

North Dakota Industrial Commission



Doug Burgum
Governor

Drew H. Wrigley
Attorney General

Doug Goehring
Agriculture Commissioner

Department of Mineral Resources Director Search Committee Meeting
Thursday, February 15th, 2024, 9:00 am
Fort Union Room, Ground Floor State Capitol Building

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Call-in number

[+1 701-328-0950,,692833014#](#)

- I. Introductions
- II. Committee Reports:
 - a. Report on February 7th Search Committee Meeting ([Attachment 1](#))
- III. Executive Search Firm:
 - a. **Consideration of Request for Proposal for Executive Recruitment Services for the Department of Mineral Resources** ([Attachment 2](#))
- IV. Future Meeting Dates
- V. Other Business
- VI. Adjourn

***Bold actions indicate committee action**

North Dakota Industrial Commission



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Department of Mineral Resources Director Search Committee Meeting
Wednesday, February 7th, 2024, 1:00 pm
Fort Union Room, Ground Floor State Capitol Building

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Call-in number

[+1 701-328-0950,,744853530#](#)

- I. Introductions
- II. Committee Reports:
 - a. Search Committee Membership and Process ([Attachment 1](#))
 - b. Current DMR Director Job Tasks ([Attachment 2](#))
 - c. Search Process Timeline ([Attachment 3](#))
- III. Executive Search Firm:
 - a. Search Firms Under State Enterprise Contract ([Attachment 4](#))
 - b. Procurement Process if New Executive Search Firm is used – *Abigail Dschaak, State Procurement Officer*
- IV. Committee Action on Executive Search Firm**
- V. Future Meeting Dates
- VI. Other Business
- VII. Adjourn

***Bold actions indicate committee action**

Search Committee Membership and Process
Director of the Department of Mineral Resources Search
January – August 2024

Search Committee Voting Members

- Industrial Commission representatives
 - Jace Beehler representing the Governor
 - Claire Ness representing the Attorney General
 - Tom Bodine representing the Agriculture Commissioner
- Oil and Gas Research Council representatives
 - Zac Weis
 - Preston Page
- Justin Kringstad, Pipeline Authority
- Reice Haase, Office of the Industrial Commission

Department Advisor and Administrative Services

Robyn Loumer, DMR

Search Committee Role Includes:

- Understand the position and uniqueness of DMR
- Review internal and external candidates
- Affirm slate of candidates to interview based on recommendation of search firm
- Conduct interviews
- Develop consensus of recommended 2-4 candidates to forward to the IC for final interviews

Initial tasks to be completed by search committee:

- Review process memo, search firms under state enterprise contract
 - Take action to move forward with either the enterprise contract or procure a new search firm
- Draft position posting, to include minimum and preferred qualifications
- Develop draft selection and scoring criteria to be used in the candidate screening process

Search Firm Role Includes:

- Understand the position and uniqueness of DMR
- Source candidates with preference given to those with current or past ties to ND
- Provide vetted and qualified candidates to the search committee for initial interviews
- Responsible for communication with candidates not selected for interviews

Responsibilities of DMR Advisor

- Serve as main contact of search firm
- Responsible for communication with candidates selected for interviews
 - Interviews
 - Selection
 - Post interview communication to those not selected
- Provide the Committee with Department-specific feedback



Industrial Commission – Department of Mineral Resources

Position – Director

Unclassified

Date Revised – January 4, 2024

1. Daily

- a. Supervise Oil & Gas Division Director, State Geologist, and DMR Support Staff Officer to implement agency goals and ensure compliance with statutes, regulations, and policies.
- b. Sign orders for cases with signature authority delegated per NDIC memo.
- c. Work with Attorney General's office and other agency staff to prepare formal enforcement actions as necessary. Follow through to see the violations are corrected.

2. Weekly

- a. Monday afternoon activity review / planning meeting with Oil & Gas Division Director, State Geologist, and DMR Support Staff Officer
- b. Prepare and delegate preparation of orders for signature of the Director and Commission. (Back-up is UIC/Meter/Statistical Manager)

3. Monthly

- a. Industrial Commission meeting
 - i. Submit agenda items 2 weeks prior to meeting
 - ii. Orders for nondelegated case decisions
 - iii. Quarterly Reports (OGD, GSD, PA rotation)
 - iv. Legislature update
 - v. Litigation status update
 - vi. Federal regulatory update
 - vii. Complaint settlement review in confidential session
- b. Oil & Gas Hearings
- c. Cases review meeting – agenda prepared by Oil & Gas Division Director
- d. Complaints review meeting – agenda prepared by Field Supervisor
- e. Director's Cut webinar
- f. Geology Staff meeting – agenda prepared by State Geologist
- g. Natural Resources Agency Directors meeting

4. Quarterly

- a. USFS DPGL meeting
- b. BLM State Office meeting

5. Semiannual

- a. IOGCC Annual Business meeting (ND Official Rep)
- b. IOGCC Annual Conference (ND Official Rep)
- c. OGRC meetings
- d. CSEA Technical Committee and Authority meetings
- e. NDPC Board of Directors meetings
- f. PCORP Technical Advisory Board meetings
- g. BSC Petroleum Production Advisory Board meetings
- h. BSC Business and Industry Leadership Team meetings
- i. Gas Capture meetings with Midstream & Operators not achieving GC goals

6. Annual

- a. Annual certification of on-reservation trust/non-trust lands acreage ratio by April 30 to tax commissioner
- b. Summer Field Staff meeting
- c. December All Staff meeting
- d. Operator Asset Management meetings
- e. Midstream & Operator Gas Capture meetings
- f. NDPC Annual meeting presentation
- g. WDEA Annual meeting presentation
- h. Production and Transportation Roundtable - Pipeline Authority & Enbridge
- i. PCORP Annual meeting presentation
- j. Bakken Rocks Cookfest presentations
- k. EERC Energize North Dakota meeting
- l. NDPC Teachers Education presentation
- m. NARO Annual meeting presentation
- n. LEC Annual meeting presentation
- o. Bakken Production Optimization meeting
- p. EDND Annual meeting presentation
- q. LAND Annual meeting presentation
- r. EDTC meeting presentation

7. Biennial

- a. Legislative Session – Agency Budget & Other testimony – odd years
- b. Strategy Reviews and Agency Budget preparation – even years
- c. Supervise Audit – Finance Department – even years
- d. Supervise Oil & Gas Division Director Rules Revision process – odd years
- e. Advisory Council on Revenue Forecast – even years
- f. NAPE week meetings with ND oil and gas operators – even years

8. Back-up responsibilities

- a. Provide back-up for Oil & Gas Division Director.
- b. Provide back-up for State Geologist
- c. Provide back-up for DMR Support Staff Officer

9. Miscellaneous Responsibilities

- a. Report to director of legislative council on balance and fees paid into the carbon dioxide storage trust fund every 4 years (next report due in December 2026)
- b. CCUS Hearings
- c. BLM meetings and rule revision comments
- d. EPA meetings and rule revision comments
- e. Other federal agency rule revision comments
- f. Litigation declarations and expert testimony
- g. Visiting Delegation presentations
- h. Orphan Well Program oversight

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Department of Mineral Resources Director Search Committee Schedule

| | |
|---------------------------------------|---|
| January 24th, 2024: | Industrial Commission authorizes search committee and directive |
| February 7th, 2024: | Initial meeting of the Search Committee, begin process for search firm selection |
| February-March 2024: | RFP process, Committee drafts proposed selection and scoring criteria, first draft of job posting |
| April 2024: | Select search firm, finalize job posting |
| May - June 2024: | Position open, recruiting candidates |
| July 2024: | Schedule interviews with search committee |
| Late July – Early August 2024: | Schedule interviews with Commission, selection of candidate |

Executive Search Firms Under State Enterprise Contract

| Contractor | Summary of Experience | Address | City | Contact | Title | Telephone | Email |
|--|--|---|-------------------------|---|--|----------------------------------|--|
| MGT of America Consulting, LLC (GovHR USA, LLC) | General Government, Municipal and Local Government | 630 Dundee Road Suite 130 | Northbrook, IL 60062 | Laurie Pederson | Contract Rep | 847-380-3198 | lpederson@govhrusa.com |
| AGB Search | Higher Education | 1133 20th Street Suite 300 | Washington, DC 20036 | Rod McDavis | Contract Rep | 202-776-0856 | rod.mcdavis@agbsearch.com |
| Academic Search | Higher Education | 1015 18th Street NW Suite 510 | Washington, DC 20036 | Shawn Hartman | Contract Rep | 202-332-4049 | shawn.hartman@academicsearch.org |
| Greenwood Asher & Associates | Higher Education | 42 Business Center Drive Suite 206 | Miramar Beach, FL 32550 | Courtney Kerrigan Team Greenwood | Business Development Manager Contract Rep | 850-337-1494 850-650-2277 | courtneykerrigan@greenwoodsearch.com team@greenwoodsearch.com |
| Effertz Executive Search (Olson Effertz Lobbying & Consulting) | Education, Information Technology | 1601 N 12th Street Suite 609 | Bismarck, ND 58501 | Kayle Effertz Kleven | Contract Rep | 701-595-1844 | kayla@olsoneffertz.com |
| Spherion Staffing (Elite Personnel) | General Government, Engineering, Finance, Light Industrial | 1830 East Century Ave | Bismarck, ND 58503 | Karen Witzel | VP Sales and Marketing | 701-298-8300 | karenwitzel@spherion.com |

