

Minutes of the  
**EMPOWER NORTH DAKOTA COMMISSION**

July 9, 2013  
Brynhild Haugland Room  
Capitol  
Bismarck, ND 58503

**Members present:**

Al Anderson, Ron Day, Ron Ness, Mark Nisbet, Randy Schneider, Sandi Tabor, Terry Goerger, Mike Rud, John Weeda

**Ex Officio Members present:**

Mark Bring, proxy for Chuck MacFarLane  
Margaret Hodnick

**Public present via phone:**

Todd Kranda, Kelsch, Kelsch, Ruff & Kranda  
Law Firm  
Connie Ova, Jamestown/Stutsman County  
Development Corp.

**Others present:**

Mike Fladeland, Department of Commerce  
Justin Dever, Department of Commerce  
Sherri Frieze, Department of Commerce  
Andrea Holl Pfennig, Department of Commerce  
Carlee McLeod, Utility Shareholders of ND  
Karlene Fine, ND Industrial Commission  
Shane Goettle, Odney Advertising  
Deana Wiese, ND Ethanol Council  
Lance Gaebe, ND Dept. of Trust Lands  
Ken Hellevang, NDSU Extension  
Harlan Fuglesten, ND Assoc. of Rural Coop.  
Emily McKay, Great Plains Energy Corridor

**CALL TO ORDER/WELCOME**

Chairman Anderson called the meeting to order at 9:00 a.m. and welcomed Commission members and guests.

**APPROVAL OF MINUTES**

**A motion was made by Schneider and seconded by Day to approve the minutes of April 17<sup>th</sup>, 2013. Motion carried unanimously.**

**EmPower ND Bills**

Justin Dever gave an overview of Commission recommended legislation that was signed by the Governor. He also discussed other bills supported by the Commission.

[Appendix A](#)

**Great Plains Energy Corridor**

Emily McKay, Director for the Great Plains Energy Corridor discussed the Draft Agenda items planned for the Great Plains & EmPower ND Energy Conference to be held Bismarck in October. Reference was made for next year's agenda to possibly add a panel of speakers regarding ND Coal Regulations to include a Government Affairs person.

**ND Studies Energy Curriculum Project**

McKay gave an update to the development of the energy curriculum for 4<sup>th</sup> and 8<sup>th</sup> grade students in ND.

[Appendix B](#)

**Future of Energy Corridor**

Kari Knutson, Vice President of the National Energy Center for Excellence asked members for their input on how they see short term and long term goals for the future of the National Center of Excellence Energy Corridor website. The website is a communication hub for other energy websites.

**Value-Added Study – Request for Proposal and Scope of Work**

Mike Fladeland, Commerce Department walked through the DRAFT Request for Proposal (RFP): Study to Evaluate Value-Added Market Opportunities for Natural Gas Liquids produced in North Dakota.

[Appendix C](#)

Members suggested redrafting the RFP with a Committee consisting of Weeda, Tabor, Day and Schneider. The DRAFT would be discussed at the next EmPower ND meeting.

### **FUTURE MEETINGS**

Members discussed the need to bring back the Strength, Weakness, Opportunity and Threat Analysis (SWOT) again for each industry. The SWOT Analysis for each industry would be done for the next upcoming meeting of August 19<sup>th</sup> in Bismarck, ND.

### **PUBLIC COMMENT**

Ken Hellevang, NDSU Extension Service Education presented a summary on the Science and Research based education.  
[Appendix D](#)

### **ADJOURNMENT**

**Meeting was adjourned at 1:30 p.m. unanimously.**

---

Al Anderson \_\_\_\_\_ Date  
Chairman

---

Sherri Frieze \_\_\_\_\_ Date  
Recording Secretary

# Legislative Recap Presentation to EmPower ND Commission – 7/9/2013

---

## **EmPower ND Commission Recommended Legislation**

The EmPower North Dakota Commission recommended four pieces of legislation that went through the interim Energy Development & Transmission Committee and supported another bill that was introduced separately. The legislative concepts in all five bills were approved and signed by the governor. The approved bills included:

- HB 1029 – Continues the Housing Incentive Fund program, including \$20 million in tax credits. An additional \$15.4 million in general funds were provided in SB 2014.
- HB 1358 – Includes \$120,000 in funding to Job Service North Dakota for upgrading employment data relating to oil & gas development (originally in SB 2028).
- SB 2014 – Includes \$500,000 for a study of value-added energy market opportunities; \$3 million in continuing funding for the Renewable Energy Program; and an increase to \$10 million for the Oil & Gas Research Program (originally in SB 2027 & SB 2029).

The EmPower ND Commission also supported HB 1382 which extends the sales and use tax exemption for wind towers.

## **Infrastructure Related Legislation**

The legislature made significant investments in infrastructure during the 2013 Legislative Session. This included \$2.3 billion for transportation infrastructure across the state (SB 2012 & SB 2176); \$1.1 billion in direct tax distributions and grants to oil-impacted communities (HB 1358); and \$515 million in for flood control & water supply projects (HB 1020).

The legislature continued and expanded the Housing Incentive Fund for a total funding level of \$35.4 million (HB 1029 & SB 2014). The legislature removed the sunset on the Bank of North Dakota's Rural Mortgage Loan Program and gave the bank more flexibility in administering the program (SB 2064). The legislature also provided \$12 million in Flex PACE loan interest buydowns for affordable housing projects (SB 2014).

## **Research & Development Related Legislation**

The legislature continued the Lignite Research Program; provided an ongoing funding source for the Renewable Energy Program at \$3 million per biennium; increased funding for the Oil & Gas Research Program from \$4 million to \$10 million per biennium; and approved \$500,000 for a value-added energy market opportunities study (SB 2014). The legislature also approved funding for Research North Dakota

which will provide grants to research universities for research, development and commercialization projects, including energy-related projects (SB 2018).

## **Workforce Related Legislation**

The legislature approved \$120,000 in funding to Job Service North Dakota for upgrading employment data relating to oil & gas development (HB 1358); approved new funding for Science, Technology, Engineering, and Math (STEM) programs; and enhanced funding for other workforce development programs.

