**STATE OF NORTH DAKOTA**

**INVITATION FOR BID (IFB)**

**(February 2024)**

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| **DATE ISSUED** | April 10th, 2024 | **BID NUMBER** | 110.7-24-022 |
| **BID TITLE** | Flags- US, State of North Dakota and POW/MIA | **COMMODITY CODE(S)** | 350-70, 72 |
| **BID QUESTION DEADLINE** | April 16th, 2024 | **CONTRACT NUMBER** | 043 |
| **BID RESPONSE DEADLINE** | May 3rd, 2024 at 12 PM CT | **CONTRACT PERIOD** | 12 Months |

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| **PROCUREMENT OFFICER** |
| The Procurement Officer is the point of contact for this IFB. Bidders shall direct all communications regarding this IFB to the Procurement Officer. Please do not add the Procurement Officer to any marketing distribution lists.  PURCHASING AGENCY (STATE): ND Office of Management and Budget  PROCUREMENT OFFICER: Sara Bilden  EMAIL: sbilden@nd.gov  PHONE: 701-328-0819  TTY Users call: 7-1-1  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)](http://www.legis.nd.gov/information/acdata/pdf/4-12-05.pdf?20130319105642)] |
| **BID QUESTION DEADLINE** |
| Bidders should carefully review the IFB including all attachments. Bidders may ask questions to obtain clarification and request additional information, or object to material in the IFB. Questions and objections must be submitted to the Procurement Officer in writing by the deadline identified in the IFB. If no deadline is specified, questions or objections must be received at least seven days prior to the Bid Response deadline. The Procurement Officer may elect to respond to questions received after the deadline.  Email is the preferred method of submission with the IFB 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 bidder to a specific section of the IFB.  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). |
| **STATE PROCUREMENT WEBSITE (SPO ONLINE)** |
| This IFB and any related amendments and notices will be posted on the North Dakota OMB website using the State Procurement Online system (SPO Online). Bidders are responsible for checking this website to obtain all information and documents related to this IFB: <https://apps.nd.gov/csd/spo/services/bidder/main.htm>  Select Recent Solicitations and find this solicitation. Recent solicitations are listed by close date.  Bidders not having completed the Bidders List registration may request to receive notices related to this IFB by contacting the Procurement Officer in writing with the following information: IFB title, business name, contact person, mailing address, telephone number, and email address. |

**SECTION 1**

**BIDDERS INSTRUCTIONS**

1. **Bidder Checklist.** Have you remembered to?

* Ensure your Bid Response complies with all instructions, terms and conditions, delivery requirements, and specifications.
* Prepare your price in the specified unit of measure, FOB: Destination to the shipping location.
* Sign your bid, and initial any changes or corrections
* Ensure your Bid Response is received by the Procurement Officer by the Bid Response deadline. Called to confirm receipt.
* If using a delivery service, check tracking to ensure the Bid Response will be delivered on time. Contact the Procurement Officer as soon as possible in the event of delays due to weather, etc.
* Submit any required samples or documents.

1. **Definitions.**

* Bidder: any person or firm submitting a competitive bid in response to a solicitation.
* Bid Response: the executed document submitted by a Bidder in response to a solicitation.
* Commodities: all property, including equipment, supplies, materials, printing, insurance, and the lease of equipment.
* Contractor: any person or firm having a contract with a governmental body.
* Procurement Officer: an individual duly authorized to enter into and administer purchasing contracts and make written determinations with respect thereto; also includes an authorized representative acting with the limits of designated purchasing authority.
* Purchasing Agency (STATE): the entity on which the purchase is being made on behalf of.
* Services: the furnishing of labor, time, or effort by a Contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.
* Solicitation: a document to notify prospective Bidders of a bidding opportunity.
* N.D.A.C.: North Dakota Administrative Code; rules with the force and effect of law.
* N.D.C.C.: North Dakota Century Code; state laws.
* OMB: Office of Management and Budget (OMB); a North Dakota state agency.
* SPO: State Procurement Office, a division of the Office of Management and Budget.
* SPO Online:a procurement information website maintained by the State Procurement Office pursuant to [N.D.C.C. § 54-44.4-14](http://www.legis.nd.gov/cencode/t54c44-4.pdf).

