

# **The UNIVERSITY OF NORTH DAKOTA**

**REQUEST FOR QUALIFICATIONS  
for**

**Wilkerson Commons Public Art**

**RFQ # 25-2018**

**RELEASE DATE: November 14, 2017**

**DUE DATE: 2:00PM CDT, January 22, 2018**

Prepared by the University of North Dakota Procurement & Payment Services  
Department

## INTRODUCTION AND INFORMATION

### Purpose of RFQ

This Request for Qualifications is released by the University of North Dakota Procurement Services Department on behalf of the University of North Dakota Department of Facilities Management for the purposes of retaining the most qualified Consultant to commission a professional artist to create site-specific artwork to be placed inside Wilkerson Commons.

### Time Frame of Work

The time frame of Work as proposed by the Offeror and by UND acceptance of the proposed time frame shall be carried out without any delays. Delays of Work by Consultant shall be defined by UND and any penalties imposed upon Consultant shall be mutually agreed upon at time of Contract Award.

### Execution of contract

UND Procurement Services will issue an official contract to the successful Offeror. At time of award, the appropriate contact/invoice addresses will be given. The final contract will be binding to Contractor and UND upon completion of contract signing by all parties. The RFQ, its attachments, its appendices, its amendments, the awarded Contractor RFQ response, and any attachments hereto shall be used in the writing of the contract entered into between the successful Offeror and UND but shall not be included directly or by reference within the contract.

### Vendor Registration

Vendors, including Offerors to this RFQ, conducting business in the State of North Dakota are required to be registered with the North Dakota Secretary of State as per <http://www.nd.gov/sos/businessserv/registrations/index.html>. Contact that office for information by telephone at 701-328-4284.

**The successful Offeror must register and become approved within thirty calendar days or shorter time specified in writing by the Procurement Services Office from the date of notice of intent to award. The Offeror will be deemed as non-responsive should they fail to register within the specified time period.**

## SECTION 1

### SCOPE OF WORK

#### BACKGROUND

Since its founding in 1883, six years before North Dakota statehood, UND has cultivated an exciting history. Unlike most state institutions of higher education west of the Mississippi, UND did not begin as an agricultural school or only as a teachers college. Instead, it was organized initially as a College of Arts & Sciences, with a Normal School for the education of teachers. Today, the University of North Dakota (UND) is the state's flagship university as well as its oldest and largest University. UND has approximately 15,000 students and offers **225+** fields of study, including the only law and medical schools in the state. More information about the history and traditions of the University of North Dakota can be found at <http://und.edu/discover/>

#### About the Department of Housing & Dining:

More information on the UND Department of Housing & Dining can be found here:

<http://und.edu/student-life/housing/>

<http://und.edu/student-life/dining/index.cfm>

#### REQUEST FOR QUALIFICATIONS IN PUBLIC ART

The University of North Dakota (UND) seeks Statements of Qualifications from Professional Visual Artists for the project described below. The selected Artist will contract directly with UND to successfully complete the full scope of the Project within the project budget and on schedule.

This Request for Qualifications (RFQ) provides information on the scope of the project and information to aid in preparing responses to this RFQ. All inquiries regarding this Project and RFQ must be in writing and must be submitted to the Procurement Officer listed in section 4.2 in sufficient time to allow UND to respond. UND will evaluate the inquiries, determine whether an Addendum is required, and issue an appropriate response

Facilities Management is not responsible for the accuracy or comprehensiveness of information provided by other UND officials or other agencies. Artists should not rely on information obtained from sources other than the Procurement Officer listed below. UND reserves the right to waive any or all formalities and to reject any or all responses if it determines it is in its best interest to do so.

#### **Project Budget: \$75,000 (All Inclusive)**

This amount is inclusive of all costs associated with this public art project including, but not limited to, artist fees, other consultants' and subcontractors' fees, insurance conforming to University of North Dakota standards, engineering, materials, fabrication, transportation, installation (including any site modification), and post-installation documentation.

*\*Please note that artists submitting from outside of the United States may be subject to a 30% tax withholding from the Internal Revenue Service.*

#### **Project Scope:**

The University of North Dakota seeks to commission a professional artist(s) to create a public art project to be placed at the newly remodeled Wilkerson Commons building. Wilkerson Commons underwent significant renovation and expansion, re-opening in fall 2015.