STATE OF NORTH DAKOTA
Office of Management and Budget, Procurement Office
4th Floor Capitol Tower
600 E. Boulevard Ave. Dept. 012
Bismarck, ND 58505

REQUEST FOR PROPOSAL (RFP)

RFP Title: Executive Recruitment Services for the Department of Mineral Resources

RFP Number: 110.7-24-010

Issued: February 16, 2024

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ATTACHMENTS

Attachment 1 – Position Description

Attachment 2 – Technical Proposal Evaluation Worksheet

Attachment 3 – Contract

Attachment 4 – Cost Proposal

SECTION ONE – INSTRUCTIONS

1.1 PURPOSE OF RFP

The State of North Dakota (STATE), acting through its Industrial Commission (NDIC), is seeking a qualified independent contractor with experience in executive recruitment services, specifically with previous experience with the recruitment of oil and gas industry professionals, to identify and evaluate qualified candidates to fill the position of Director for the North Dakota Department of Mineral Resources (DMR) with combined management / executive management experience.

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. Do not add the Procurement Officer to any marketing distribution lists.

PROCUREMENT OFFICER: Abigail Dschaak
EMAIL: aadschaak@nd.gov
PHONE: 701-328-4912
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 DEFINITIONS

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

| Acronym or Term | Name or Definitions |
|----------------------|---|
| DMR | Department of Mineral Resources |
| Contractor | Entity that has an approved contract with the State of North Dakota |
| CT | Central Time Zone |
| OMB | Office of Management and Budget |
| RFP | Request for Proposal |
| Solicitation Closing | Deadline for receipt of proposals listed in the RFP Schedule |
| SPO | Office of Management and Budget, State Procurement Office |
| SPO Online | State Procurement Office Online system |

1.4 RFP SCHEDULE

| EVENT | DATE and TIME |
|---|--------------------------|
| RFP issued | 2/16/2024 |
| Deadline for submission of Questions and Objections | 2/23/2024 by 1:00 PM, CT |
| Solicitation Amendment with responses to Questions issued approximately (if required) | 2/28/2024 |
| Deadline for receipt of proposals (Solicitation Closing) | 3/6/2024 by 1:00 PM, CT |

| EVENT | DATE and TIME |
|--|---------------------------|
| Demonstrations or presentations. (if needed) | 3/13/2024 – 3/14/2024 |
| Proposal evaluation completed by approximately | 3/19/2024 |
| Notice of intent to award issued approximately | 3/21/2024 |
| Secretary of State Registration, if determined to be required. | Prior to Contract Signing |
| Contract start approximately | 4/1/2024 |

1.5 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.

1.6 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 by [email](#) or call 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 the legal reference.

1.7 BIDDERS LIST REGISTRATION

Individuals or business entities desiring to be notified of bidding opportunities may apply to be placed on the Bidders List. ([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 receipt of solicitation notices. The Bidders List application and SPO Online system use commodity codes to identify categories of goods, services, and information technology.

The commodity codes used for this solicitation are: 918-06, 918-07, 918-21, 918-32, 918-66, 918-75, 918-85, 961-30.

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.

1.8 STATE PROCUREMENT WEBSITE (SPO ONLINE)

This RFP and any related amendments and notices will be posted on the North Dakota OMB website using SPO Online. 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.

1.9 AMENDMENTS TO THE RFP

If an amendment to this RFP is issued, it will be provided to all Offerors on the Bidders List for the solicitation and to those prospective Offerors who have contacted the Procurement Officer to receive notices related to the RFP. An Offeror shall include in their proposal any required acknowledgements of amendments to the RFP.

1.10 DEADLINE FOR QUESTIONS AND OBJECTIONS

Offerors should carefully review the RFP including all Attachments. Offerors may ask questions to obtain clarification and 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. If no deadline is specified, questions or objections must be received at least seven days prior to the Solicitation Closing deadline. The Procurement Officer may elect to respond to questions received after the deadline.

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 and title cited in the email subject line.

Responses to questions will be distributed as a solicitation amendment unless the question can be answered by referring the Offeror to a specific section of the RFP.

1.11 PREPROPOSAL CONFERENCE OR SITE INSPECTION

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

1.12 OFFER HELD FIRM

Offerors must hold proposals firm for at least 120 days from the deadline for receipt of proposals (Solicitation Closing). The STATE may send a written request to all Offerors to hold their offer firm for a longer period of time.

1.13 OFFEROR RESPONSIBLE FOR COSTS

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.

1.14 TAXES

The STATE 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 is 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 Form 1099 reportable. The purchasing agency may require the contractor to submit an IRS Form W-9.

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. Contact the North Dakota Tax Department at 701-328-1246 or visit their website at <https://www.nd.gov/tax/tax-resources/> 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 701-328-1248 or visit their website for more information.

1.15 PROPOSAL RECEIPT DEADLINE – LATE PROPOSALS REJECTED

An Offeror is solely responsible for ensuring their proposal is received by the STATE prior to the Solicitation Closing deadline identified in the RFP schedule regardless of the method of submission. A solicitation amendment will be issued if this deadline is changed. An Offeror may contact the Procurement Officer to inquire whether their proposal has been received. Proposals delivered late will be rejected pursuant to [N.D.A.C. § 4-12-08-13](#).

1.16 PROPOSAL OPENING

A public opening will not be held.

This is a formal sealed Request for Proposal (RFP) process. Proposals will be secured and held unopened until the Solicitation Closing deadline. Per [N.D.A.C § 4-12-08-04](#), the openings may be made public at the discretion of the purchasing agency. If a public opening is held, only the names of Offerors that submitted proposals can be revealed at the opening, and each proposal will be opened in a manner to avoid disclosure of the contents to the competing Offerors.

1.17 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 their proposal and shall provide evidence that a substantial mistake has been made, at which point the STATE may permit withdrawal.

1.18 NEWS RELEASES

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

1.19 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 official 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 [N.D.A.C. § 4-12-04-04](#). ([N.D.C.C. § 12.1-13-03](#))

Persons employed by the State of North Dakota, 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.

1.20 ATTEMPT TO INFLUENCE PROHIBITED

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

1.21 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](#).

1.22 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. If no deadline for questions is specified, protests based upon defects in the solicitation must be made at least seven calendar days before the deadline for receipt of proposals.

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

The protestor may appeal the decision of the Procurement Officer to the Director of OMB or designee in writing within seven calendar days after receiving notice of the decision pursuant to [N.D.C.C. § 54-44.4-12](#) and [N.D.A.C. § 4-12-14-03](#).

1.23 SPECIFICATIONS PREPARED BY NON-STATE PERSONNEL

When a purchasing agency has specifications prepared by someone other than a state employee or official on behalf of the STATE, that person or business entity must be excluded from submitting bids or proposals in accordance with [N.D.A.C. § 4-12-06-06](#).

1.24 SUPPLIER REGISTRATION (PAYEE)

The successful Offeror will be required to complete Supplier Registration, if not already registered as a Supplier. Any individual or business who will be receiving payment from a state agency or higher education institution must complete a registration process to collect important financial and taxpayer information. Payments are generally made by check or automatic clearing house (ACH), and taxpayer information must be collected in compliance with IRS requirements. The State and North Dakota University System (NDUS) have separate financial systems and vendor registration processes.