1. **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](https://www.ndlegis.gov/cencode/t54c44-4.pdf))

See the OMB [Guidelines to Vendor Registry](https://www.omb.nd.gov/sites/www/files/documents/doing-business-with-the-state/procurement/vendor-reg-guidelines.pdf) for more information.

Visit the Secretary of State's [Vendor Registration](https://sos.nd.gov/business/vendors.html) webpage for information on registration requirements and fees. Visit [FirstStop](https://sos.nd.gov/firststop.html), the Secretary of State's business and licensing software, for online form options.

* Check the [Business Records](https://firststop.sos.nd.gov/search/business) database to see if a business is registered.
* Contact Secretary of State's office by [email](mailto:sos@nd.gov) 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](https://www.ndsu.edu/agriculture/extension/extension-topics/leadership-and-civic-engagement/business-leadership-and-resources-2) in the State of North Dakota. The link includes information on who to contact, application fees, renewal dates, and the legal reference.

1. **Bidders List.** 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](https://www.ndlegis.gov/cencode/t54c44-4.pdf)) 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](https://www.ndlegis.gov/information/acdata/pdf/4-12-05.pdf)). 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: 350-70, 72

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

[**Bidders List Registration Website**](https://www.omb.nd.gov/doing-business-state/procurement/suspended-and-debarred-bidders)

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

1. **Submission Instructions.** Please follow these instructions to submit your Bid Response. Bid Responses must be received by the Procurement Officer by the Bid Response deadline. Bidders assume the risk of the delivery method selected**.** Late Bid Responses will be rejected.

Upload Response Through the State Procurement Online System (SPO Online):

Bidders **must** electronically submit Bid Responses through the State Procurement Office Online system (SPO Online) by the Bid Response deadline.

DO NOT WAIT UNTIL THE “LAST MINUTE” TO SUBMIT A RESPONSE. Recommend uploading response 24 hours prior to the Bid Response deadline.

Bidder must begin the electronic submission process well in advance of the Bid Response deadline to allow for transmission and resolution of any technical difficulties. Be advised that the STATE is not responsible for a Bidder’s failure to timely submit a Bid Response due to any technical difficulties. If you experience any technical difficulties contact the Procurement Officer or the State Procurement Office at [infospo@nd.gov](mailto:infospo@nd.gov) or 701.328.2740.

If documents are in the process of being uploaded when the Bid Response 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 this solicitation. Solicitations are listed by close date.

3. Use “Upload Response” to upload a maximum of five (5), clearly labeled documents before the Bid Response deadline.

4. Offerors must upload their Bid Response as requested in the Bid Response section of this IFB.

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.Bidder will receive an email confirmation from [infospo@nd.gov](mailto:infospo@nd.gov) that the upload response was received including the “File Description” for the uploaded files. Review this email to ensure all files were successfully uploaded. If Bidder do not receive an email confirmation, the upload was not successful, and you will need to upload the files again. If Bidder does not receive an email confirmation after the reattempt, contact the Procurement Officer or the State Procurement Office at [infospo@nd.gov](mailto:infospo@nd.gov) or 701.328.2740.

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.

1. **Additional Terms and Conditions.** Additional terms and conditions submitted with a Bid Response are of no effect unless accepted in writing by the Procurement Officer. Bid Responses with additional terms and conditions may be rejected as non-responsive. ([N.D.A.C. § 4-12-11-06](http://www.legis.nd.gov/information/acdata/pdf/4-12-11.pdf)).
2. **Assistance to Bidders with a Disability.** Bidders with a disability that need an accommodation must contact the Procurement Officer prior to Bid Response deadline so reasonable accommodation can be made.
3. **Bid Response Held Firm.** Bid Responses are not awarded at the bid opening. Bidders must hold their Bid Responses firm for 30 days, unless otherwise specified by the Procurement Officer in writing.
4. **Bid Response Opening.** A public Bid Response opening will be held. The Procurement Officer will hold the Bid Response opening will be held: via Microsoft Teams on May 3rd, 2024 at 12 PM CT