The upper level of Wilkerson Commons houses the primary residential dining facility on the University of North Dakota campus and features seven dining concepts. In addition, Wilkerson dining also offers regional favorites showcasing regionally sourced ingredients, allergen free

options, vegetarian, global cuisine and a chef's table area where showcase and demonstration cooking events take place to entertain and educate our residents about healthy dining and food preparation methods. The upper level dining area features floor to ceiling windows overlooking University Avenue and the English Coulee water feature that runs through campus. Abundant natural light and the modern décor provide a light and lively dining location.

The lower level, where the public art will be installed, serves as a crossroads and central hub for socializing, studying, and gathering for residential students. Wilkerson Commons is connected by underground tunnels to the five surrounding Wilkerson Complex residence halls. Approximately 1000 students live in the Wilkerson area. Student mailboxes and package pick up are located near the lower level Service Center. Other services located on the lower level are: ResNet student computer and technology support services, several meeting rooms, an Innovation lab and study pods. Our Association of Residence Halls student leaders have their offices on the lower level and hold the majority of their meetings, programs and events at Wilkerson Commons. The lower level is a destination location for student activities, meetings, study and events.

This work of public art needs to take up all or a large part of the wall shown in the attachments. Given the very public and high-traffic nature of this space, durable, low-maintenance materials are recommended and preferred.

This art installation will not only serve as a highlight and focal point of the facility, but should also create a sense of place and reflect the community gathering nature of the space and the ideals of the UND residential student experience. Submitting artists should consider lighting and other elements that will draw attention to the artwork at various times throughout the day. Artists should keep in mind that this is a public location. Any concepts that may be considered polemic or political should be avoided.

Ideal submissions will create an original art piece that celebrates University of North Dakota **residential student experience** and which reflect institutional values of Community, Discovery, Diversity and Inclusion, Lifelong Learning and Liberal Arts. Other themes or characteristics that may provide the artist insight or inspiration for this project include: hardworking, self-reliant, proud, doer, resilient, bold, and friendly.

In order to be considered, submissions must comply with the requirements outlined in this document. UND seeks an original and unique art piece. Objects that are mass-produced or of standard manufacture are not eligible for consideration.

Finalists will develop a design concept that reflects the standards and culture of the University of North Dakota with specific reference to the residential student experience as previously outlined. Artists submitting project concepts will prepare presentation materials, drawings, a model, (if applicable) and related specifications in sufficient detail and in the format required to convey the design intent.

**Design Proposal Honorarium:**

Design Proposal Selected finalists will receive a maximum of \$2000 *Honorarium to assist in defraying cost* for travel and design fees following the submission and presentation of a Design Proposal and a model. *\*Please note that artists submitting from outside of the United States may be subject to a 30% tax withholding from the Internal Revenue Service.*

**Note: The commissioned artist will be issued sets of facilities drawings and applicable specifications and shall verify all dimensions prior to the commencement of work.**

## COMMISSION REQUIREMENTS

If commissioned, the successful Artist shall be responsible for the following:

1. Performing all services and furnishing all supplies, material, and equipment as necessary for the design, execution, fabrication, transportation, and installation of the Work at the Site, and providing professional documentation photos at the conclusion of the project.
2. Submitting detailed working drawings of the commissioned Work and the Site(s) to UND in order to permit UND to carry out architectural and engineering design reviews and to certify the compliance of the Work with applicable statutes and ordinances.
3. Strictly adhering to and managing the approved project, budget, and schedule, including the submission of monthly written Progress Reports to UND.
4. Bearing the entire risk of loss or damage to the Work during design, fabrication, packing, shipping, and installation.
5. Providing and maintaining insurance to cover claims for damages for personal injury, bodily injury (including wrongful death), and property damage. The Artist shall require all subcontractors to provide and maintain insurance. A complete list of insurance requirements will be provided to project finalists.
6. The Artist's design(s) should complement UND's architectural traditions and enhance the Site's identity and use.

## PROJECT DELIVERABLES

Selected finalists will be responsible for **refining the** proposal design. Artists submitting project concepts will prepare presentation materials, drawings or model, (if applicable) and related specifications in sufficient detail and in the format required to convey the design intent. Models and finalist presentation materials will not be returned to the artist.

The commissioned artist will be responsible for the development, execution and installation of an original art piece that celebrates University of North Dakota **residential student experience**, which reflects institutional values of Community, Discovery, Diversity and Inclusion, Lifelong Learning and Liberal Arts. This original piece of commissioned art to be created and installed in the Wilkerson Commons location as specified in this request for qualifications. Please specifically note criteria outlined under Commission Requirements.