SECTION TWO – BACKGROUND

2.1 BACKGROUND INFORMATION

The Director of the Department of Mineral Resources reports to the North Dakota Industrial Commission, which is made up of the Governor, Attorney General and Agriculture Commissioner. The position is responsible for the overall strategic and operational performance of DMR. The Director is responsible for developing recommendations for the North Dakota Industrial Commission which achieve the Commission's objectives of:

- Fostering, encouraging and promoting the development, production and utilization of natural resources of oil and gas in the state in such a manner as will prevent waste
- Authorizing and providing for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas be obtained and that the correlative rights of all owners are fully protected
- Encouraging and authorizing recycling, pressure maintenance and enhanced oil recovery operations in order that the greatest possible economic recovery of oil and gas be obtained within the state to the end that the landowners, royalty owners, producers and the general public realize and enjoy the greatest possible benefit from these vital natural resources
- Regulating geophysical exploration, underground injection control, mineral spacing and pooling, pore space amalgamation and surface infrastructure related to mineral production and gathering

Major tasks for the position include:

- Supervising Oil & Gas Division Director, State Geologist, and DMR Support Staff Officer to implement agency goals and ensure compliance with statutes, regulations, and policies
- Signing orders for regulatory cases with signature authority delegated per NDIC memo
- Preparing formal enforcement actions in consultation with the Attorney General's office
- Present recommended action items to NDIC at their regularly scheduled monthly meetings
- Preside over monthly oil and gas regulatory hearings
- Present a monthly Director's Cut webinar to the press and the general public
- Maintain relationships and meet regularly with stakeholders, tribal nations, local government agencies, other state agencies, and federal agencies
- Serve as the State's official representative on the Interstate Oil and Gas Compact Commission (IOGCC)
- Serve as a technical advisor on the Oil and Gas Research Council, Clean Sustainable Energy Authority, Plains CO₂ Reduction Partnership, North Dakota Revenue Advisory Council and the Bismarck State College Petroleum Production Advisory Board
- Annual certification of reservation trust land acreage ratio to the Tax Commissioner
- Lead biennial agency strategy reviews for the agency
- Provide legislative testimony in support of the agency budget and policy initiatives
- Supervise agency audits and rule revisions

General Background

The NDIC has had regulatory authority over the management of North Dakota's oil and gas resources since 1945. The State Geologist had originally been staffed part-time by the Commission to play this role, splitting time between academic roles under the State Board of Higher Education and regulatory roles under the Industrial Commission.

In 1981, the Oil and Gas Division was created, with the Commission appointing Wes Norton as its first Director. Upon Mr. Norton's retirement, the Commission appointed Lynn Helms as its second director on June 24th, 1998. Under Lynn's leadership, the Oil and Gas Division was merged with the Geological Survey on July 1, 2005, being reorganized under the Department of Mineral Resources with Mr. Helms

as its first director. With Lynn's announced retirement on June 30th, 2024, the Commission will be tasked with hiring its next Director of the Department of Mineral Resources.

Several sections of the North Dakota Century Code address the creation of DMR, its oversight and role in the state.

- Chapter 54-17 Industrial Commission
- Title 38 Mining and Gas and Oil Production
 - Chapter 38-08 Control of Oil and Gas Resources
 - Chapter 38-08.1 Geophysical Exploration Requirements
 - Chapter 38-11.1 Oil and Gas Production Damage Compensation
 - Chapter 38-11.2 Subsurface Exploration Damages
 - Chapter 38-12 Regulation, Development and Production of Subsurface Minerals
 - Chapter 38-12.1 Exploration Data
 - Chapter 38-15 Resolution of Conflicts in Subsurface Mineral Production
 - Chapter 38-18 Surface Owner Protection Act
 - Chapter 38-18.1 Termination of Mineral Interest
 - Chapter 38-19 Geothermal Resource Development Regulation
 - Chapter 38-21 Exploration Fund
 - Chapter 38-22 Carbon Dioxide Underground Storage
 - Chapter 38-23 High-Level Radioactive Waste
 - Chapter 38-24 Underground Storage and Retrieval of Nonhydrocarbons
 - Chapter 38-25 Underground Storage of Oil and Gas

Organizational Structure and Operations

Industrial Commission

DMR operates under the management and control of the Industrial Commission which is comprised of the Governor who acts as Chairman, the Attorney General, and the Agriculture Commissioner.

DMR

The Department of Mineral Resources consists of two divisions, the Oil and Gas Division and the Geological Survey.

The Oil and Gas Division regulates the drilling and production of oil and gas, with a mission to encourage and promote the development, production, and utilization of oil and gas in the state in such a manner as will prevent waste, maximize economic recovery, and fully protect the correlative rights of all owners to the end that the landowners, the royalty owners, the producers, and the general public realize the greatest possible good from these vital natural resources. The Division is also responsible for the regulation of geophysical exploration, underground gathering pipelines, and underground injection control for Class II and Class VI injection wells.

The Geological Survey publishes maps and reports on the mineralogical, paleontological, and geochemical resources of North Dakota, including oil and gas, coal, uranium, clay, sand and gravel, volcanic ash, potash and other salts, etc. In addition to the mapping of subsurface resources, the Survey is actively mapping the surface geology throughout the state with an emphasis on urban areas and the identification of geohazards such as landslides. Survey publications support the regulatory programs of the Industrial Commission, as well as other state and federal agencies, and assist mineral companies, geotechnical consulting firms, city and county governments, landowners, and citizens of the state.

The Geological Survey regulates coal exploration, subsurface mineral exploration and development (this includes all elements, minerals, and compounds other than oil and gas, sand and gravel, and

coal), geothermal facilities (both commercial and residential), the Class III Underground Injection Control Program, and paleontological resources on state-owned lands.

Employees

The North Dakota Legislature has authorized 108 full time equivalents for employment at DMR.

Estimated Salary:

For the purposes of this RFP, the salary for the DMR position is anticipated to be in the range of \$200,000 to \$300,000. The actual salary will be dependent upon qualifications and experience of the selected candidate.

2.2 BUDGET

The funds for payment of this contract are already identified.

SECTION THREE – SCOPE OF WORK

3.1 SCOPE OF WORK

The Offeror shall provide DMR with executive recruiting services to fulfill the purpose of this RFP, including:

Search Strategy:

- Candidate profile development;
- Firm will conduct review of job description and make recommendations for amendments as appropriate;
- Active and passive candidate sourcing methods;
- Identification and recruitment of candidates.

Candidate Evaluation and Selection:

- Make recommendations for criteria for evaluating candidates;
- Methods for initial screening of resumes and applications, including;
 - Development of tailored search strategies;
 - Flexibility to adapt strategies based on the unique needs of the STATE/DMR;
- Present qualified candidates for consideration of first round interviews. Number of candidates will be determined in consultation with the STATE;
- Development and implementation of a process to narrow the candidate list;
- Develop interview questions for the STATE;
- Arrange interview schedules and coordinate travel for in person interviews;
- Rigorous evaluation of candidates, including their skills, experience, and cultural fit;
- Responsible for assisting with all background checks.

Reporting and Communication:

- Provide progress reports on the search;
- Detailed reports on shortlisted candidates.

Timeline:

- Ability to meet deadlines and deliver high-quality results within a specified timeframe;
- Key dates for submission of candidate profiles, interviews, and final interviews.

Expectations:

- Industry Expertise: Understanding of the specific requirements and challenges within the oil and gas industry at the executive level.
- Aligning candidates with client culture:
 - Deep understanding of the NDIC's organizational culture and values.
 - Ensuring that recommended candidates align with the NDIC's cultural expectations.

Employment Guarantee

Offerors must guarantee continued employment of the individual hired for a minimum of one year, preferably two years. If the individual leaves prior to the employment guarantee timeframe from the date of hire, the Offeror must reengage in one equivalent replacement search on an expenses-only basis (no additional fee), unless the candidate's departure has been caused by significant changes in reporting structure or responsibility. The STATE will not reimburse the contractor for expenses exceeding the maximum specified amount unless the contractor obtains prior written approval from the STATE in an amendment to the contract.

Open Records

North Dakota is an open meetings and open records state. Upon award, all proposals for the Offeror will become public record, open and accessible to the public upon request. All information related to the Director candidates brought forward by the Offeror, including employment applications, nominations, reference letters and other documents received or created by the DMR Director Search Committee members, NDIC/DMR employees, STATE or their agents in connection with this search are confidential records under N.D.C.C. section 44-04-18.27, except for candidates designated as “finalists” which are public records. Meetings of the search committee generally are open to the public; notice of meetings and posting of agenda are required. Executive sessions or “closed” meetings may be held to discuss information designated as confidential under North Dakota public records law. The STATE will work with the Contractor to respond to any open records requests.

3.2 REQUIREMENTS

A. LOCATION OF WORK/TRAVEL

The Contractor shall determine the extent of on-site work required to fulfill stated requirements.

B. PROPERTY/SERVICES

State-Furnished Property/Services: The STATE will provide access to office personnel, documents and data as required by the Contractor. If the Contractor is conducting on-site work in Bismarck, the STATE will provide the Contractor with a reasonable amount of office space. The STATE will also provide the Contractor with access to a copy machine.

Contractor-Furnished Property/Services: The Contractor must furnish all labor, equipment, specialized software and supplies.