**Webinar or Conference Call**

[Link to join meeting.](https://teams.microsoft.com/l/meetup-join/19%3ameeting_MjE4YjRiOTgtYWM0NS00MDdmLTlmNzktYmFmOTNmMGQ3NDdm%40thread.v2/0?context=%7b%22Tid%22%3a%222dea0464-da51-4a88-bae2-b3db94bc0c54%22%2c%22Oid%22%3a%22880e453d-256c-4b07-81dc-9867b161bd89%22%7d)

Meeting ID: 256 036 932 207

**Dial-in by phone**

[+1 701-328-0950,,824984528#](tel:+17013280950,,824984528) United States, Fargo

[Find a local number](https://dialin.teams.microsoft.com/b55e1684-2d28-41f4-ba9d-69c288a879dd?id=824984528)

Phone conference ID: 824 984 528#

**Join on a video conferencing device**

Tenant key: teams@join.nd.gov

Video ID: 113 699 199 9

1. **Bid Response Results.** Interested parties may contact the Procurement Officer to obtain a summary of all Bid Responses received and the award. Bid Response results may be posted on SPO Online: <https://apps.nd.gov/csd/spo/services/bidder/main.htm>
2. **Bidders List - Suspension and Debarment**. Placement on the Bidders List does not guarantee a vendor will receive notice of every solicitation. A vendor may be removed from the Bidders List if a solicitation notice is undeliverable. Vendors may be suspended or debarred from the Bidders List for cause. ([N.D.A.C. ch. 4-12-05](http://www.legis.nd.gov/information/acdata/pdf/4-12-05.pdf))
3. **Changes/Corrections.** Bidders must initial any changes or corrections to the Bid Response, such as erasures and crossed out/rewritten prices. The Procurement Officer may confirm the Bid Response when changes are not initialed.
4. **Multiple Bid Responses.** Bidders may submit more than one Bid Response in response to this solicitation. Each Bid Response submitted must be prepared in accordance with the Bid Response instructions and meet the stated requirements.
5. **Open Records Requests.** Bid Responses are exempt records until the date and time of the Bid Response opening. After the Bid Response opening, all Bid Responses are subject to North Dakota open records laws. Interested parties may contact the Procurement Officer to request information related to this solicitation.
6. **Packaging.** All packaging must be strong and secure in accordance with accepted commercial practices.
7. **Protests.** Protests of the solicitation must be received by the Procurement Officer within seven days before the Bid Response deadline. Protests of the award or Notice of Intent to Award must be received by the Procurement Officer within seven days after receiving notice of award. Seven calendar days after award or issuance of the Notice of Intent to Award it will be assumed that all interested parties knew or should have known all the facts surrounding the award. Protests must be made in writing to the Procurement Officer and include the basis for the protest. ([N.D.C.C. § 54-44.4-12](http://www.legis.nd.gov/cencode/t54c44-4.pdf); [N.D.A.C. ch. 4-12-14](http://www.legis.nd.gov/information/acdata/pdf/4-12-14.pdf).)
8. **Signature.**  The Bidder’s authorized representative must provide their printed name, title, and sign the Bid Response. The lack of a signature may be waived as a minor informality, provided a signed Bid Response is submitted by the deadline established by the Procurement Officer. ([N.D.A.C. ch. 4-12-10](http://www.legis.nd.gov/information/acdata/pdf/4-12-10.pdf))
9. **Specifications, Compliance.** All Bid Responses must comply with the stated specifications, and the successful Bidder will be held responsible. Bidders who desire to submit commodities or services that deviate from these specifications or have any objections to the stated specifications must contact the Procurement Officer by the deadline for questions or at least seven days before the Bid Response deadline, so the Procurement Officer can determine whether the specifications need to be amended.
10. **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](https://www.ndlegis.gov/information/acdata/pdf/4-12-06.pdf?20140130144222).
11. **Supplier Registration (Payee).** The successful Bidder 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.
12. **Withdrawal or changes to a Bid Response prior to the Bid Response deadline.** Before the Bid Response deadline, the Bidder’s authorized representative may withdraw or change a Bid Response by making a written request to the Procurement Officer.
13. **Withdrawals or changes to a Bid Response after the Bid Response deadline.** After the Bid Response deadline, no changes may be made to Bid Response, except as provided in [N.D.A.C. ch. 4-12-10](http://www.legis.nd.gov/information/acdata/pdf/4-12-10.pdf). The Bidder’s authorized representative may make a written request to withdraw the Bid Response.