The artist will grant to UND a perpetual, non-exclusive, and royalty-free right and license to publicly display, relocate, photograph, and depict reproductions of the work of art in any medium in conjunction with the University's lawful activities, including without limitation teaching, education, research, scholarship, and advertising and promotion, and the right to sub-license third parties acting on the University's behalf.

## SECTION 2

### PROPOSAL CONTENTS

#### SUBMISSION REQUIREMENTS

All ARTISTS responding to this Request for Qualifications must submit complete responses to the information required in this section and will note any exceptions to information required in the RFQ. Submit a **signed scanned copy** of Appendix A – Signature Page, noting the number of Addenda the artist has viewed.

Responses will be evaluated based upon the selection criteria listed below.

**Offerors should present the required information in a clear and concise manner in the following order and format:**

#### Cover Sheet (Appendix A, Form of Response)

- Include name, address, telephone, email, and website (if applicable) of the ARTIST to receive all Project information, or any official correspondence relating to the Project. **Please reference the project name Wilkerson Commons Public Art and number (25-2018) on all correspondence.**

#### Section 1: Artist Resume and References

- Include degrees held, a summary list of exhibitions/public art projects completed during the past ten (10) years, selected exhibitions/public art projects, awards, catalogues, current gallery affiliations, and grants / fellowships).
- Include phone numbers **and email addresses** for at least three (3) professional references.

#### Section 2: Digital Images of Past Work

- Images of Previous Work (PC compatible). Please closely observe the following guidelines for the submittal of digital images:
- Submit **between five (5) and (15) images** featuring select examples of previous public art projects with particular emphasis on works of a similar scope or utilizing similar techniques.
- Include the artist name, the year, location, media, **and budget** of featured artwork. Briefly describe the project concepts.

#### Section 3: Statement

- Artist Statement
- Please describe the conceptual basis for your body of work. In a separate paragraph, please explain your experience working with architectural, engineering, and design specifications and drawings (limit to 250-500 words).
- Preliminary Concept Statement and description of your preliminary proposed design. Please include your interpretation and description of how the piece reflects the UND residential student experience.
- Preliminary rendering and descriptive detail of proposed Wilkerson Commons art piece.
- Please describe your initial impressions of and projected approach to this public art project for the Wilkerson Commons project. Specifically, please address your thoughts on location and medium and, if applicable, discuss any projects for which you used a similar approach (limit to 250-500 words).

**All submissions should be clearly marked with the Project Name (Wilkerson Commons Public Art) and Number (25-2018).**

All materials prepared and submitted by the Consultant will become the jointly owned intellectual property of the University of North Dakota and the Consultant, with limited use of the documents by UND on future projects limited by North Dakota law.

- 14 Electronic copies of the complete submission documents, which shall include the information outlined below under Section 2, Proposal contents.

UND reserves the right to request additional information from individual artists.

### **EVALUATION CRITERIA**

UND will select the Artist that best meets the requirements, based on the information contained in their response to the Request for Qualifications, any reference checks conducted, and the information presented during any interviews conducted as part of the selection process. Specifically, in the selection of finalists, UND and its team of evaluators will review and consider the following:

1. The conceptual basis for the Artist's body of work and the preliminary concept statement presented.
2. Aesthetic and conceptual interpretation of the UND student residential experience
3. The quality – technical and aesthetic – of the artist's preliminary proposed art piece as represented in the submission.
4. The experience of the artist in successfully designing, fabricating, administering, and completing public art projects and/or custom architectural elements on time and in budget.
5. Consideration of the use of the space and selection of materials relative to maintaining and preserving the art piece.
6. The quality and comprehensiveness of the submission package

After evaluating the artists' submissions, UND will narrow the pool of Offerors to no more than five finalists to refine or further develop a design and model for presentation based on the preliminary submission. The final submission will be presented to the selection committee. Each finalist will be paid an honorarium not to exceed \$2000 for the development of their Design Proposal and to facilitate travel for the presentation. The model will not be returned to the artist.

### **FEES**

Fee proposals are not required to be submitted with the proposal. Fees and reimbursable expenses will be negotiated with the best qualified Offeror after the selection process is completed. If UND and the Offeror cannot reach an agreement, UND reserves the right to negotiate with the next highest rated applicant.

## SECTION 3

## RULES FOR PROPOSAL SUBMISSION

- 4.1 It is the sole responsibility to the Offeror to be certain that it has received a full set of the Proposal Documents when preparing to respond. Upon submission of its Proposal, the Offeror shall be deemed conclusively to have been in possession of a full set of proposal documents.