C. RISK MANAGEMENT

The contractor will take appropriate measures to ensure the safety of their employees, state employees, the public, and property. The contractor must identify any potential risks, issues and problems associated with the project and identify ways to mitigate those potential risks.

D. CONTRACT TERM, SCHEDULE, AND DELIVERABLES

1. Contract Term

The length of this contract will be from the date of award, approximately April 1, 2024, for five months until completion, approximately August 30, 2024. See the attached contract for extension provisions.

2. Schedule and Deliverables

The STATE has identified the following deliverables which are significant work products or milestones in the project. The STATE requires these deliverables to be addressed in the Contract Schedule, at a minimum. The contractor shall develop a schedule for accomplishing the Scope of Work, including these specific deliverables. The final schedule shall be agreed upon between the STATE and the successful Offeror and incorporated into the contract. The approximate schedule for this contract is as follows:

- a. Approximate contract start: April 1, 2024
- b. “Kick off” meeting/conference call: To be mutually agreed upon by successful offeror and the STATE within 1 week of the signed contract.
- c. Contractor submits first progress report with slate of potential candidates and meets to discuss with STATE approximately May 1, 2024.
- d. Contractor arranges first round interviews for candidates selected by the search

- committee.
- e. Contractor submits second progress report with slate of additional potential candidates and meets to discuss with STATE approximately May 22, 2024.
- f. Contractor arranges first round interviews for candidates selected by the search committee.
- g. Based on feedback from the search committee Contractor submits third progress report on top 3-5 candidates and meets to discuss with STATE approximately June 5, 2024.
- h. Contractor arranges in-person interviews for candidates selected by the search committee.
- i. Contractor develops scoring methodology in consultation with the DMR Director Search Committee for each round of interviews.
- j. Contingent on North Dakota Industrial Commission interview process, candidate offer extended no later than July 31, 2024.

3.3 EXPERIENCE AND QUALIFICATIONS

In order for offers to be considered responsive, offerors must meet the mandatory qualification. An offeror's failure to meet this mandatory qualification will cause its proposal to be considered non-responsive and its proposal will be rejected.

Mandatory Requirement

The Offeror must have experience in executive recruitment services for the oil and gas industry. Offerors must provide three (3) references from organizations where they provided similar executive search services, within the last five (5) years. Contact information for references should include contact names, addresses, telephone numbers, and valid email addresses. The STATE reserves the right to contact any references provided by the offeror. Offerors are invited to provide letters of reference from previous clients.

SECTION FOUR – PROPOSAL INSTRUCTIONS

4.1 PROPOSAL PREPARATION

The STATE discourages overly lengthy and costly proposals. An Offeror must prepare their 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 the 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.

4.2 PROPOSAL SUBMISSION INSTRUCTIONS

UPLOAD RESPONSE THROUGH THE STATE PROCUREMENT ONLINE SYSTEM (SPO ONLINE):

Offeror **must** electronically submit proposals through the State Procurement Office Online system (SPO Online) by the Solicitation Closing deadline.

DO NOT WAIT UNTIL THE “LAST MINUTE” TO SUBMIT A RESPONSE. We recommend uploading your response 24 hours prior to the Solicitation Closing deadline.

Offeror must begin the electronic submission process well in advance of the Solicitation Closing deadline to allow for transmission and resolution of any technical difficulties. Be advised that the STATE is not responsible for an Offeror’s failure to timely submit a proposal due to any technical difficulties. If you experience any technical difficulties, contact the Procurement Officer or the State Procurement Office at infospo@nd.gov or 701-328-2740.

If documents are in the process of being uploaded when the Solicitation Closing deadline occurs, the upload process will stop. The attempted submission will not be uploaded successfully and is ineligible for consideration. The STATE takes no responsibility for electronic submissions that are captured, blocked, filtered, quarantined, or otherwise prevented from uploading by any anti-virus or other security software.

1. This solicitation is posted on SPO Online at: <https://apps.nd.gov/csd/spo/services/bidder/main.htm>
2. Select “Recent Solicitations” and find the solicitation. Solicitations are listed by close date.
3. Use “Upload Response” to upload a maximum of five (5) clearly labeled documents before the Solicitation Closing deadline provided in the RFP Schedule.
4. Offeror must upload their Technical Proposal and Cost Proposal in separate files.
5. The maximum file size allowed is 50 MB per file.
6. There is a 50 character file name limitation for the document being uploaded.
7. There is 75 character limit in the TITLE field within SPO Online.
8. 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.
9. DO NOT submit documents that are embedded (zip files), movies, wmp, encrypted, or mp3 files.

10. Offeror will receive an email confirmation from infospo@nd.gov that the upload response was received including the “File Description” for the uploaded files. Review this email to ensure all files were successfully uploaded. If Offeror DOES NOT receive an email confirmation, the upload was NOT successful, and the files will need to be uploaded 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 or 701-328-2740.

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.

4.3 PROPOSAL FORMAT

Prepare the Technical Proposal and Cost Proposal in accordance with these instructions.

Technical Proposal – Format the proposal with the following labeled sections:

- Section 1 – Cover Letter
- Section 2 – RFP Amendments
- Section 3 – Scope of Work Strategy
- Section 4 – Experience and Qualifications
- Section 5 – Contract Provisions
- Section 6 – Open Records and Confidentiality

Cost Proposal – The Cost Proposal must be a separate document. Format the Cost Proposal following the RFP instructions.

4.4 TECHNICAL PROPOSAL

SECTION 1 – COVER LETTER

Proposals shall include a cover letter 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. Offerors are instructed to review the “Conflict of Interest” provisions in RFP Section 1 “Instructions.” If the firm, its employees, or subcontractors working on the contract have an apparent or actual conflict of interest, provide a statement disclosing the circumstances of the apparent or actual conflict of interest. Otherwise, provide a statement that your firm, employees, and subcontractors do not have a conflict of interest.
3. The cover letter must be signed by an individual with authority to bind the Offeror. By signing the cover letter, an Offeror certifies that it complies with:
 - a. All the requirements, terms, and conditions as set forth in this RFP.
 - b. The requirement that the Offeror’s proposal accurately describes the goods and services being offered to the STATE, and the proposal will be held firm for the period specified.
 - c. All local, state, and federal laws, rules, code laws, rules, code, regulation, and policies, including those relating to nondiscrimination, accessibility, civil rights, and equal employment.
 - d. The requirement that this proposal was prepared independently without collusion.

SECTION 2 – RFP AMENDMENTS

Provide signed copies of all Solicitation Amendments issued by the STATE that were required to be acknowledged by Offerors.

SECTION 3 –SCOPE OF WORK STRATEGY

Offeror must provide a comprehensive Executive Recruitment Strategy that details the approach being proposed to accomplish the scope of work in RFP Section 3, Scope of Work.

1. **Strategy for Scope of Work Requirements.** The Offeror must provide comprehensive narrative statements that set out the recruitment strategy it intends to employ to accomplish the purpose of the RFP. Explain the proposed approach will serve to accomplish the scope of work, meet all requirements, and provide the deliverables described in the scope of work within the STATE's project schedule.
2. **Value-Added Options.** Offerors may include any optional services or goods that are not required by the STATE but are within the scope of work (e.g., an option for a higher level of service, equipment accessories, extended warranty options, etc.). Describe any value-added options being offered.
3. **Location of Work.** The proposal must respond to the STATE's Location of Work instructions within the RFP Scope of Work. STATE recognizes that some onsite presence may be required. Offerors must describe the extent of on-site work that will be utilized to perform the requested services.
4. **State Furnished Property and Services.** Provide a detailed breakdown of the Offeror's expectations for STATE resources that will be needed for the project, including number of staff, qualifications, roles and responsibilities, and time requirements for the various phases of the project.
5. **Risk Management.** Offerors must describe measures to be taken to ensure the safety of its employees, state employees, the public, and property.
6. **Proposed Schedule and Deliverables.** The proposal must provide a timeline for accomplishing the work, in consideration of the STATE's Contract Schedule within the RFP Scope of Work.

SECTION 4 –EXPERIENCE AND QUALIFICATIONS

Mandatory Requirements. An Offeror must provide information to demonstrate meeting the Offeror Experience and Qualifications Requirement in RFP Section 3, Scope of Work, [Experience and Qualifications](#).

Experience and Qualifications of the Firm

Provide a brief history and describe the organization of the firm. 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 requirement projects, including any experience specific to recruitment for oil and gas institutions. Provide a description of the project, approximate time frame of the project, and contact information for the customer. Offerors may provide letters of reference from customers.