**SECTION 2**

**EVALUATION AND AWARD**

1. **Award.** Award will be made to the responsible Bidder with the lowest priced Bid Response that is responsive to the specifications and all other requirements stated herein. Award will be made as follows:
   * + Contracts will be awarded in the following categories:
       1. Category A: Indoor ND Flags, Outdoor North Dakota Flags Single Seal
       2. Category B: Indoor US/POW/MIA Flags, Outdoor US/POW/MIA Flags
       3. Category C: Outdoor ND Flags Double Seal
     + Optional Hemp Fiber Flags will be a separate award.
2. **Award – Preference Laws.** The reciprocal preference law, N.D.C.C.§ 44-08-01, was repealed effective August 1, 2023.
3. **Award – Tie Bid Response Preference.** If a tie occurs between two or more Bidders with equal Bid Response prices or offerors with identical evaluation scores:
4. 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](https://www.ndlegis.gov/cencode/t44c08.pdf#nameddest=44-08-02). ([N.D.C.C. 54-44.4-05.1](https://ndlegis.gov/cencode/t54c44-4.pdf))
5. If a tie still remains, award shall be made in accordance with [N.D.A.C. § 4-12-11-05](http://www.legis.nd.gov/information/acdata/pdf/4-12-11.pdf).
6. **Late Bid Responses.** Bid Response responses must be received by the Procurement Officer by the Bid Response deadline. Late Bid Responses will be rejected, regardless of the degree of lateness, unless the delay is due to the error of the Procurement Officer and discovered before the selection of the successful Bidder. ([N.D.A.C. § 4-12-08-13](http://www.legis.nd.gov/information/acdata/pdf/4-12-08.pdf))
7. **Responsiveness of the Bid Response.** Any Bid Response that does not meet the requirements of the solicitation, other than mistakes determined to be minor informalities, will be rejected. ([N.D.A.C. § 4-12-11-03](http://www.legis.nd.gov/information/acdata/pdf/4-12-11.pdf))
8. **Minor Informalities.** The STATE reserves the right to waive minor informalities in Bid Responses. Minor informalities are insignificant omissions or nonjudgmental mistakes that are matters of form rather than substance, evident from the Bid Response document, with a negligible effect on price, quantity, quality, delivery, or contractual conditions that can be waived or corrected without prejudice to other Bidders. ([N.D.A.C. ch. 4-12-10](http://www.legis.nd.gov/information/acdata/pdf/4-12-10.pdf))
9. **Mistakes.** The Procurement Officer may confirm the Bid Response in the event of apparent errors, such as an unreasonably priced Bid Response. Mistakes will be handled in accordance with [N.D.A.C. ch. 4-12-10](http://www.legis.nd.gov/information/acdata/pdf/4-12-10.pdf).
10. **Responsibility of the Bidder.** The Procurement Officer, at any time, may make a supplementary investigation as to the responsibility of any Bidder, even though the Bidder may be on the Bidders List. If a Bidder is determined to be not responsible, that Bid Response will be rejected even if it is the lowest Bid Response, and the Bidder may be debarred or suspended from the Bidders List. ([N.D.A.C. § 4-12-11-04](http://www.legis.nd.gov/information/acdata/pdf/4-12-11.pdf))
11. **Rejection.** The STATE reserves the right to reject any and all Bid Responses in whole or in part. The Procurement Officer will send a rejection notice, including the reason for rejection. Bid Responses will be rejected if:
12. the Bid Response is determined to be not responsive to the instructions, specifications, and other requirements of the solicitation, other than mistakes or omissions determined to be minor informalities;
13. the Bid Response is determined to be late;
14. the Bidder fails to comply with Bidders List Application requirements by the stated deadline;
15. the Bidder is determined to be not responsible, in accordance with [N.D.A.C. § 4-12-11-04](http://www.legis.nd.gov/information/acdata/pdf/4-12-11.pdf);
16. the Bid Response is not legible.