**Offerors are expected to examine the entire RFQ, including all specifications, requirements, and instructions. Failure to do so will be at the Offeror's risk.**

- 4.2 Inquiries & Permitted Communications

Inquiries: Any inquiries by Offerors relating to the RFQ are to be in written form and emailed ([anna.leddige@UND.edu](mailto:anna.leddige@UND.edu)) or faxed to UND Procurement Services. (701-777-3948), attention: Anna Leddige, Procurement & Contracting Officer.

Inquiries must be received on or before the date set out in section 4.5. Replies will be issued in written form and signed by a UND Procurement Services official, and sent out to all Offerors. The replies sent out are considered an amendment to the RFQ and shall become a part of the RFQ documents.

UND Procurement Services shall not be responsible for, and the Offeror shall not rely upon, any instructions or information given to any Offeror other than in writing in accordance with the requirements of the RFQ documents.

Communications: All communications must be conducted with the Purchasing Official named above. During the period between the RFQ response submission date and the selection of the Offeror and subsequent contract, neither Offeror nor their agents and/or representatives, shall directly discuss or promote their RFQ response with any member of the University except in the course of University-sponsored inquiries, briefings, interviews, or presentations, unless requested by the University. This prohibition is intended to create a level playing field for all potential Offeror, assure that decisions are made in public, and to protect the integrity of the RFQ process. Violation of this provision may result in rejection of the Offeror's RFQ response.

- 4.3 RFQ Revisions: UND Procurement Services may revise the RFQ documents up to three (3) days prior to Closing Date by issuance of a written amendment, signed by UND Procurement Services official, which shall be issued to all Offerors. Upon issuance, all amendments shall become part of the Request for Qualifications documents and the cost for doing any portion of the Scope of Work required there in shall be included in the RFQ price.
- 4.4 RFQ Costs & Samples: UND Procurement Services will not be responsible for any costs incurred by Offerors which may result from the preparation or submission of the proposal documents pertaining to the RFQ.



## 4.5 Tentative RFQ Time Period and Work Time Line.

November 14, 2017	RFQ documents released.
November 27, 2017	Project Walk Through @ 10:00am (optional)
December 11, 2018	Last day for Offeror's inquiries.
January 22, 2018	RFQ Closing Date (Time: 2:00 PM CST)
TBD (within approximately 7-10 days of RFQ Closing).	On-Site Verbal Presentations (as determined by UND Procurement Services)
February 22, 2018	Notice of Intent to Award a Contract is Issued

4.6 The RFQ response submitted shall be valid and cannot be withdrawn for a period of 30 days following the RFQ closing time and date.

## 4.7 Proposal Receipt and Opening

4.7.1 Submission of Qualifications: Offerors are required to use any attached forms, and additional sheets with the proper headings (RFQ #, your company name) on each page submitted.

4.7.2 Telephone or facsimile proposals will not be accepted.

4.7.3 Offerors must submit 14 copies of its proposal in a sealed envelope or package.

Offerors must submit an electronic copy of their proposal and digital images of past work on a disk, USB memory device, or CD.

The Proposal may be mailed or hand carried. Envelopes or packages containing proposals must be clearly addressed as described below to ensure proper delivery and to avoid being opened by UND before the deadline for receipt.

Envelopes or packages must be addressed as follows:

University of North Dakota  
Procurement Services Office  
Request for Qualifications (RFQ): Wilkerson Commons Public Art  
RFP Number: 25-2018  
264 Centennial Dr. Stop 8381  
Grand Forks, ND 58202

4.7.4 Any Proposal response received after the Closing Date and Time shall be considered disqualified and will be returned unopened to the submitting Offeror.

4.7.5 Offeror amendments to a Request for Qualifications must be mailed to the above address with the proposal description, "RFQ # 25-2018" clearly marked on the outside of the envelope, as well as the Offeror organization name and full address. Offeror amendments must be received by UND Procurement Services on or before Closing Date and Time.