Experience and Qualifications of the Project Team

Provide a narrative or organizational chart that describes the organization of the proposed project team. Provide information for key project team members, including:

1. Description of anticipated work they will perform;
2. A narrative or organizational chart that describes the composition of the Recruitment Team, including a description of the type of work each individual will perform;

3. Resume or description of the relevant education, training, experience, skills, and qualifications of each personnel that will work on this project, including any professional certifications, licenses, and permits, if required by federal, state, or local law, to publicly perform recruitment services identified in the Contractor's work strategy;
4. Offeror must provide a designated executive level contact that will act as a point of contact for any issues that need escalation or to discuss the needs of the STATE. This point of contact will be required to participate in any requested demonstration or presentation requested during the RFP process. They will discuss how the contract will be supported and how the Offeror and STATE will work together to ensure a successful outcome;
5. If the Offeror has vacant positions, identify the job description and minimum qualifications for staff members to be recruited;
6. 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; and
7. Joint Venture. If submitting a proposal as a joint venture, provide narrative statements that describe the roles and responsibilities of each party to the joint vendor. If available, submit a copy of the joint venture agreement that identifies the parties involved and their rights and responsibilities.

References

Provide three (3) references from organizations where the Offeror has provided similar executive search services within the last five (5) years. Offerors must include the name of a contact person, address, email, and telephone number. Offerors are responsible for providing accurate reference contact information and are instructed to notify the reference that the STATE may be contacting them. Reference checks may begin within one (1) business day of the Solicitation Closing deadline. Evaluation may be impacted if the STATE is unable to contact the reference or the reference does not provide the requested information in a timely fashion.

SECTION 5 – CONTRACT PROVISIONS

Offeror shall review the RFP Section 6 and the STATE's contract – Attachment 3.

The proposal must indicate whether the Offeror accepts the terms and conditions in the STATE's contract.

An Offeror may state that they accept the STATE's contract as written.

An Offeror may state any objections or propose changes or additions to the STATE's contract. Describe the changes to the contract being proposed or provide a red-line of the STATE's contract. Offeror is not to submit their own contract or standard terms and conditions with their proposals. Offeror should address the specific language in the attached contract and submit any proposed changes.

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 STATE.

SECTION 6 – OPEN RECORDS AND CONFIDENTIALITY

All proposals and other material submitted become the property of the STATE and may be returned only at the STATE's discretion. The State of North Dakota has broad open records laws. Proposals received are exempt from open record requirements until an award is made, in accordance with

[N.D.C.C. § 54-44.4-10\(2\)](#). After award, proposals are subject to the North Dakota open records laws. Proposals or portions of proposals may be confidential only if specifically stated in law.

Offerors are instructed not to mark their entire proposal as “confidential”.

Offeror must provide one of the following in their proposal:

- 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 their proposal. Offeror must clearly identify the material considered confidential and explain why the material is confidential. See the North Dakota Office of the Attorney General website for additional information at <https://www.legis.nd.gov/cencode/t44c04.pdf> and <https://attorneygeneral.nd.gov/open-records-meetings>

If the STATE receives a request for public information, the Procurement Officer, in consultation with the Office of the Attorney General, shall determine whether the information is an exception to the North Dakota open records laws, and the information shall be processed accordingly.

4.5 COST PROPOSAL

Cost Proposal Format. Cost proposals must be prepared as a separate document from the technical proposal, clearly labeled, “Cost Proposal”.

Offeror must complete the Cost Proposal Format - Attachment 4 or prepare a Cost Proposal following the same format.

Value-Added Options. Offeror may include pricing for any value-added options that are described in the Offeror’s proposal as options, but not included in the total cost. Any options must be within the scope of work. (e.g., an option for a higher level of service, equipment accessories, extended warranty options, etc.). Provide details related to initial cost, reoccurring costs, and options. The STATE shall not consider these costs as part of cost evaluation scoring.

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

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

SECTION FIVE – AWARD AND PROPOSAL EVALUATION

5.1 AWARD

The STATE 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 the most advantageous in consideration of the RFP evaluation criteria.

5.2 RESPONSIVENESS

All proposals will be evaluated to determine if they are responsive to the requirements of the solicitation. The STATE 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 within the RFP.

5.3 RESPONSIBILITY – SUPPLEMENTARY INVESTIGATION

The STATE reserves the right to contact references, other customers, including state and local government agencies, regarding past experience with the Offeror. Prior experience of the state agency or institution with any prospective Offeror may also be taken into consideration during evaluation.

The STATE may, at any time, 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, capacity to produce, sources of supply, performance record, or other matters related to the Offeror's probable ability to deliver if a contract is awarded to the Offeror. If it is determined that an Offeror appears not to be sufficiently responsible, the proposal will be rejected.

5.4 EVALUATION CRITERIA

Proposals will be evaluated using a 100 point scale. The evaluation committee will award points based on the questions in the Technical Proposal Evaluation Worksheet – 2. The Technical Proposal evaluation score and Cost Proposal evaluation score will be added together to determine the total evaluation score. After the initial evaluation, the evaluation committee may determine which proposals are reasonably susceptible for award and continue the evaluation process with only those Offerors. Offerors whose proposals are not selected for further evaluation may request a debrief from the Procurement Officer after an award notice is issued. The final evaluation score will consider information received by the STATE, 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: 80 Points

- A. Scope of Work Strategy – 40 Points
- B. Experience and Qualifications – 40 Points

Cost Proposal Evaluation: 20 Points

Preference Laws: Any applicable preference laws will be applied. For more information, refer to the [Guidelines to Preference Laws](#).

5.5 COST PROPOSAL EVALUATION

The STATE 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.

The cost amount used for evaluation may 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 ITD to host a STATE hosted solution).

The lowest Cost Proposal will receive the maximum number of points allocated to cost. Cost proposals will be evaluated using the following formula.

Price of Lowest Cost Proposal

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

5.6 CLARIFICATIONS OF PROPOSALS – DISCUSSIONS

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

In conducting discussions, there may be no disclosure of any information derived from proposals submitted by competing Offerors. Clarifications may not result in material or substantive change to the proposals. Evaluation scores may be adjusted based in consideration of information obtained through discussions.

5.7 RIGHT OF REJECTION

The STATE 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 STATE reserves the right to reject the proposal of an Offeror determined to be not responsible. The STATE reserves the right to refrain from making an award if determined to be in its best interest.

5.8 PRESENTATIONS/DISCUSSIONS

After the initial evaluation, STATE may require vendors to complete online presentations/discussions for the evaluation committee. If they are required, STATE may determine which proposals are reasonably susceptible for award and continue the evaluation process with only those offerors. Offerors shall be responsible for all associated costs, including any travel and per diem. Offerors whose proposals are not selected for further evaluation may request a debrief from the procurement officer after an award notice is issued.

5.9 BEST AND FINAL OFFERS

The STATE 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 STATE determines there is a need for additional information, substantial clarification or changes to the RFP or proposals, the STATE 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 STATE shall consider its original proposal its best and final offer. Best and final offers will be evaluated using the evaluation criteria stated in the RFP. The STATE may request more than one best and final offer.

5.10 TIE PROPOSALS

In the event that two or more proposals contain identical pricing or receive identical evaluation scores, [N.D.C.C. § 54-44.4-05.1](#) requires preference must be given to a resident North Dakota bidder, seller,

vendor, offeror, or contractor as defined in [N.D.C.C. § 44-08-02](#). In the event the tie is not resolved by application of this law, [N.D.A.C. § 4-12-11-05](#) will be applied.

5.11 NEGOTIATIONS

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

Each Offeror will be responsible for all costs it incurs as a result of negotiations, including any travel and per diem expenses. Contract negotiations will be conducted primarily by email, conference calls, or internet-based conference. Any on-site negotiation, if needed, will be held in Bismarck, North Dakota.

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

- Fails to provide necessary information for negotiations in a timely manner
- Fails to negotiate in good faith
- Is unable to successfully negotiate contract terms that are acceptable to the STATE
- Indicates that it cannot perform the contract within the budgeted funds

In accordance with [N.D.C.C. § 54-44.4-13.1](#), the STATE and contractor may negotiate payment terms for all commodities and services procured. If a date for payment is not specified in this contract, payment must be made pursuant to section [N.D.A.C § 13-01.1-01](#).

5.12 NOTICE OF INTENT TO AWARD

After proposals have been evaluated and the successful Offeror selected, a notice of intent to award will be promptly issued to all Offerors that submitted proposals. Upon issuance of this notice, the procurement file becomes an open record. The successful Offeror named in the notice of intent to Award is advised not to begin work, purchase materials, or enter into subcontracts until the successful Offeror and the STATE sign the contract.

5.13 CONTRACT APPROVAL

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

5.14 EVALUATION DEBRIEFING

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

6.1 NORTH DAKOTA CONTRACTUAL REQUIREMENTS – BACKGROUND

As a public institution and government entity of the State of North Dakota (the STATE), there are a number of statutes, rules, and policies (Requirements) that may restrict or prevent the STATE 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 the STATE more challenging than negotiating with a private industry business, these are not unique to any one agency of the State of North Dakota. 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.