If all Bid Responses are rejected, the Procurement Officer will send written notice to Bidders, including the reason all Bid Responses were rejected. ([N.D.A.C. § 4-12-11-09](http://www.legis.nd.gov/information/acdata/pdf/4-12-11.pdf))

**SECTION 3**

**SPECIAL TERMS AND CONDITIONS**

1. **State Contract.** The contract resulting from this solicitation will be a State Contract made available to North Dakota state agencies and institutions.
2. **Term of the Contract.** The term of the contract issued as a result of this solicitation will be as follows:
3. **Contract Period.** This Contract term (Term) begins on June 1st, 2024, or its Effective Date, and ends on May 31st, 2025.
4. **No Automatic Renewal**. This Contract will not automatically renew.
5. **Extension Option**. STATE reserves the right to extend this Contract for an additional period of time, not to exceed 12 months, beyond the current termination date of this contract.
6. **Renewal Option**. STATE may renew this Contract upon satisfactory completion of the initial Contract Term. STATE reserves the right to execute up to 6 renewal options to renew this Contract under the same terms and conditions for a period of 12 months each.
7. **Billing Address.** After delivery of commodities or services under contract, the CONTRACTOR must submit a correct invoice. Payment will be made after inspection and acceptance.

* Invoices must be addressed to the Ordering Agency that places an order under this contract. All invoice and payment inquiries must be directed to the Ordering Agency. Any problems related to late payment may be escalated to the Procurement Officer.

1. **Contract Amendment – Unanticipated Amendment.** After a binding contract has been entered into, no changes may be made, unless prior written approval has been obtained from the Purchasing Agency through execution of a contract amendment. The Contractor may request changes, such as substitutions of a product, by submitting a written request to the Procurement Officer. Unanticipated amendments must be within the scope of the original contract, authorized by the terms of the contract and due to legitimate, unforeseen circumstances. ([N.D.A.C. ch. 4-12-13](http://www.legis.nd.gov/information/acdata/pdf/4-12-13.pdf))
2. **Contract Estimated Volume.** The volume of this contract is estimated. Estimates are not to be considered as either a minimum or maximum, but rather an estimate based upon past and anticipated usage. The CONTRACTOR or CONTRACTORs will be required to furnish actual requirements upon receipt of an order. This contract will not include items of a similar nature, which must be bought for emergency use.
3. **Contract Sales Reports.** The CONTRACTOR must maintain records of sales under the contract and furnish volume of sales information to the Procurement Officer. The CONTRACTOR must furnish reports listing all purchases made by all government entities using this contract. The report must be furnished within 14 days after the request by the Procurement Officer.

The report format will be determined by mutual agreement of the CONTRACTOR and the Procurement Officer.

1. **Order Confirmation.** The CONTRACTOR must confirm the receipt of orders by communicating with the Ordering Agency within 3 working days of the order placement.
2. **Delivery Time Required.** The CONTRACTOR must meet the specified delivery requirements. If delivery cannot be made within the specified time, the CONTRACTOR must notify the Ordering Agency in writing of the delay and the approximate date delivery may be expected.

* Delivery of double seal North Dakota State flags must be made within 28 days after the CONTRACTOR receives an order from the Ordering Agency by issuance of a contract or purchase order or use of a purchasing card.
* Delivery of all other flags under this contract must be made within 14 days after the CONTRACTOR receives an order from the Ordering Agency by issuance of a contract or purchase order or use of a purchasing card.