## **Science, Technology, Engineering, and Match (STEM)**

\$2.05 million in funding related to STEM, including:

- \$300,000 for the ND STEM Network (\$160,000 in HB 1228 and \$140,000 in SB 2019)
- \$150,000 for STEM program matching grants (§4 of SB 2019)
- \$1 million in base funding for DSU, MaSU, MiSU, and VCSU for STEM programs
- \$100,000 for Great Plains STEM Center at VCSU
- \$300,000 for STEM-Based Engineering and Project Lead the Way
- \$200,000 for the STEM Infusion Initiative

The Department of Career and Technical Education has been asked by the legislature to coordinate STEM initiatives (SCR 4015) and is to report to the budget section on performance measures relating to STEM (§3 of SB 2019).

## **Operation Intern**

\$1,500,000 (\$600,000 increase) was provided for Operation Intern.

## **Workforce Enhancement Grants**

\$2 million was provided for Workforce Enhancement Grants, which provides \$1 to \$1 matching funds for BSC, NDSCS, WSC, or LRSC to develop or improve training programs to meet industry demand.

## **Train ND Funding**

A total of \$4 million was provided for Train ND, including \$3 million in ongoing funding and \$1 million in one-time matching funds to purchase equipment.

## **Tribal College Workforce Development Grants**

\$5 million was provided for workforce development grants to the five tribally-controlled colleges in the state.

## **Regulatory Related Legislation**

The legislature approved additional staff and resources to state regulatory agencies to ensure appropriate state oversight of the energy industries. This includes 8 FTEs and \$2 million for the State Health Department (SB 2004); 23 FTEs and \$4.2 million for the Department of Mineral Resources (SB

2014); 2 repurposed FTEs for the Public Service Commission (HB 1008); and 2 FTEs and \$308,456 for the State Water Commission (HB 1020).

## **Other Energy Legislation**

Other energy related legislation included:

- HB 1030 - An Act to provide that the present use and disposal of coal combustion residues is acceptable in North Dakota.
- HB 1064 - Relating to the maximum penalty for a violation of pipeline safety standards.
- HB 1134 - Relating to oil and gas gross production tax exemption for natural gas to encourage use of gas that might otherwise be flared; relating to flaring restrictions for natural gas and sales tax exemption for property used to process natural gas to encourage use of gas that might otherwise be flared.
- HB 1147 - Relating to route adjustments for gas and liquid transmission lines; relating to definitions for siting a gas or liquid transmission line; to repeal section 49-22-07.1 of the North Dakota Century Code, relating to a letter of intent.
- HB 1178 - Relating to a penalty for continued failure of a public utility company to submit reports; relating to extensions of time for utility company reporting and applicable penalties and due dates for filing reports with the county auditor and tax commissioner.
- HB 1198 - Relating to income tax withholding for oil and gas royalties; relating to oil extraction tax definitions and exemptions and the state-tribal oil tax agreement.
- HB 1206 - Relating to development of a comprehensive water development plan.
- HB 1278 - Relating to the North Dakota outdoor heritage fund; relating to the oil and gas gross production tax.
- HB 1333 - Relating to locating, definitions for, and mediation for pipeline facilities; relating to saltwater disposal wells, the abandoned oil and gas well plugging and site reclamation fund, reclamation of pipelines facilities, and oil and gas gross production tax for reclamation.
- HB 1348 - Relating to setbacks for oil and gas wells.
- HB 1350 - Relating to statute of limitations for actions for injury due to oil and gas production.
- HB 1352 - Relating to mediation of mineral developer and surface owner disputes and resolution of title disputes.
- HB 1358 - Relating to definitions under the oil and gas gross production tax; relating to oil and gas gross production tax allocation and the impact aid program.
- HB 1359 - Relating to the one-call notice system.
- HB 1382 - Relating to sales tax exemption for a wind-powered electrical generating facility.
- HB 1410 - Relating to a sales tax exemption for liquified natural gas used for railroad purposes; relating to exemption from sales and use and special fuels taxes for liquified natural gas used for railroad purposes and materials used to liquify natural gas.
- HB 1413 - Relating to a sales tax exemption for tangible personal property used to construct or expand a facility for use of coal gasification byproducts; relating to a sales tax exemption for

tangible personal property used to construct or expand a facility for use of coal gasification byproducts.

- HB 1440 - Relating to water services by cities and water districts and state water commission policies on funds for water districts and cities.
- SB 2013 - AN ACT to provide an appropriation for defraying the expenses of the commissioner of university and school lands; relating to the energy infrastructure and impact office.
- SB 2020 - A BILL for an Act to provide an appropriation for defraying the expenses of the extension service, northern crops institute, upper great plains transportation institute, main research center, branch research centers, and agronomy seed farm. Includes funding for UGPTI road studies.
- SB 2105 - Relating to reimbursement of coal severance tax allocated to a non-coal-producing county.
- SB 2139 - Relating to the submission of ten-year plans by a utility.
- SB 2174 - Relating to the requirement that a public utility regulated by the public service commission provide advance notification of disconnection or termination of electric or gas service.
- SB 2209 - Relating to eminent domain siting of an energy conversion facility or a transmission facility.
- SB 2233 - AN ACT to provide a declaration of water policy and goals and objectives for water project development; relating to exempting certain activities of the industrial commission from the Administrative Agencies Practice Act, western area water supply authority industrial water sales audits, an infrastructure revolving loan fund, and franchise protection rights of the western area water supply authority; relating to jurisdiction of the water-related topics overview committee, the Red River valley water supply project, the location of industrial water depots, and the western area water supply project; to repeal sections 61-24.7-02, 61-24.7-03, 61-24.7-04, and 61-40-06 of the North Dakota Century Code, relating to funding of the Red River valley water supply project and oversight of western area water supply authority projects.
- SB 2287 - Relating to the fuel production facility loan guarantee program.
- SB 2294 - Relating to increased fees for use of dyed special fuel in a licensed motor vehicle and display of consumer advisory information on pumps dispensing dyed special fuel.
- SB 2312 - Relating to coal leases on state land.
- SB 2325 - Relating to corporate and individual income tax credits and transition of financial institutions to corporate income tax treatment; relating to reduction of the distribution tax rate for companies engaged in the distribution of electricity, individual and corporation income tax rates, and credits and increased allocations from the state aid distribution fund; relating to elimination of the financial institutions tax.
- SB 2339 - AN ACT to provide for a legislative management study to create an inventory and strategic plan relating to residential and commercial development programs and infrastructure and to provide for a study of programs providing residential and commercial development assistance.