6.2 STATE CONTRACT TERMS AND CONDITIONS – OFFEROR’S PROPOSED CHANGES

The STATE intends to execute a contract substantially similar to the contract – Attachment 3. The Offeror will be required to sign the contract attached to this RFP and must comply with the terms and conditions. The STATE may deem any failure to object to a contract provision as the Offeror’s acceptance of that provision.

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 STATE.

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 STATE. Proposed terms and conditions that conflict with those contained in the attached contract or that diminish the STATE’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 STATE may deem any failure to object to a contract provision as the Offeror’s acceptance of that provision.

6.3 CONTRACT PROVISIONS

A. Contract Type.

The contract type will be as follows:

Firm Fixed Price. The contractor will be required to hold the price firm for the contract period, except as otherwise provided in the contract.

B. Payment Procedures

Compensation and payment terms will be set forth in the contract based upon the successful Offeror’s proposal. The STATE will not make any advanced payments before performance by the contractor under this contract.

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

C. Inspection & Modification

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 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 STATE determine that corrections or modifications are necessary to accomplish its intent, the STATE 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.

D. Contract Changes – Unanticipated Amendments

During the course of the contract entered as a result of this solicitation, the contractor may be required to perform additional work due to a legitimate unforeseen circumstance. That work will be within the general scope of the initial contract. When additional work is required, the STATE shall provide the contractor with a written description of the additional work and request that the contractor submit proposal for accomplishing the scope of work. Contractor will not commence additional work until all parties agree in writing.

E. Purchasing Card

The STATE may make payments under this contract using a state purchasing card. See the contract related to payments using the STATE purchasing card.

6.4 CONTRACTUAL TERMS AND CONDITIONS – NO MATERIAL CHANGES

A. Indemnification and Insurance

[N.D.C.C. § 32-12.2-17](#) requires that the OMB 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 STATE shall not be deemed to have accepted any alteration of these provisions without prior written approval to Offeror from the STATE acting in consultation with the North Dakota Risk Management Division.

B. 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 STATE agencies 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 STATE, whether the clause contains the words “indemnity” or “indemnify,” are not clauses to which the STATE may agree.

The STATE will also not agree to clauses to indemnify a contractor “to the extent permitted by law”. This is because the STATE 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 STATE to imply in a contract that there might be some set of circumstances under which the STATE would defend the contractor against a third party claim(s). Simply put, the STATE 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 STATE does not enter into agreements that invite litigation. Do not ask the STATE to indemnify you against third party claims because it is a contractual obligation to which the STATE cannot agree.

While the STATE may limit the liability of a contractor in claims between the STATE and the contractor, the STATE 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 6.4(D) for Limitation of Liability.

C. 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 STATE, 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.

D. Limitation of Liability

The STATE may negotiate Limitation of Liability pursuant to [N.D.C.C. § 32-12.2-15](#) "Contracts limiting liability to the STATE".

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 STATE 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 STATE; and
3. the limitation is in the best interests of the STATE.

The agency, in consultation with OMB and the Attorney General's Office, shall prepare 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 STATE. 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 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 STATE resulting from fraud or other intentional or willful misconduct, breach of confidentiality obligations, or loss resulting from tangible property damage or personal injury.

E. Waivers of Jurisdiction and Venue; Alternative Dispute Resolution

The North Dakota Attorney General is the STATE's attorney for all purposes, including management of litigation and claims against the STATE. The STATE 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 STATE 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 STATE cannot contractually agree to such terms, this does not mean that in the event of a dispute, the STATE 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.

F. Confidentiality

All state agencies of North Dakota are subject to North Dakota public records laws. The STATE 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 STATE 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.

G. Unliquidated Expenses (i.e., attorney's fees, add-ons, cost increases)

Because the STATE 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 STATE 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 STATE cannot indemnify a contractor against third party claims, but it may also be said for clauses that purport to obligate the STATE 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.

6.5 SCOPE OF WORK

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

6.6 CONTRACT TERM

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

6.7 RIGHT TO INSPECT PLACE OF BUSINESS

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

ATTACHMENT 1

POSITION DESCRIPTION

Job Title: Director, Department of Mineral Resources

Job Code: TBD

Grade: Executive Level

Full Time Annual Salary Range: Executive Level

FLSA Status: Exempt

Department ID:

Purpose Statement: The Director, Department of Mineral Resources (Director) reports to the North Dakota Industrial Commission, which is made up of the Governor, Attorney General and Agriculture Commissioner. The position is responsible for the overall strategic and operational performance of the Department of Mineral Resources.

The Director is responsible for developing recommendations for the North Dakota Industrial Commission which achieve the Commission's objectives of:

- Fostering, encouraging and promoting the development, production and utilization of natural resources of oil and gas in the state in such a manner as will prevent waste
- Authorizing and providing for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas be obtained and that the correlative rights of all owners are fully protected
- Encouraging and authorizing recycling, pressure maintenance and enhanced oil recovery operations in order that the greatest possible economic recovery of oil and gas be obtained within the state to the end that the landowners, royalty owners, producers and the general public realize and enjoy the greatest possible benefit from these vital natural resources
- Regulating geophysical exploration, underground injection control, mineral spacing and pooling, pore space amalgamation and surface infrastructure related to mineral production and gathering

Distinguishing Factors: This position is at an executive level within the Department. Employees at this level will provide leadership and act as mentor, trainer, and coach to new staff members and team positions within the Department.

Essential Functions: Major tasks for the position include:

- Supervising Oil & Gas Division Director, State Geologist, and DMR Support Staff Officer to implement agency goals and ensure compliance with statutes, regulations, and policies
- Signing orders for regulatory cases with signature authority delegated per NDIC memo
- Preparing formal enforcement actions in consultation with the Attorney General's office

- Present recommended action items to NDIC at their regularly scheduled monthly meetings
- Preside over monthly oil and gas regulatory hearings
- Present a monthly Director's Cut webinar to the press and the general public
- Maintain relationships and meet regularly with stakeholders, tribal nations, local government agencies, other state agencies, and federal agencies
- Serve as the State's official representative on the Interstate Oil and Gas Compact Commission (IOGCC)
- Serve as a technical advisor on the Oil and Gas Research Council, Clean Sustainable Energy Authority, Plains CO2 Reduction Partnership, North Dakota Revenue Advisory Council and the Bismarck State College Petroleum Production Advisory Board
- Annual certification of reservation trust land acreage ratio to the Tax Commissioner
- Lead biennial agency strategy reviews for the agency
- Provide legislative testimony in support of the agency budget and policy initiatives
- Supervise agency audits and rule revisions

**Minimum
Education and
Experience:**

Executive level. The Director, Department of Mineral Resources position requires the education, experience, talent, and mindset to assess and mitigate principal operational risks and drive legal and regulatory compliance of the Department's work.

ATTACHMENT 2

TECHNICAL PROPOSAL EVALUATION WORKSHEET

Proposals that are determined to be responsive to the requirements of the RFP will be evaluated by the Evaluation Committee using the evaluation criteria stated in the RFP. For assistance with RFP evaluations, contact the State Procurement Office at infospo@nd.gov or 701-328-2740.

- If a group evaluation is conducted, the Evaluation Committee will produce one worksheet that summarizes the comments and scores. If individual scores are being compiled, each member of the Evaluation Committee will prepare an evaluation worksheet with their comments and scores.
- Evaluation Committee members must read the Request for Proposal and have a clear understanding of the requirements and evaluation criteria before attempting to evaluate proposals.
- Evaluators should read all proposals twice. First, read all proposals for a general understanding without scoring. Next, read proposals with the intent to complete the evaluation worksheet which includes taking notes and documenting any questions/clarification needed.
- Each evaluation criterion is assigned a specific number of points. The questions under each evaluation criterion help Evaluators measure the quality of the Offeror's response. Do not assign points to individual questions, instead, award a total score for each evaluation criterion.
- Evaluators will assign an initial score for each evaluation criterion and provide comments which explain their scores.
- Evaluation documents become an open record upon award.