- 4.7.6 UND Procurement Services accepts no responsibility for non-receipt and delays in receipt caused by mail carrier.
- 4.7.7 Proposals submitted which contain qualifying conditions or otherwise fail to conform to submittal instructions may be disqualified or rejected.
- 4.7.8 Offerors with a disability that need an accommodation should contact the Procurement Officer prior to the deadline for receipt of proposals so that reasonable accommodation can be made.
- 4.7.9 Committee recommendations may result in further RFQ clarifications, which may include verbal presentations. Any verbal presentations will be at UND Procurement Services discretion and scheduled by UND Procurement Services.
- 4.8 Open Record Laws
- All proposals and other material submitted become the property of the State and may be returned only at the State's option. All proposals and related information, including detailed cost information, are exempt records and will be held in confidence until an award is made, in accordance with N.D.C.C. § 54-44.4-10(2).
- Proposers may make a written request that trade secrets and other proprietary data contained in proposals be held confidential. Material considered confidential by the proposer must be clearly identified, and the proposer must include a brief statement that sets out the reasons for confidentiality. See the North Dakota Office of the Attorney General website for additional information.  
<http://www.ag.state.nd.us/OpenRecords/ORM.htm>
- After award, proposals will be subject to the North Dakota open records law. Records are closed or confidential only if specifically stated in law. If a request for public information is received, the procurement officer, in consultation with the University of North Dakota General Counsel, will determine whether the information is an exception to the North Dakota open records law, and the information will be processed appropriately.
- 4.9 Award
- 4.9.1 This RFQ shall result in an exclusive award.
- 4.9.2 UND Procurement Services reserves the right to award on basis of the best qualifying proposals.
- 4.9.3 Acceptance or Rejection of RFQ Response: UND Procurement Services reserves the right to accept or reject any or all RFQ responses or parts of RFQ responses, and to waive informalities therein. UND Procurement Services may award a contract based on proposals received without discussion of such proposals. Accordingly, each proposal should be submitted with the most favorable response available.
- 4.9.4 Negotiations: UND Procurement Services reserves the right to negotiate for final agreement with the Contractor(s) offering the best qualifying proposal and upon mutual agreement of UND and Contractor(s).

SECTION 5

PROPOSAL RESPONSE FORMAT

- 5.1 Appendix - A. Signature Page shall be attached to the front of the proposal response and shall be signed by an official who has full authority to represent the organization responding to the RFP.

## SECTION 6

## GENERAL CONTRACT INFORMATION

**6.01****Contract Type****Fixed Price with Adjustment**

The contract will be a fixed price contract with adjustment. A fixed price will be established for the scope of work. Any changes to the fixed price will be agreed upon between the parties, and the contract will be amended.

**6.02****Payment Terms**

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

Procurement & Payment Services at:

[und.accountingservices@email.und.edu](mailto:und.accountingservices@email.und.edu)

or mailed to:

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

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

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

**6.03****Travel**

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

Should additional travel be required, UND will reimburse Contractor for expenses related to travel at amounts not to exceed those outlined below:

- 1) **Lodging:** Reimbursement will not exceed the then current, published GSA rate for the travel location. Copies of receipts are required for lodging reimbursement. UND will not reimburse for incidental and miscellaneous expenses charged to the room, including, but not limited to, alcohol, telephone charges, or entertainment (e.g., movies, room service).
- 2) **Transportation:** Air travel will be reimbursed by UND at the actual cost of air fare for coach class travel only. Contractor will make air travel arrangements at least fourteen (14) days in advance whenever possible. Reimbursement for rented, chartered, or contracted vehicle transportation will be limited to reasonable rates as determined by UND.
- 3) **Meals:** Meals will 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 will 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 UND's representative.

#### **6.05**

##### **Time is of the Essence**

Contractor hereby acknowledges that time is of the essence for performance under this contract unless otherwise agreed to in writing by the parties.

#### **6.06**

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

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

#### **6.07**

##### **Termination of Contract**

- a. **Termination without cause.** This contract may be terminated by mutual consent of both parties, or by either party upon 30 days' written notice.
- b. **Termination by Mutual Agreement.** This contract may be terminated by mutual consent of both parties executed in writing.
- c. **Early Termination in the Public Interest.** UND is entering into this contract for the purpose of carrying out the public policy of the University of North Dakota, as determined by its governor, legislative assembly, the State Board of Higher Education, and courts. If this contract ceases to further the public policy of UND, in its sole discretion, UND may terminate this Contract in whole or in part by written notice to contractor.
- d. **Termination for Lack of Funding or Authority.** UND by written notice to contractor, may terminate the whole or any part of this Contract under any of the following conditions:
  - 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. Continuation of this contract beyond June 30 of any odd-numbered year is contingent on continued legislative appropriation of funds for the purposes of this Agreement. If those appropriations are not forthcoming, UND will notify contractor as soon as possible and the contract will terminate on June 30 of that year.
  - 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
  - 3) If any license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.UND will not be penalized or incur any liability because of termination of this Contract as provided in this subsection.  
Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.
- e. **Termination for Cause.** UND may terminate this contract effective upon delivery of written notice to contractor, or any later date stated in the notice:
  - 1) If contractor fails to provide services required by this contract within the time specified or any extension agreed to by the University; or
  - 2) If contractor fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.