- HCR 3010 - A concurrent resolution urging Congress and the United States Army Corps of Engineers to ensure that access to Lake Sakakawea and Lake Oahe for agriculture, commerce, energy and water development, and recreation is not inhibited by unreasonable regulations and to address proper funding for all project purposes and weed control on Lake Sakakawea and Lake Oahe.
- HCR 3016 - A concurrent resolution directing the Legislative Management to study the use of natural gas as fuel in motor vehicles.
- HCR 3026 - A concurrent resolution urging the United States Environmental Protection Agency to refrain from enacting regulations that place unreasonable economic burden on electric consumers living in the Northern Great Plains.
- HCR 3031 - A concurrent resolution directing the Legislative Management to study special enforcement measures in high-fatality zones on highways in this state.

## **2013-14 Interim Studies**

### **Energy Development & Transmission Committee**

- Study the likely changes to oil industry practices, production, impacts, and tax policy in the foreseeable future, with the Legislative Management to obtain the services of an independent consultant with demonstrated insight into current and future production advances, including use of carbon dioxide and water or other means of enhancing production; effects of mature production areas on state and local tax policy; future infrastructure needs; and environmental considerations. (HB 1198 § 8)
- Study the feasibility and desirability of the establishment of an energy corridor in the western portion of the state, including an examination of rights of way and state highway and county road easements necessary for the further development of energy resources in the state, and including the existing and necessary easements required to make United States Highway 85 a four-lane highway corridor to complement the development of energy transportation resources. (SB 2018 § 41)
- Study the impact of a comprehensive energy policy for the state and the development of each facet of the energy industry from the obtaining of the raw natural resource to the sale of the final product in this state, other states, and other countries. (NDCC § 54-35-18)
- Receive report from the Department of Commerce before September 1, 2014, on the findings and recommendations of the department's study to evaluate value-added market opportunities related to renewable energy resources and oil and gas. (SB 2014 § 16)

### **Economic Impact Committee**

- Study the long-term costs of transportation infrastructure maintenance and improvement projects and methods for funding these projects. (SB 2012 § 18)

# North Dakota Studies Energy Curriculum Project

## Project Summary

The project includes the development of energy curriculum in N.D. Studies for students in 4<sup>th</sup> grade and 8<sup>th</sup> grade. Online modules will be developed with 2 weeks of content related to N.D.'s energy resources. Curriculum would be added to the N.D. studies courses as part of the N.D. educational standards.

Pilot project provides the following benefits:

- Updated curriculum to include relevant information about N.D.'s robust energy resources in N.D. Studies courses in 4<sup>th</sup> grade and/or 8<sup>th</sup> grade.
- N.D. students and teachers have the opportunity to learn about energy through delivery of current curriculum, including the demonstration of relevancy to N.D.
- Teachers receive training on content and delivery of new curriculum and technology.
- Potential for mitigating the urgent workforce needs within the energy industry in N.D. due to increased interest and understanding of energy industry and abundance of career options.
- Provides more educated citizens and contributors to N.D.'s future workforce.
- Supports Science, Technology, Engineering & Mathematics (STEM) emphasis.
- Potential for integration of energy curriculum into Valley City State University teacher education curriculum.

## Key Stakeholders

N.D. Energy Industry – represented by EmPower Commission, including the following members:

N.D. Petroleum Council, N.D. Lignite Council, Great River Energy, Tesoro, Basin Electric Power Cooperative, Montana-Dakota Utilities Company, Xcel Energy, N.D. Petroleum Marketers Association, N.D. Ethanol Producer's Association, North American Coal Corporation, N.D. Department of Commerce, Next Era Energy, Otter Tail Power Company, Minnesota Power, Archer Daniels Midland

Additional Entities: Department of Public Instruction, N.D. 4th and/or 8th grade teachers, Career & Technical Education, N.D. State Historical Society, Bismarck Public Schools - Career Academy, Bismarck State College & Valley City State University

## Investment

The project investment is \$125,000 per module or \$250,000 for two modules (4<sup>th</sup> & 8<sup>th</sup> grade). N.D. Energy Industry and others will provide "in-kind" match for content development and training.

Project Milestones	Project Timing
Secure funding	February - April 2013
Select Project Team/Resources	April 2013
Identification of Content	April - June 2013
Begin Project (Officially)	July 1, 2013
Development of Curriculum	Summer & Fall 2013
Pilot of module(s)	Spring 2014
Receive input & update content	Spring & Summer 2014
Train Teachers	Spring & Summer 2014
Begin Using New Curriculum	Fall 2014

# STATE OF NORTH DAKOTA

North Dakota Department of Commerce  
1600 East Century Avenue  
P.O. Box 2057  
Bismarck, North Dakota 58502-2057

## Request for Proposal (RFP)

RFP Title: Study to Evaluate Value-Added Market Opportunities for  
Natural Gas Liquids (NGLs) produced in North Dakota

**RFP Number:** \_\_\_\_\_

Date of Issue: \_\_\_\_\_

### **Purpose of RFP:**

Determine the feasibility of processing natural gas liquids, including ethane, propane, butanes, pentanes and higher molecular weight hydrocarbons, produced in the state into products that can be marketed nationally and internationally. The objective is to add value to those products rather than shipping them out of state for further processing. To do so it is important to gain an understanding of the industry and the products.