RATING SCALE FOR TECHNICAL PROPOSAL SCORING

The rating scale provided is intended to help Evaluators perform evaluations. Evaluators are exercising independent judgement so variation in scoring is normal. However, the Procurement Officer may question scoring that appears to be unsupported. Evaluators may assign any value for a given evaluation area from 0 to the maximum number of points allowed per evaluation criterion. A zero value typically constitutes no response or an inability of the Offeror to meet the criteria. In contrast, the maximum value should constitute a high standard of meeting the criteria. For example: "Experience and Qualifications" is an evaluation area weighted at 25% of the total possible points on a 100 Point Scale, so any value between 0 and 25 points can be awarded. An example of the rating scale is below:

| Experience and Qualifications Rating Scale (25 Point Maximum) | |
|---|---|
| Point Value | Explanation |
| 0-5 | Poor. Not addressed or response of no value |
| 6-10 | Fair. Limited applicability |
| 11-15 | Good. Some applicability |
| 16-20 | Very Good. Substantial applicability |
| 21-25 | Excellent. Total applicability |

COST PROPOSAL

Cost proposals are normally scored by the Procurement Officer or selected evaluators, and cost proposals are given to the Evaluation Committee after technical proposals have been evaluated. Prompt payment discounts are not considered in evaluating cost.

ADJUSTMENT OF INITIAL EVALUATION SCORES

After the initial scoring, the Evaluation Committee should meet to discuss proposals and identify areas where clarification or more information is needed. Evaluation scores may be adjusted as a result of discussions with offerors, clarifications, demonstrations, presentations, reference check results, Best and Final Offers, and further due diligence within the evaluation process.

TECHNICAL PROPOSAL EVALUATION WORKSHEET

Offeror Name _____

RFP Title/Number _____

Evaluator Name _____

Evaluator Certification. I have reviewed the Request for Proposal Evaluators Guide, and I certify that neither I nor my immediate family members have a conflict of interest with regard to this offeror, in accordance with [N.D.A.C. § 4-12-04-04](#).

Evaluator Signature _____ Date _____

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

| SCOPE OF WORK STRATEGY RATING SCALE (40 Point Maximum) | |
|--|---|
| Point Value | Explanation |
| 0 – 8 | None. Not addressed or response of no value |
| 9 – 16 | Fair. Limited applicability |
| 17 – 24 | Good. Some applicability |
| 25 – 32 | Very Good. Substantial applicability |
| 33 – 40 | Excellent. Total applicability |

IMPORTANT. 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. Evaluators must provide comments to support scoring.

How well has the Offeror followed the proposal preparation instructions? Does the proposal contain all the requested information?

EVALUATOR NOTES

Does the executive recruitment strategy depict a logical approach to accomplishing the RFP scope of work? What are the strengths of the proposed strategy?

EVALUATOR NOTES

How well does the strategy serve to assist in identifying desired skills, qualifications, and an overall position profile?

EVALUATOR NOTES

Are there aspects of the proposed Scope of Work strategy of concern or that requires clarification or further information?

EVALUATOR NOTES

Does the timeline prepared by the firm meet the needs requested to timely complete the selection process?

EVALUATOR NOTES

How well does the strategy serve to provide nationwide search/recruitment activities to solicit applicants?

EVALUATOR NOTES

How well does the strategy service the coordination of on-site interviews, reference checks, and composition of candidate appraisals?

EVALUATOR NOTES

How well does the proposal address where the work will be performed and any travel?

EVALUATOR NOTES

How comprehensive are the background checks conducted by the firm?

EVALUATOR NOTES

How does the firm propose to provide STATE with progress reports?

EVALUATOR NOTES

How does the proposal address pertinent issues and potential problems related to the recruitment, such as not being able to fill the position, selected candidate declining, or successful candidate resigning shortly after beginning work, etc?

EVALUATOR NOTES

How well does the employment guarantee align with the needs of the STATE?

EVALUATOR NOTES

INITIAL EVALUATION SCORE FOR SCOPE OF WORK STRATEGY: _____

Additional/overall comments related to the offeror’s proposed strategy for accomplishing the work.

EVALUATOR NOTES

| EXPERIENCE AND QUALIFICATIONS RATING SCALE (40 Point Maximum) | |
|--|---|
| Point Value | Explanation |
| 0 – 8 | None. Not addressed or response of no value |
| 9 – 16 | Fair. Limited applicability |
| 17 – 24 | Good. Some applicability |
| 25 – 32 | Very Good. Substantial applicability |
| 33 – 40 | Excellent. Total applicability |

IMPORTANT. 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. Comments to support scoring are required, and will be helpful when performing offeror evaluation debriefs after award.

MANDATORY EXPERIENCE OR QUALIFICATIONS

Does the firm meet the mandatory requirement stated in 3.3 of the RFP?

EVALUATOR NOTES

EXPERIENCE AND QUALIFICATIONS OF THE FIRM

Has the offeror provided historical information to demonstrate the firm is well established in this field?

EVALUATOR NOTES

How extensive is the firm’s experience in this type of work? How well has the firm demonstrated experience in completing similar projects satisfactorily and timely?

EVALUATOR NOTES

Any concerns with the firm being independent and without conflicts related to DMR?

EVALUATOR NOTES

Does the firm have an established network of public and private industry contacts and resources for the purposes of locating candidates for this position and how well does it align with the needs of the STATE?

EVALUATOR NOTES

EXPERIENCE AND QUALIFICATIONS OF THE PROJECT TEAM

Has the offeror provided information about the organization of the project team and proposed work project team members will perform? Do the individuals assigned to the recruitment team have experience providing recruitment services needed for this RFP, including technical acumen? How well does the education of proposed personnel align with the STATE needs?

EVALUATOR NOTES

Does the proposed project team and work breakdown seem appropriate to accomplish the requirements of the RFP?

EVALUATOR NOTES

How extensive is the experience of the project team members on similar projects?

EVALUATOR NOTES

If a subcontractor will perform work on the project or joint venture is proposed, has the offeror provided the requested information? How extensive is the experience and qualifications of the subcontractor or other party of the joint venture?

EVALUATOR NOTES

REFERENCE CHECK RESULTS

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

EVALUATOR NOTES

Did references identify any areas of concern?

EVALUATOR NOTES

Did references identify any particular strengths of the vendor?

EVALUATOR NOTES

INITIAL EVALUATION SCORE FOR EXPERIENCE AND QUALIFICATIONS: _____

Additional/overall comments related to the offeror's experience and qualifications.

EVALUATOR NOTES

ATTACHMENT 3

CONTRACT

OFFEROR INSTRUCTIONS

Offeror shall review the STATE's Contract.

The proposal must include indicate whether or not the offeror accepts the terms and conditions in the STATE's Contract.

An offeror may state that they accept the STATE's Contract as written.

An offeror may state any objections or propose changes or additions to the STATE's Contract. Describe the changes to the Contract being proposed or provide a red-line of the STATE's Contract. Offerors are not to submit their own contract or standard terms and conditions with their proposals. Offeror should address the specific language in the attached contract and submit any proposed changes.

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 STATE.

1. PARTIES

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

2. SCOPE OF WORK

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

Search Strategy:

- Candidate profile development;
- Firm will conduct review of the current job description and make recommendations for amendments as appropriate;
- Active and passive candidate sourcing methods;
- Identification and recruitment of candidates.

Candidate Evaluation and Selection:

- Make recommendations for criteria for evaluating candidates;
- Methods for initial screening of resumes and applications, including;
 - Development of tailored search strategies;
 - Flexibility to adapt strategies based on the unique needs of the STATE/DMR;
- Present qualified candidates for consideration of first round interviews. Number of candidates will be determined in consultation with the STATE;
- Development and implementation of a process to narrow the candidate list;
- Develop interview questions for the STATE;
- Arrange interview schedules and coordinate travel for in person interviews;
- Rigorous evaluation of candidates, including their skills, experience, and cultural fit;
- Responsible for assisting with all background checks.

Reporting and Communication:

- Provide progress reports on the search;
- Detailed reports on shortlisted candidates.

Timeline:

- Ability to meet deadlines and deliver high-quality results within a specified timeframe;
- Key dates for submission of candidate profiles, interviews, and final interviews.

Expectations:

- Industry Expertise: Understanding of the specific requirements and challenges within the oil and gas industry at the executive level.
- Aligning candidates with client culture:
 - Deep understanding of the NDIC's organizational culture and values.
 - Ensuring that recommended candidates align with the NDIC's cultural expectations.

3. COMPENSATION-PAYMENTS**a. Contractual Amount**

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

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

b. Payment

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

c. Travel

STATE shall reimburse CONTRACTOR for expenses related to travel at amounts not to exceed those outlined below:

- 1) **Lodging:** Reimbursement shall not exceed the then current, published GSA rate for the travel location. Copies of receipts are required for lodging reimbursement. STATE shall not

reimburse for incidental and miscellaneous expenses charged to the room, including: alcohol, telephone charges, or entertainment (e.g., movies).

