damages authorized under [N.D.C.C. § 32-12.2-15](#).
3. A contract under [N.D.C.C. § 32-12.2-15](#) may not limit any loss to the NDUS resulting from fraud or other intentional or willful misconduct, breach of confidentiality obligations, or loss resulting from tangible property damage or personal injury.



## WAIVERS OF JURISDICTION AND VENUE; ALTERNATIVE DISPUTE RESOLUTION

The North Dakota Attorney General is the NDUS's attorney for all purposes, including management of litigation and claims against the state. The NDUS may not usurp the Attorney General's authority by agreeing in advance to control the way litigation may be managed in the event of a dispute. The NDUS cannot, without specific authority, agree to the jurisdiction or the laws of another state or federal courts, nor can it contractually agree to participate in any form of alternative dispute resolution.

Although the NDUS cannot contractually agree to such terms, this does not mean that in the event of a dispute, the NDUS would not agree to participate in alternative dispute resolution. It simply means that this is a decision that must be made by the Attorney General and is a decision that is made at the time a dispute arises.

## CONFIDENTIALITY

All state entities of North Dakota are subject to North Dakota public records laws. The NDUS cannot agree to contractual terms that attempt to prevent it from having to disclose records that are declared public records under applicable statutes. Although some confidentiality and exemptions are allowed under the public records laws, the NDUS may not agree to more restrictive obligations concerning its records. Under North Dakota public records laws, contracts are records that are open to the public and may be reviewed at the request of the public.

## UNLIQUIDATED EXPENSES (I.E., ATTORNEY'S FEES, ADD-ONS, COST INCREASES)

Because the NDUS may only obligate those funds that have been appropriated to it by the Legislative Assembly and may only obligate those funds for the purposes for which the funds were appropriated, the NDUS may not agree to clauses which may obligate it to pay for claims that might exceed its current funding appropriation. Certainly, this is one of numerous reasons why the NDUS cannot indemnify a contractor against third party claims, but it may also be said for clauses that purport to obligate the NDUS to pay a contractor's attorneys' fees, unknown cost increases during the life of the contract, add-ons that were not contemplated or priced in the contract.

### **6.3 SCOPE OF WORK**

The Scope of Work agreed upon by the parties will be incorporated into the attached contract.

### **6.4 CONTRACT TERM**

The contract term will be set forth in the contract, including any options for extension, renewal, and renegotiation.

### **6.5 COMPENSATION**

Compensation and payment terms will be set forth in the contract based upon the successful offeror's proposal.

### **6.6 LIQUIDATED DAMAGES**

The contract may include a clause setting forth an actual dollar amount designated as liquidated damages in order to make the NDUS whole if it suffers damages due to a contractor's fault. The specific dollar amount for liquidated damages may be part of the negotiation process. The amount will be reasonable and not disproportionate to the damages to the NDUS that are anticipated at the point of the contract and will not serve in any way as a penalty.

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