*DRAFT*

**Procurement Officer: Cheryl Purdy**

## TABLE OF CONTENTS

### SECTION ONE

#### Introduction & Instructions

- 1.01 Purpose of RFP
- 1.02 Contact Person, Telephone, Fax, E-mail
- 1.03 RFP Schedule
- 1.04 Return Mailing Address and Deadline for Receipt of Proposals
- 1.05 Assistance to Offerors with a Disability
- 1.06 Deadline for Receipt of Questions and Objections
- 1.07 Approved Vendor Registration Requirements
- 1.08 Pre-proposal Conference
- 1.09 Amendments to the RFP
- 1.10 News Releases
- 1.11 Notice Provided
- 1.12 Letter of Interest

### SECTION TWO

#### Background Information

- 2.01 Background Information
- 2.02 Budget

### SECTION THREE

#### Scope of Work

- 3.01 Scope of Work
- 3.02 Location of Work
- 3.03 Skills and Experience Required
- 3.04 Deliverables
- 3.05 Contract Schedule

### SECTION FOUR

#### General Contract Information

- 4.01 Contract Term
- 4.02 Contract Type
- 4.03 Standard Contract Provisions
- 4.04 Proposal as a Part of the Contract
- 4.05 Additional Terms and Conditions
- 4.06 Supplemental Terms and Conditions
- 4.07 Contract Approval
- 4.08 Contract Changes – Unanticipated Amendments
- 4.09 Indemnification and Insurance Requirements
- 4.10 Taxes and Taxpayer Identification
- 4.11 Proposed Payment Procedures
- 4.12 Contract Funding
- 4.13 Payment Terms
- 4.14 Inspection & Modification – Reimbursement for Unacceptable Deliverables
- 4.15 Termination for Default
- 4.16 Open Records Laws – Confidentiality

- 4.17 Work Product, Equipment and Material
- 4.18 Independent Entity
- 4.19 Assignment
- 4.20 Disputes – Applicable Law and Venue

## **SECTION FIVE**

### **Evaluation Criteria and Contractor Selection**

- 5.01 Understanding of the Project
- 5.02 Methodology Used for the Project
- 5.03 Experience and Qualifications
- 5.04 Contract Cost

## **SECTION SIX**

### **Proposal Format and Content**

- 6.01 Proposal Format and Content
- 6.02 Introduction
- 6.03 Understanding of the Project
- 6.04 Experience and Qualifications
- 6.05 Cost Proposal
- 6.06 Required Enclosures

## **SECTION SEVEN**

### **Standard Proposal Information**

- 7.01 Authorized Signature
- 7.02 State Not Responsible for Preparation Costs
- 7.03 Conflict of Interest
- 7.04 Offeror's Certification
- 7.05 Offer Held Firm
- 7.06 Amendments to Proposals and Withdrawals of Proposals
- 7.07 Alternate Proposals
- 7.08 Subcontractors
- 7.09 Joint Ventures
- 7.10 Disclosure of Proposal Contents and Compliance with State Open Records Laws
- 7.11 Evaluation of Proposals
- 7.12 Right of Rejection
- 7.13 Clarification of Offers
- 7.14 Discussions and Best and Final Offers
- 7.15 Preference Laws
- 7.16 Contract Negotiation
- 7.17 Failure to Negotiate
- 7.18 Notice of Intent to Award – Offeror Notification of Selection
- 7.19 Protest and Appeal

## **SECTION EIGHT**

### **Attachments**

- 8.01 Proposal Evaluation Form
- 8.02 Sample Personal Service Contract

## **SECTION ONE INTRODUCTION AND INSTRUCTIONS**

### **1.01 Purpose of the RFP**

Determine the feasibility of processing natural gas liquids, including ethane, propane, butanes, pentanes and higher molecular weight hydrocarbons, produced in the state into products that can be marketed nationally and internationally. The objective is to add value to those products rather than shipping them out of state for further processing. Ultimately, the objective is to convert data to intelligence about the industry and use the intelligence to attract investment opportunities to the state.

### **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.

PROCUREMENT OFFICER: Cheryl Purdy

PHONE: 701-328-2548

FAX:

TTY Users call: 1-800-366-6888 (Relay North Dakota)

E-MAIL: cpurdy@nd.gov

### **1.03 RFP Schedule**

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

The approximate RFP schedule is as follows:

- RFP Issued: July 22, 2013
- Deadline for receipt of questions and objections related to the RFP: 2:00 pm, CT, August 16, 2013
- Responses to questions/RFP amendments: August 30, 2013
- Proposals due by: 2:00 pm, CT, September 16, 2013
- Proposal Evaluation Committee evaluation completed by: October 4, 2013
- State issues Notice of Intent to Award a Contract by: October 18 2013
- State issues contract by: November 1, 2013
- Contract start: November 15, 2013

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

Offerors must submit three (3) copies of their proposal in a sealed envelope or package. Offerors must submit one copy of the cost proposal; the cost proposal must be in a separate sealed envelope or package marked "Cost Proposal".

Envelopes or packages containing proposals must be clearly addressed as described below to ensure proper delivery and to avoid being opened by the State before the deadline for

receipt. Envelopes or packages must be addressed as follows:

ND Department of Commerce  
(RFP): \_\_\_\_\_  
RFP Number: 601.00.\_\_\_\_\_  
1600 E Century Ave, Suite 2  
Bismarck, ND 58503  
or  
P.O. Box 2057  
Bismarck, ND 58502-2057

Proposals must be received by the purchasing agency at the location specified no later than 2:00 P.M. Central Time on September 16, 2013. Proposals will not be publicly read at the opening.

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

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

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

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

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

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

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

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

## **1.07 Approved Vendor Registration Requirements**

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

To become an approved vendor, offerors must: 1) be registered with the North Dakota Secretary of State (fees apply), and 2) submit a completed Bidders List Application to the North Dakota Vendor Registry Office. Prospective offerors may access the Procurement Vendor Database on-line to verify whether their firm is currently on the bidders list. The bidders list that will be used for this solicitation is commodity code 918-21, 918-75 and 918-76.

The Procurement Vendor Database, registration instructions and forms are available on-line at: [www.nd.gov/spo/](http://www.nd.gov/spo/). Contact the Vendor Registry Office at 701-328-2773 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance.

The successful offeror must register and become approved within 60 calendar days from the date of the Notice of Intent to Award. If an offeror fails to become approved by the time specified by the Procurement Officer, its proposal will be determined to be non-responsive, and its proposal will be rejected.

## **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 that were mailed a copy of the RFP and to those that have requested a copy of the RFP from the procurement officer.