- 2) **Transportation.** Air travel shall be reimbursed by STATE at the actual cost of air fare for coach class travel only. CONTRACTOR shall make air travel arrangements at least fourteen (14) days in advance whenever possible. Reimbursement for rented, chartered, or contracted vehicle transportation shall be limited to reasonable rates as determined by STATE
- 3) **Meals:** Meals shall be paid on a per diem basis for each day of travel at then current, published GSA per diem rate for the travel location. Per diem for the first and last day of travel shall be paid at seventy five percent (75%) of the GSA per diem rate. Requests for per diem payments must include the start and end dates of travel, the location where the services are performed, and the allowable per diem amount for each trip on the billing/invoice.

Payment for any travel expenses that exceed the travel budget as agreed upon by the Parties must be approved by STATE.

d. Prepayment

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

e. Payment of Taxes by STATE

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

f. Taxpayer ID

CONTRACTOR'S federal employer ID number is: *[Insert FEIN]*.

g. Purchasing Card

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

4. TERM OF CONTRACT

This Contract term (Term or Initial Term) begins on Effective Date and ends on August 31, 2024.

a. No Automatic Renewal

This Contract will not automatically renew.

b. Extension Option

STATE reserves the right to extend this Contract for an additional period of time necessary to fill the position of Director, Department of Mineral Resources.

5. TIME IS OF THE ESSENCE

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

6. TERMINATION

a. Termination for Convenience or by Mutual Agreement

This Contract may be terminated by STATE upon thirty (30) days' written notice to CONTRACTOR. This Contract may be terminated by mutual consent of both Parties executed in writing.

b. Early Termination in the Public Interest

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

c. Termination for Lack of Funding or Authority

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

- 1) If funding from federal, state, or other sources is not obtained or continued at levels sufficient to allow for purchase of the services or goods in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services or goods are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either Party already accrued prior to termination.

d. Termination for Cause

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

- 1) If CONTRACTOR fails to provide services or goods required by this Contract within the time specified or any extension agreed to in writing by STATE; or
- 2) If CONTRACTOR fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms.

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

7. FORCE MAJEURE

Neither Party shall be held responsible for delay or default caused by fire, riot, terrorism, pandemic (excluding COVID-19), acts of God, or war if the event was not foreseeable through the exercise of

reasonable diligence by the affected Party, the event is beyond the Party's reasonable control, and the affected Party gives notice to the other Party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default. If CONTRACTOR is the affected Party and does not resume performance within fifteen (15) days or another period agreed between the Parties, then STATE may seek all available remedies, up to and including termination of this Contract pursuant to its Termination Section, and STATE shall be entitled to a pro-rata refund of any amounts paid for which the full value has not been realized, including amounts paid toward software subscriptions, maintenance, or licenses.

8. INDEMNIFICATION

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

9. INSURANCE

- a. Contractor shall secure and keep in force during the term of this agreement and Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:
 1. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$2,000,000 per occurrence.
 2. Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
 3. Employer's liability or "stop gap" insurance of not less than \$2,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- b. The insurance coverages listed above must meet the following additional requirements:
 1. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.
 2. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the STATE. The policies shall be in form and terms approved by the STATE.
 3. The duty to defend, indemnify, and hold harmless the STATE under this agreement shall not be limited by the insurance required in this agreement.
 4. The state of North Dakota and its agencies, officers, and employees (STATE) shall be endorsed on the commercial general liability policy on a primary and noncontributory basis, including any excess policies (to the extent applicable), as additional insured. The STATE shall have all the benefits, rights and coverages of an additional insured under these policies

that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.

5. A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the STATE.
6. 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.
7. Failure to provide insurance as required in this agreement is a material breach of contract entitling the STATE to terminate this agreement immediately.
8. Contractor shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration.

10. WORKS FOR HIRE

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

11. WORK PRODUCT

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

12. NOTICE

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

| STATE | CONTRACTOR |
|-----------------------|-------------------------|
| Robyn Loumer | <i>Name</i> |
| Accounting Manager | <i>Title</i> |
| 1016 East Calgary Ave | <i>Address</i> |
| Bismarck, ND 58503 | <i>City, State, Zip</i> |
| rdloumer@nd.gov | <i>Email</i> |

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

13. CONFIDENTIALITY

CONTRACTOR shall not use or disclose any information it receives from STATE under this Contract that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by STATE. STATE

shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, [N.D.C.C. CH. 44-04](#). The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the Term of this Contract.

14. COMPLIANCE WITH PUBLIC RECORDS LAWS

Under the North Dakota public records law and subject to the Confidentiality clause of this Contract, certain records may be open to the public upon request.

Public records may include: (a) records STATE receives from CONTRACTOR under this Contract, (b) records obtained by either Party under this Contract, and (c) records generated by either Party under this Contract.

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

15. INDEPENDENT ENTITY

CONTRACTOR is an independent entity under this Contract and is not a STATE employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR's activities and responsibilities under this Contract, except to the extent specified in this Contract.

16. ASSIGNMENT AND SUBCONTRACTS

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE's express written consent, provided, however, that CONTRACTOR may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Contract, whether by merger, reorganization, operation of law, or otherwise. Should Assignee be a business or entity with whom STATE is prohibited from conducting business, STATE shall have the right to terminate in accordance with the Termination for Cause section of this Contract.

CONTRACTOR may enter subcontracts provided that any subcontract acknowledges the binding nature of this Contract and incorporates this Contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor with whom CONTRACTOR contracts. CONTRACTOR does not have authority to contract for or incur obligations on behalf of STATE.

17. SPOILIATION – PRESERVATION OF EVIDENCE

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

18. MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS

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

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

- a. The terms of this Contract as may be amended;
- b. STATE's Solicitation Amendment #1 to Request for Proposal ("RFP") number 110.7-24-010 dated _____;
- c. STATE's Request for Proposal ("RFP") number 110.7-24-010, dated December 13, 2023;
- d. CONTRACTOR's proposal dated _____ in response to RFP number 110.7-24-010.
- e. All terms and conditions contained in any automated end-user agreements (e.g., click-throughs, shrink wrap, or browse wrap) are specifically excluded and null and void, and shall not alter the terms of this Contract.

19. SEVERABILITY

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

20. APPLICABLE LAW AND VENUE

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

21. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

By entering this Contract, STATE does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The Parties may enforce the rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

22. ATTORNEY FEES

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

23. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. (See N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women.)

CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums.

CONTRACTOR shall have and keep current all licenses and permits required by law during the Term of this Contract all licenses and permits required by law.

CONTRACTOR is prohibited from boycotting Israel for the duration of this Contract. (See N.D.C.C § 54-44.4-15.) CONTRACTOR represents that it does not and will not engage in a boycotting Israel during the term of this Contract. If STATE receives evidence that CONTRACTOR boycotts Israel, STATE shall determine whether the company boycotts Israel. The foregoing does not apply to contracts with a total value of less than \$100,000 or if CONTRACTOR has fewer than ten full-time employees.

CONTRACTOR's failure to comply with this section may be deemed a material breach by CONTRACTOR entitling STATE to terminate in accordance with the Termination for Cause section of this Contract.

24. STATE AUDIT

Pursuant to N.D.C.C. § 54-10-19, all records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Contract are subject to examination by the North Dakota State Auditor, the Auditor’s designee, or Federal auditors, if required. CONTRACTOR shall maintain these records for at least three (3) years following completion of this Contract and be able to provide them upon reasonable notice. STATE, State Auditor, or Auditor’s designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.

25. COUNTERPARTS

This Contract may be executed in multiple, identical counterparts, each of which is be deemed an original, and all of which taken together shall constitute one and the same contract.

26. EFFECTIVENESS OF CONTRACT

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

| CONTRACTOR | STATE OF NORTH DAKOTA |
|-------------------|------------------------------------|
| <insert business> | Acting through its <insert agency> |
| BY: <Signature> | BY: <Signature> |
| <Printed Name> | <Printed Name> |
| <Title> | <Title> |
| Date: | Date: |

ATTACHMENT 4

COST PROPOSAL

The fee proposed may be given by Option 1, a fixed fee, **OR** Option 2, a fee based on percentage of salary. If selecting Option 2, a fee based on percentage of salary, the percentage will be calculated using a salary of \$250,000 for evaluation purposes. The actual fee paid to the Contractor will be based upon the final base salary accepted by the successful candidate. Respond to only one fee option.

In addition to your fee option selected, list any additional expenses in the estimated expenses section. For purposes of calculating cost points, the total from the fee option selected and the estimated cost section will be summed.

Option 1 – Fixed Fee:

Fixed fee for the proposed services: \$ _____

Option 2 – Fee Based on Percentage of Base Salary:

Percentage of Base Salary: _____ % x \$ \$250,000 = \$ _____

Estimated Expenses:

| Item | Estimated Cost |
|--------|----------------|
| | |
| | |
| | |
| | |
| Total: | |