1. **Delivery Location - F.O.B. Point and Freight**. Delivery, freight, and passage of title shall under this contract shall be as follows:

* Orders that meet the minimum order amount of $160 will be F.O.B. Destination, Freight Prepaid to any North Dakota destination with all freight and handling included in the item price. Title will pass to Ordering Agency upon delivery to the specified destination. The CONTRACTOR will file any claims.
* Orders that do not meet the minimum order amount will be F.O.B. Destination, Freight Prepaid and Added. CONTRACTOR will prepay all freight and handling and add to the Ordering Agency invoice. Title will pass to the Ordering Agency upon delivery to the specified destination. The CONTRACTOR will file any claims.

1. **Sample Submission Requirement.** The successful Bidder will be required to furnish one outdoor 3’x5’ nylon sample North Dakota Flag. The successful bidder must provide a representative sample of the commodity being offered at no cost to the STATE to ensure compliance with the specification. The sample must be marked to show the Bidder's name, the bid number and title, and the bid item number. Sample of the successful bidder or offeror will be retained for comparison to commodities delivered under contract ([N.D.A.C. § 4-12-08-11](http://www.legis.nd.gov/information/acdata/pdf/4-12-08.pdf)).

Sample must be sent to the Mailing/Delivery Address below.

Steve Lippert, Admin Services IV

State Supply, J-Wing Basement

600 East Boulevard Avenue

Bismarck, ND 58505

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

701-328-334

1. **Inspection and Acceptance or Rejection.** The STATE reserves the right to conduct inspections and investigations related to the Bidder and the offered commodities or services, including but not limited to the firm, personnel, qualifications, and the commodities and services offered to make determinations regarding compliance with the Bid Response requirements and responsibility of the Bidder. All material and workmanship are subject to inspection and testing by the STATE at the point of manufacturer, place of storage, or upon receipt. The STATE reserves the right to reject any commodities or services and terminate the contract if the CONTRACTOR fails to comply with the specifications, terms and conditions, or the seller’s express or implied warranties. Rejected commodities will be removed at the CONTRACTOR’s expense. Failure to satisfactorily perform may result in suspension or debarment from the Bidders List.

If commodities or services are rejected as being not compliant with the requirements of this solicitation, the STATE will inform the CONTRACTOR in writing. The Purchasing Agency may provide the CONTRACTOR with a reasonable opportunity to cure, whenever practicable, as set forth in writing by the Purchasing Agency.

1. **Invoicing.**

Orders will be placed by state agencies and institutions.

1. **Pricing – Tax Exempt.** All prices must be in United States currency. Bid Response prices must include all discounts and deductions, and to be less federal and state taxes. Bidders may contact the Procurement Officer to obtain the Purchasing Agency’s tax exemption number and tax-exempt certificate.
2. **Price Adjustment.** Pricing during the term of the contract will be as follows:

* **Pricing, Firm-Fixed with Adjustment upon Renewal.** Pricing shall be firm for the first year of the Contract. If a Renewal Option is being considered, the CONTRACTOR may request a price adjustment 60 days prior to the renewal of the contract period. After the firm-fixed period, the CONTRACTOR may submit a request for a price increase to the Procurement Officer. Requests for a price increase must include a copy of the manufacturer's official notice or other evidence that the increase or decrease is applicable to all customers. The STATE reserves the right to accept or reject, within 30 days, or cancel the contract. The CONTRACTOR shall immediately inform the STATE of any price decreases. Price changes will become effective upon execution of a contract amendment. All orders placed are to be billed at prices in effect at the time of the order, not the date the shipment is made.

1. **Pricing, Unit of Measure.** The unit prices is to be according to the unit of measurement specified in the solicitation. In the event of mathematical differences between the unit price and extended total, the unit price will prevail. ([N.D.A.C. § 4-12-10-02](http://www.legis.nd.gov/information/acdata/pdf/4-12-10.pdf))
2. **Specifications, Brand Name.** Detailed specifications are provided in the bid document, Attachment 1.

The State has a qualified products list of ND State Flags that have been manufactured to meet the specifications as per [N.D.C.C. § 54-02-02](http://www.legis.nd.gov/cencode/t54c02.pdf?20131202142735). **Bids will only be accepted from bidders that are offering an approved ND State Flag design from one of the manufacturers on our qualified products list.** Approved manufacturers are listed in Attachment 1.