## **1.10 News Releases**

News releases related to this RFP will not be made without prior approval of the procurement officer or project manager designated by the State.

## **1.11 Notice Provided**

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

## **1.12 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 the purchasing agency 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**

A large quantity of oil and natural gas is produced in North Dakota, primarily in the Bakken and Three Forks formations. During April 2013, there was 25,811,939 MCF of natural gas produced. As of June 2013, 21 natural gas processing plants were operating in the state. Additions to gathering and processing capacity are catching up, but the percentage of gas flared remained unchanged at 29% as of June 2013. The historical high was 36% in September 2011.

According to a report published by the North Dakota Industrial Commission, Department of Mineral Resources, dated June 17, 2013, natural gas delivered to the Northern Border pipeline at Watford City, North Dakota was \$3.51/MCF. This resulted in an oil to gas price ratio of 24 to 1, but the high liquids content has made gathering and processing of Bakken gas economic.

The 2013 North Dakota Legislative Assembly authorized the Department of Commerce (Commerce), in cooperation with the EmPower North Dakota Commission (Commission) to issue a contract for the purpose of conducting a study to evaluate value-added market opportunities for renewable energy resources and oil and gas. The decision was made to focus the studies on ethanol and natural gas liquids.

The Commission is comprised of leaders from all major energy industries in the state. Their goal is to be critical thinkers for the development of the state's energy resources and to provide the Governor and the Legislature with recommendations for policy and laws. In the most recent Commission report, 2012 Policy Recommendations and Updates, the Commission recommended increased levels of funding for the renewable R&D program and the oil and gas research fund. The legislature approved \$3 million for renewables and \$10 million for oil and gas.

Further, the Commission recommended that the state coordinate with private industry to identify the steps necessary to create a viable chemical industry related to energy resources. The intention was to include funding a study to evaluate value-added market opportunities for energy resources. The legislature subsequently approved the funding.

### **2.02 Budget**

The State legislature appropriated \$500,000 for conducting 2 studies, one for value-added opportunities related to renewables and one for oil and gas. Commerce and the Commission have decided to limit the studies to ethanol for the renewable study and NGLs for the oil and gas study.

## SECTION THREE SCOPE OF WORK

### 3.01 Scope of Work

1. Describe the background of the industry – NGLs to chemicals
  - a. Identify and describe the range of products produced from the NGL stream.
  - b. Describe what is happening to market size, growth, geographical distribution, and profits for the range of products.
  - c. Identify the major customers and their needs and buying processes.
  - d. Identify the major competitors and describe their objectives, strategies, strengths, weaknesses, sizes, and market shares. Identify, where possible, those that have demonstrated an interest in expanding their facilities outside of their current location.
  - e. Outlook and trends for products
    - i. Foreign
    - ii. United States
2. Marketing Analysis: A market assessment of value-added products derived from NGLs and other market factor trend analysis (historical, current and forecasts)
  - a. Identify supply chains for various products.
  - b. Provide a review of products markets (demand and pricing) within the United States. Review should include both historical and current conditions. Complete a similar review of the broader area markets for refined products internationally. Identify any significant difference between these markets and evaluate whether those differences could impact the decision to construct a refinery.
  - c. Based on the review of the markets, provide a range of price and demand ten year forecast for the products market domestic and world-wide.
  - d. Identify potential sources for the “next best” NGL supply for processing plant, if Williston Basin NGL supply has limits or constraints.
  - e. Review potential competitive impact of a **???? NGL processing plant** on other key players nationally and internationally.
  - f. Identify current or forecast product quality issues (i.e., changes in EPA regulations) and consider their impact in the forecast, making quality adjustments as needed.
  - g. Chart historical product price mix analysis from 2002 to 2012. Provide demand trends and growth or decline rates for these products. Define which market players are filling any of the growing trend product areas. These will be “processing plant” prices, net of any transportation costs to move these products to market.
  - h. Wherever applicable, provide an interpretation of the data to yield marketing intelligence.
3. Among the companies identified to be in a growth or expansion stage, identify “most likely” candidates and rationale for expanding in North Dakota .

### 3.02 Location of Work

To be determined by the Contractor

### 3.03 Skills and Experience Required

1. A Statement of qualifications of your firm and potential collaborators;
2. Project references;
3. Study methods and methodologies to address the project questions;

### 3.04 Deliverables

Reporting -- selected Consultant is responsible for the following:

1. Interim progress report to the EmPower ND Commission
2. Final report to the EmPower ND Commission
3. Legislative management – Energy Development and Transmission Committee
4. ??????? 2015 Legislative Assembly ??????

### 3.05 Contract Schedule

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

The approximate contract schedule is as follows:

Contract Start Date:	November 15, 2013
Interim Progress Report	February 14, 2014
Complete Study and Report to Commission	May 2, 2014
Report to Legislative Management	July 2014
Report to Legislature/Committee	January-April 2015

## **SECTION FOUR GENERAL CONTRACT INFORMATION**

### **4.01 Contract Term**

The State intends to enter into a contract effective November 15, 2013, and ending upon final report to the 2015 Legislative Assembly, but not later than April 30 2015.

### **4.02 Contract Type**

This will be a firm fixed contract.

### **4.03 Standard Contract Provisions**

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

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

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

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

### **4.05 Additional Terms and Conditions**

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

### **4.06 Supplemental Terms and Conditions**

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

- A. if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and
- B. if the State's rights would be diminished as a result of application of a supplemental term or condition included in the proposal, the supplemental term or

condition will be considered null and void.

#### **4.07 Contract Approval**

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

#### **4.08 Contract Changes - Unanticipated Amendments**

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

The contractor will not commence additional work until the project director has secured any required State approvals necessary for the amendment and issued a written contract amendment, approved by the purchasing agency.

#### **4.09 Indemnification and Insurance Requirements**

Offerors must review the attached Sample Service Contract for indemnification and insurance requirements. The indemnification and insurance provisions will be incorporated into the final contract.

Objections to any of the provisions of the Indemnification and Insurance Requirements must be made in writing to the attention of the procurement officer by the time and date set for receipt of questions. No alteration of these provisions will be permitted without prior written approval from the purchasing agency in consultation with the North Dakota Risk Management Division.