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

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

## 6.08

### Force Majeure

Neither party will be held responsible for delay or default caused by fire, riot, terrorism, acts of God or war if the event is beyond the party's reasonable control and the affected party gives notice to the other party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

## 6.09

### Indemnification and Insurance Requirements

Contractor agrees to defend, indemnify, and hold harmless UND and its officers and employees, from and against claims based upon actions, inactions, errors, or omissions of CONTRACTOR or its agent(s), but not against UND's comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by CONTRACTOR to UND under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for UND is necessary. CONTRACTOR also agrees to defend, indemnify, and hold UND harmless for all costs, expenses, and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation will continue after the termination of this Agreement.

### INSURANCE

- a. Contractor will secure and keep in force during the term of this Contract, and will require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor to secure and keep in force, 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 contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
  - 2) Automobile liability with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
  - 3) Workers' compensation coverage meeting all statutory requirements. In addition, an "all states endorsement" covering claims occurring outside the state of North Dakota if any of the services provided under the Contract involve work outside of the state of North Dakota.
  - 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers' compensation or commercial general liability insurance.

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

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. The amount of any deductible or self-retention is subject to approval by UND.
- 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 UND. The policies shall be in form and terms approved by UND.

- 3) The duty to defend, indemnify, and hold harmless the University under this agreement shall not be limited by the insurance required in this agreement.
- 4) UND, the State Board of Higher Education, and the State of North Dakota, including their agencies, officers, and employees will be endorsed on the commercial general liability as an additional insured. The University shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.
- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
  - a) "Waiver of Subrogation" waiving any right to recovery the insurance company may have against UND;
  - b) Cross liability/severability of interest for all policies and endorsements;
  - c) The insolvency or bankruptcy of the insured Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy.
- 6) Contractor's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance, or self-retention maintained by UND and any insurance, self-insurance, or self-retention maintained by UND shall be in excess of the Contractor's insurance and shall not contribute with it.
- 7) The legal defense provided to UND under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for UND is necessary.
- 8) The Contractor shall furnish a certificate of insurance to the undersigned UND representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- 9) Failure to provide insurance as required in this agreement is a material breach of contract entitling the UND 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.

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

Upon receipt of the Notice of Intent to Award, the successful Offeror must obtain the required insurance coverage and provide procurement with proof of coverage prior to contract approval. The coverage must be satisfactory to UND. An Offeror's failure to provide evidence of insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.

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

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

**6.10****Works for Hire**

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

**6.11****Work Product, Equipment and Materials**

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

**6.12****New Equipment, Used Equipment, Refurbished Equipment and Materials Certification**

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

**6.13****Confidentiality**

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

**6.14****Inspection and Investigations**

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

**6.15****Compliance With Public Records Law**

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



**6.16****Independent Entity**

Contractor, its employees, agents, and representatives under this Contract are not UND employees for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workforce Safety and Insurance Act. Contractor retains sole and absolute discretion in the manner and means of carrying out Contractor's activities and responsibilities under this Contract, except to the extent specified in this Contract. No part of this contract shall be construed to represent the creation of an employer/employee relationship.

**6.17****Assignments and Subcontracts**

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

**6.18****Spoilation – Preservation of Evidence**

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

**6.19****Severability**

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

**6.20****Applicable Law and Venue**

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

**6.21**

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

**6.22****Audit**

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

**6.23****On-Campus Parking**

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

APPENDIX – A

SIGNATURE PAGE

RFP preparer information and official signature.

Must be included as Page 1 of the Response to Request for Qualifications

RFP PREPARER:

PRINTED NAME: \_\_\_\_\_  
SIGNATURE: \_\_\_\_\_  
E-MAIL ADDRESS: \_\_\_\_\_  
TITLE: \_\_\_\_\_

OFFICIAL AUTHORIZING SIGNATURE:

PRINTED NAME: \_\_\_\_\_  
SIGNATURE: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
COMPANY NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
TELEPHONE: \_\_\_\_\_  
FAX: \_\_\_\_\_  
E-MAIL ADDRESS: \_\_\_\_\_

RFQ addenda received: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.