Note- manufacturers interested in being listed on the qualified products list can review the following website for details on the color chart: [http://history.nd.gov/state-flag.html.](http://history.nd.gov/state-flag.html)  Vector art is available from the State Procurement Officer assigned to this solicitation. Manufacturers not listed on the qualified product list can submit their sample to the State Procurement Officer for review. If approved, they would be eligible for incorporation onto the qualified products list for a future bidding opportunity.

All United States of America flags bid shall meet United States of America Government regulations concerning official United States of America flags. In addition, North Dakota Century Code section 44-08-22 mandates that all United States of America flags purchased by all North Dakota state and political subdivisions shall be manufactured in the United States of America. Therefore, all United States of America flags bid shall be manufactured in the United States of America.

1. **Optional Category for Bid-** Hemp Flags- Specification details for Hemp Fiber Flags are available in the bid document Attachment 1, Tab 2.

During the sixty-eight Legislative assembly of North Dakota, legislators issued House Concurrent Resolution No. 3004 which encourages all North Dakota citizens to purchase United States flags made out of hemp.

Sixty-eighth Legislative Assembly of North Dakota

In Regular Session Commencing Tuesday, January 3, 2023

HOUSE CONCURRENT RESOLUTION NO. 3004

(Representatives Monson, B. Anderson, Bellew, D. Johnson, Longmuir) (Senators Myrdal, Rust, Vedaa)

A concurrent resolution encouraging North Dakota citizens to purchase United States flags made out of hemp and manufactured in North Dakota.

**WHEREAS**, on June 14, 1777, the Continental Congress passed an Act to establish an official flag for our new nation; and

**WHEREAS**, for more than 200 years, the United States flag has served as a symbol of our nation's unity, freedom, and patriotism, as well as a source of pride and inspiration for millions of citizens;

**WHEREAS**, historians assert the first United States flags were made from hemp; and

**WHEREAS**, hemp is stronger and more durable than cotton; and

**WHEREAS**, hemp fades less than other fabrics; and

**WHEREAS**, state law prohibits state entities or political subdivisions from purchasing a United States flag unless the flag was manufactured in the United States; and

**WHEREAS**, North Dakota citizens should demonstrate their patriotism by supporting local businesses in our state which manufacture United States flags made out of durable materials, such as hemp;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

**BE IT FURTHER RESOLVED**, that all North Dakota citizens are encouraged to purchase United States flags made out of hemp and manufactured in North Dakota; and

**BE IT FURTHER RESOLVED**, that the Secretary of State forward copies of this resolution to the commissioner of commerce and members of the North Dakota Congressional Delegation.

1. **Delivery and Orders.** The CONTRACTOR must deliver commodities and services ordered under this contract by the required time. If after receiving the order, the Bidder learns that the delivery requirements cannot be met, the Bidder must immediately notify the Purchasing Agency by telephone, email or mail and indicate the delay and an approximate delivery date. Repeated delivery delays may be considered as failure to deliver.

**SECTION 4**

**RISK MANAGEMENT REQUIREMENTS**

1. Indemnification. Indemnification provisions are incorporated and made part of this solicitation and resultant contract.
   * No Indemnification provisions required.
2. Insurance.
   * No Insurance provisions required.

**SECTION 5**

**BID RESPONSE FORM**

**ATTACHMENT 1**

The bid response form, Attachment 1, contains two tabs. The first tab must be completed to respond to IFB 110.7-24-022. Only the sections highlighted in yellow need to be filled. The second tab is an optional bid response for hemp fiber constructed US flags. The hemp flag bid response will be considered an optional bid and awarded separately.