Upon receipt of the Notice of Intent to Award, the successful offeror must obtain the required insurance coverage and provide the procurement officer with proof of coverage prior to contract approval. The coverage must be satisfactory to the purchasing agency, in consultation with the North Dakota Risk Management Division. An offeror's failure to provide evidence of insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.

#### **4.10 Taxes and Taxpayer Identification**

The contractor must provide a valid Vendor Tax Identification Number as a provision of the contract.

The State is not responsible for and will not pay local, state, or federal taxes. The State sales

tax exemption number is E-2001, and certificates will be furnished upon request by the purchasing agency.

A contractor performing any contract, including service contracts, for the United States Government, State of North Dakota, counties, cities, school districts, park board or any other political subdivisions within North Dakota is not exempt from payment of sales or use tax on material and supplies used or consumed in carrying out contracts. In these cases, the contractor is required to file returns and pay sales and use tax just as required for contracts with private parties. Contact the North Dakota Tax Department at 701-328-3470 or visit its website at <http://www.nd.gov/tax> for more information.

A contractor performing any contract, including a service contract, within North Dakota is also subject to the corporation income tax, individual income tax, and withholding tax reporting requirements, whether the contract is performed by a corporation, partnership, or other business entity, or as an employee of the contractor. In the case of employees performing the services in the state, the contractor is required to withhold state income tax from the employees' compensation and remit to the state as required by law. Contact the North Dakota Tax Department at 701-328-3125 or visit its web site for more information

#### **4.11 Proposed Payment Procedures**

The State will make payments based on a negotiated payment schedule. Each billing must consist of an invoice and a monthly progress report. No payment will be made until the progress report and the project director has approved invoice.

The State will not make any advanced payments before performance by the contractor under this contract.

#### **4.12 Contract Funding**

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

#### **4.13 Payment Terms**

No payment will be made until the purchasing agency approves the contract.

Payment for services received under contracts will normally be made within 30 calendar days after receipt and acceptance by the purchasing agency or after receipt of a correct invoice, whichever is later. Payment inquiries must be directed to the purchasing agency.

#### **4.14 Inspection & Modification - Reimbursement for Unacceptable Deliverables**

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

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

#### **4.15 Termination for Default**

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

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

#### **4.16 Open Records Laws - Confidentiality**

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

#### **4.17 Work Product, Equipment, and Material**

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

#### **4.18 Independent Entity**

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

#### **4.19 Assignment**

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

#### **4.20 Disputes - Applicable Law and Venue**

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

## **SECTION FIVE EVALUATION CRITERIA AND CONTRACTOR SELECTION**

All proposals will be reviewed to determine if they are responsive to the requirements of this solicitation. The procurement officer or an evaluation committee will evaluate responsive proposals. The evaluation will be based solely on the evaluation factors set forth in this RFP. The evaluation will consider information obtained subsequent to any discussions with offerors determined to be reasonable for award and any demonstrations, oral presentations, or site inspections, if required in this RFP.

### **5.01 Understanding of the Project**

20% of the total possible evaluation points will be assigned to this criterion.

- A. Has the offeror demonstrated a thorough understanding of the purpose and scope of the project?
- B. Has the offeror demonstrated an understanding of the deliverables the State expects it to provide?
- A. Has the offeror demonstrated an understanding of the State's time schedule and provided a time table for completion of the project?
- B. Is the proposal submitted responsive to all material requirements in the RFP?

### **5.02 Methodology Used for the Project**

20% of the total possible evaluation points will be assigned to this criterion.

- A. Does the methodology depict an innovative approach to fulfilling the requirements of the RFP?
- B. Does the methodology match and achieve the objectives set out in the proposal?
- C. Does the methodology have provisions for quality assurance?

### **5.03 Experience and Qualifications**

20% of the total possible evaluation points will be assigned to this criterion.

- A. Do the individuals assigned to the project have experience on similar projects?
- B. Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the RFP requires?

- C. Has the firm demonstrated experience in completing similar projects on time and within budget?
- D. Did the references provide information to verify the satisfactory performance of the vendor?
- E. If a subcontractor will perform work on the project, how well does it measure up to the evaluation used for the offeror?

#### **5.04 Contract Cost**

40% 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. The cost amount used for evaluation may be affected by the application of North Dakota preference laws (N.D.C.C. 44-08-01). The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be evaluated according to the method set forth in the Proposal Evaluation form in section seven.

## **SECTION SIX PROPOSAL FORMAT AND CONTENT**

### **6.01 Proposal Format and Content**

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

### **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 the State 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 where the firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g. employed by the State of North Dakota).

Proposals must be signed by a company officer empowered to bind the company. 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 provide 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:

- A. title;
- B. resume;
- C. description of the type of work the individual will perform; and
- D. the number of estimated hours for each individual named above.

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)** professional reference names and phone numbers for similar projects the offeror's firm has completed. The State reserves the right to contact any references provided by the offeror. Offerors are invited to provide letters of reference from previous clients.

#### **6.05 Cost Proposal**

All costs associated with the contract must be stated in U.S. currency. The cost proposal must be submitted in a separate sealed envelope or package marked "Cost Proposal".

#### **6.06 Required Enclosures**

Offerors must provide all documents, samples, or other information 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 State Not Responsible for Preparation Costs**

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

### **7.03 Conflict of Interest**

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

### **7.04 Offeror's Certification**

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

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

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

### **7.05 Offer Held firm**

Proposals must remain open and valid for at least 60 days from the deadline specified for

submission of proposals. In the event award is not made within 60 days, the State will send a written request to all offerors deemed susceptible for award asking offerors to hold their price firm for a longer specified period of time.

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

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

### **7.07 Alternate Proposals**

Offerors may submit only one proposal for evaluation. Alternate proposals will be rejected.

### **7.08 Subcontractors**

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

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

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

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

### **7.09 Joint Ventures**

Joint ventures will not be allowed.

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

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

Offerors may make a written request that trade secrets and other proprietary data contained in proposals be held confidential. Material considered confidential by the offeror must be clearly identified, and the offeror must include a brief statement that sets out the reasons for confidentiality. See the North Dakota Office of the Attorney General website for additional information. <http://www.ag.state.nd.us/OpenRecords/ORM.htm>

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

### **7.11 Evaluation of Proposals**

All proposals will be reviewed to determine if they are responsive to the requirements of this solicitation. The procurement officer or an evaluation committee will evaluate responsive proposals. The evaluation will be based solely on the evaluation factors set forth in this RFP. The evaluation will consider information obtained subsequent to any discussions with offerors determined to be reasonable for award and any demonstrations, oral presentations, or site inspections, if required in this RFP.

### **7.12 Right of Rejection**

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

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

The procurement officer may waive minor informalities that:

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

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

### **7.13 Clarification of Offers**

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

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

### **7.14 Discussions and Best and Final Offers**

The State may conduct discussions or request best and final offers with offerors that have submitted proposals determined to be reasonably susceptible for award. The State is not obligated to do so, therefore, offerors should submit their best terms (cost and technical). The purpose of these discussions is to ensure full understanding of the requirements of the RFP and the offeror's proposal. Discussions will be limited to specific sections of the RFP or proposal identified by the procurement officer. Discussions, if held, will be after initial evaluation of proposals by the proposal evaluation committee. If modifications to the proposal are made as a result of these discussions, the modifications must be put in writing.

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

### **7.15 Preference Laws**

The preference given to a resident North Dakota offeror will be equal to the preference given or required by the state of the nonresident offeror. 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://tpps.das.state.or.us/purchasing/pref-law/reciprocal\\_detail.php](http://tpps.das.state.or.us/purchasing/pref-law/reciprocal_detail.php) or contact the North Dakota State Procurement Office at 701-328-2740.

### **7.16 Contract Negotiation**

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

If contract negotiations are commenced, they will be held at:

ND Department of Commerce  
Century Center  
1600 East Century Avenue, Suite 2  
Bismarck, ND

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

### **7.17 Failure to Negotiate**

If the selected offeror:

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

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

### **7.18 Notice of Intent to Award - Offeror Notification of Selection**

After the completion of contract negotiations the procurement officer will issue a written Notice of Intent to Award and send copies to all offerors. The Notice of Intent Award will set out the names and addresses of all offerors and identify the proposal selected for award. The scores and placement of other offerors will not be part of the Notice of Intent to Award. The successful offeror named in the Notice of Intent to Award is advised not to begin work, purchase materials, or enter into subcontracts relating to the project until both the successful offeror and the State sign the contract.

### **7.19 Protest and Appeal**

North Dakota law provides that an interested party may protest a solicitation. If an interested party wishes to protest this RPF's content, the protest must be received, in writing, by the procurement officer at least seven calendar days before the deadline for receipt of proposals.

An interested party may protest the award or proposed award of a contract. If an offeror wishes to protest the award of a contract or proposed award of a contract, the protest must be received, in writing, by the procurement officer within seven calendar days after the date the Notice of Intent to Award was issued.

**SECTION EIGHT  
ATTACHMENTS**

**8.01 PROPOSAL EVALUATION FORM**

All proposals will be reviewed for responsiveness and then evaluated using the criteria set out herein.

**EVALUATION CRITERIA AND SCORING**

Person or Firm Name \_\_\_\_\_

Name of Proposal Evaluation Member \_\_\_\_\_

Date of Review \_\_\_\_\_

RFP Title/Number \_\_\_\_\_

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

**Understanding of the Project**

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

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

Proposals will be evaluated against the questions set out below. Do not assign points to individual questions; instead, award a total score for each evaluation criterion.

- A. Has the offeror demonstrated a thorough understanding of the purpose and scope of the project?

**EVALUATOR'S NOTES** \_\_\_\_\_

\_\_\_\_\_

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

EVALUATOR'S NOTES \_\_\_\_\_

\_\_\_\_\_

C. Has the offeror demonstrated an understanding of the State's time schedule and provided a time table for completion of the project?

EVALUATOR'S NOTES \_\_\_\_\_

\_\_\_\_\_

D. Is the proposal submitted responsive to all material requirements in the RFP?

EVALUATOR'S NOTES \_\_\_\_\_

\_\_\_\_\_

EVALUATOR'S POINT TOTAL \_\_\_\_\_

### Methodology Used for the Project

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

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

Proposals will be evaluated against the questions set out below. Do not assign points to individual questions; instead, award a total score for each evaluation criterion.

A. Does the methodology depict an innovative approach to fulfilling the requirements of the RFP?

EVALUATOR'S NOTES \_\_\_\_\_  
\_\_\_\_\_

B. Does the methodology match and achieve the objectives set out in the proposal?

EVALUATOR'S NOTES \_\_\_\_\_  
\_\_\_\_\_

C. Does the methodology have provisions for quality assurance?

EVALUATOR'S NOTES \_\_\_\_\_  
\_\_\_\_\_

EVALUATOR'S POINT TOTAL \_\_\_\_\_

### Experience and Qualifications

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

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

Proposals will be evaluated against the questions set out below. Do not assign points to individual questions; instead, award a total score for each evaluation criterion.

A. Do the individuals assigned to the project have experience on similar projects?

EVALUATOR'S NOTES \_\_\_\_\_

\_\_\_\_\_

B. Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the RFP requires?

EVALUATOR'S NOTES \_\_\_\_\_

\_\_\_\_\_

C. Has the firm demonstrated experience in completing similar projects on time and within budget?

EVALUATOR'S NOTES \_\_\_\_\_

\_\_\_\_\_

D. Did the references provide information to verify the satisfactory performance of the vendor?

EVALUATOR'S NOTES \_\_\_\_\_

\_\_\_\_\_

E. If a subcontractor will perform work on the project, how well does it measure up to the evaluation used for the offeror?

EVALUATOR'S NOTES \_\_\_\_\_

\_\_\_\_\_

**EVALUATOR'S POINT TOTAL** \_\_\_\_\_

## Contract Cost

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

## Applying Preference Laws

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

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

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

See <http://www.state.nd.us/csd/spo/resources.html> for a list of States Preference Laws or contact the North Dakota State Procurement Office at 701-328-2683.