|  |  |
| --- | --- |
| **BIDDER INFORMATION AND SIGNATURE** | |
| By submitting a Bid Response, the Bidder agrees to sell, furnish, and deliver to the STATE all commodities and services contained in this Invitation for Bid for which a contract is awarded by the STATE. The Bidder shall fully perform the contract in accordance with all the specifications, requirements, terms, and conditions, and shall comply with all applicable provisions of the North Dakota Century Code, including chapters 54-44.4, 46-02, and 44-08, and North Dakota Administrative Code Chapter 4-12, made part of the Invitation for Bid and resultant contract by reference.  Written acceptance of the Bid Response by the STATE constitutes a binding contract made and entered into by and between the State of North Dakota, acting through the Purchasing Agency, and the Bidder named below. Written acceptance may be made by execution of a contract, purchase order, or order using a state purchasing card.  **NOTICE.** All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties identified herein. 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. | |
| **Bidder/Contractor Name:** |  |
| **Contractor Federal Employer Identification Number (FEIN)** |  |
| **Bidder Street Address/**  **P.O. Box:** |  |
| **City, State ZIP:** |  |
| **Contact Name:** |  |
| **Contact Title:** |  |
| **Telephone Number:** |  |
| **Email:** |  |
| **Authorized Representative Signature:** |  |
| **Date:** |  |

|  |  |
| --- | --- |
| **STATE OF NORTH DAKOTA**  **BID ACCEPTANCE AND CONTRACT AWARD** | |
| The parties to this contract (Contract) are the state of North Dakota, acting through the Purchasing Agency (STATE), and the above-named Bidder (CONTRACTOR). 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 signatures of the parties shall be deemed the Effective Date.  **NOTICE.** All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties identified herein. 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. | |
| **Acting through its**  **Purchasing Agency:** |  |
| **BY: (Signature)** |  |
| **Printed Name:** |  |
| **Title:** |  |
| **Date:** |  |

**SECTION 6**

**CONTRACT TERMS AND CONDITIONS**

1. **Scope of Work.** CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, shall provide the commodities and services described in this solicitation.

2.Compensation.

1. Contractual Amount

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

1. 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.

1. 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.
2. **Prepayment.** STATE will not make any advance payments before performance by CONTRACTOR under this Contract.
3. **Payment of Taxes by State.** STATE is not responsible for and will not pay local, state, or federal taxes. STATE will furnish certificates of exemption upon request by the CONTRACTOR.
4. **Purchasing Card.** STATE may make a payment using a government credit card. CONTRACTOR will accept a government credit card without passing the processing fees for the government credit card back to STATE.
5. **Termination.**
6. 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.

1. Early Termination in the Public Interest

STATE is entering into this Contract for the purpose of carrying out the public policy of the State of North Dakota, as determined by its Governor, Legislative Assembly, 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.

1. Termination for Lack of Funding or Authority

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

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

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

1. Termination for Cause

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

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

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

1. **Force Majeure.** Neither party shall be held responsible for delay or default caused by fire, riot, terrorism, acts of God, or war if the event is beyond the party’s reasonable control and the affected party gives notice to the other party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.
2. **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.
3. **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.
4. **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](http://www.legis.nd.gov/cencode/t44.html). The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the Term of this Contract.
5. **Compliance with Public Records Laws.** CONTRACTOR 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.
6. 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.
7. **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 without cause. CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this Contract and incorporates this Contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor with whom CONTRACTOR contracts. CONTRACTOR does not have authority to contract for or incur obligations on behalf of STATE.
8. **Spoliation – 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.
9. **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:
   1. The terms of this Contract as may be amended;
   2. STATE’s Solicitation Amendments related to this Invitation for Bid;
   3. STATE’s Invitation for Bid;
   4. CONTRACTOR’s Bid Response submitted in response to this Invitation for Bid.
   5. All automated end-user agreements (e.g., click‑through, shrink-wrap, or browse-wrap) are specifically excluded and null and void. Clicking shall not represent acknowledgement or agreement to any terms or conditions contained in those agreements.
   6. Terms and conditions contained within any documents furnished by the Contractor, including packing slips, shall not supersede the terms and conditions of this contract.
10. **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.
11. **Applicable Law and Venue.** This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be 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.
12. Alternative Dispute Resolution – Jury Trial. By entering into 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.
13. 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.
14. 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.

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 (10) 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.

1. **State Audit.** All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Contract are subject to examination by the North Dakota State Auditor, the Auditor’s designee, or Federal auditors, if required. CONTRACTOR shall maintain all of 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.
2. 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.