## Converting Cost to Points

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

Price of Lowest Cost Proposal

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

## COST PROPOSAL EVALUATION

EVALUATOR'S POINT TOTAL \_\_\_\_\_

NOTES:

## 8.02 Sample Personal Service Contract

The parties to this contract are the state of North Dakota, acting through its Department of Commerce (STATE) and \_\_\_\_\_ (CONTRACTOR);

### 1. SCOPE OF SERVICE

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

---

---

---

### 2. TERM OF CONTRACT

The term of this contract is for a period of \_\_\_\_\_ months, commencing on the \_\_\_\_\_, and terminating on the \_\_\_\_\_.

### 3. COMPENSATION

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

### 4. TERMINATION OF CONTRACT

**A. Termination without cause.** This contract may be terminated by mutual consent of both parties, or by either party upon 30 days' written notice.

**b. Termination for lack of funding or authority.** The STATE may terminate this contract effective upon delivery of written notice to the CONTRACTOR, or on any later date stated in the notice, 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. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.
2. If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
3. If any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.

Termination of this contract under this subsection is without prejudice to any

obligations or liabilities of either party already accrued prior to termination.

**c. Termination for cause.** The STATE by written notice of default to the CONTRACTOR may terminate the whole or any part of this contract:

1. If the CONTRACTOR fails to provide services required by this contract within the time specified or any extension agreed to by the STATE; or
2. If the 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 STATE provided in the above clause related to defaults by the CONTRACTOR are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

## **5. FORCE MAJEURE**

CONTRACTOR shall not be held responsible for delay or default caused by fire, riot, acts of God or war if the event is beyond the CONTRACTOR's reasonable control and the CONTRACTOR gives notice to the STATE immediately upon occurrence of the event causing the delay or default or which is reasonably expected to cause a delay or default.

## **6. RENEWAL**

This contract will not automatically renew. STATE will provide written notice to CONTRACTOR of its intent to renew this contract at least sixty (60) days before the scheduled termination date.

## **7. MERGER AND MODIFICATION**

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

## **8. 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 shall not be affected, 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.

## **9. ASSIGNMENT AND SUBCONTRACTS**

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty

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

**10. NOTICE**

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

- North Dakota Department of Commerce, PO Box 2057, Bismarck, ND 58502

- \_\_\_\_\_

**11. 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 District Court of Burleigh County, North Dakota.

**12. SPOILIATION – NOTICE OF POTENTIAL CLAIMS**

CONTRACTOR shall promptly notify state of all potential claims which arise or result from this contract. CONTRACTOR shall also 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 grants to the STATE the opportunity to review and inspect the evidence, including the scene of an accident.

**13. INDEMNITY**

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

**14. INSURANCE**

A. 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 with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.

2. Automobile liability, including owned (if any), hired, and non-owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
3. Workers Compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.

B. General Insurance 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 insurance required in this section, through a policy or endorsement, shall include:
  - a. a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against North Dakota;
  - b. a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned STATE representative;
  - c. the CONTRACTOR shall furnish a certificate of insurance to the undersigned STATE representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable;
  - d. failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

## 15. ATTORNEY FEES

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

## 16. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

The STATE does not agree to any form of binding arbitration, mediation, or other

forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. The STATE does not waive any right to a jury trial.

**17. CONFIDENTIALITY**

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

**18. COMPLIANCE WITH PUBLIC RECORDS LAW**

CONTRACTOR understands that, except for disclosures prohibited in Section 17, the STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records which are obtained or generated by the CONTRACTOR under this contract, except for records that are confidential under Section 17, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact the STATE immediately upon receiving a request for information under the open records law and to comply with the STATE's instructions on how to respond to the request.

**19. WORK PRODUCT, EQUIPMENT AND MATERIALS**

All work product, equipment or materials created or purchased under this contract belong to the STATE and must be delivered to STATE at STATE's request upon termination of this contract. CONTRACTOR agrees that all materials prepared under this contract are "works for hire" within the meaning of the copyright laws of the United States and assigns to STATE all rights and interests CONTRACTOR may have in the materials it prepares under this contract, including any right to derivative use of the material. CONTRACTOR shall execute all necessary documents to enable STATE to protect its rights under this section.

**20. INDEPENDENT ENTITY**

CONTRACTOR is an independent entity under this contract and is not a STATE employee for any purpose, including but not limited to 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 Workers' Compensation Act. CONTRACTOR retains sole and absolute discretion in the

manner and means of carrying out the CONTRACTOR's activities and responsibilities under this contract, except to the extent specified in this contract.

**21. NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

CONTRACTOR agrees to comply with all applicable laws, rules, regulations and policies, including but not limited to those relating to nondiscrimination, accessibility and civil rights. CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including but not limited to sales and use taxes and unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

**22. STATE AUDIT**

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

**23. TAXPAYER ID**

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

**24. EFFECTIVENESS OF CONTRACT**

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

CONTRACTOR

\_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

STATE OF NORTH DAKOTA  
Department of Commerce

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

July 8, 2013

## **NDSU Extension Service Energy Education**

Science and research based education and assistance by an organization that is not selling anything or advocating a specific agenda, but is providing expertise so people can make informed decisions for their benefit.

Networking and communication with energy agencies and organizations – Department of Commerce, Empower ND, EERC, NDARE, Utilities, etc.

- Energy (safe and efficient utilization) – residential (structural, etc.), agricultural, renewable (biofuels, wind), traditional (coal, oil), environmental impacts, etc.
  - *Education and assistance limited by funding.*
- Agriculture – examples of areas of work include dust, leasing, siting, landowner, renting and mineral owner rights, roads, rural infrastructure, financial impacts, etc.
- Community, Economic Development – examples of areas of work includes study circle process for energy impacted areas, land use planning, strategic planning, zoning and ordinances, leadership development, building community, environmental impact, etc.
- Family Consumer Science – examples of areas of work include public safety, parenting from a distance, home and business energy conservation; day care/childcare safety, nutrition, Family Finances in a Boom Economy, etc.

**We request your input on ways we can enhance our educational program for the benefit of North Dakota. We also request your assistance in filling energy related educational needs.**

*Kenneth Hellevang @ ndsu.edu*  
*701-231-7243*