

# Information Technology Department

## Invitation For Bid (IFB)

**Solicitation Number:** SRC000316  
**Purchasing Agency:** INFORMATION TECHNOLOGY DEPARTMENT  
**Solicitation Title:** CX300 SERVICE MONITOR WITH VNA AND AUTO TUNE APX CAPABILITIES (112-2637)  
**Solicitation Begin:** June 16, 2026  
**Solicitation Deadline for Submission of Questions:** June 19, 2026 by 11:00 AM, CT  
**Solicitation Amendment with responses to Questions issued approximately (if required):** June 23, 2026  
**Deadline for receipt of proposals (Solicitation End):** July 3, 2026 by 11:00 AM, CT  
**Commodity Code(s):** 73084, 73072, 99828, 72677, 72689, 72688, 72690

### Procurement Officer

The Procurement Officer is the point of contact for this IFB. Offerors 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): Information Technology Department

Procurement Officer: Tina M Berger

Email: BergerTina@nd.gov

Phone: (701) 328-9062

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\(7\)\]](#)

### Solicitation Question Deadline

Offerors should carefully review the IFB including all attachments. Offerors 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.

1. Offerors may submit questions within NDBuys using the “Discussions Tab” in the system (visit the [OMB website](#) for a quick reference guide); or
2. Offerors may email their question directly to the Procurement Officer.

If no deadline is specified, questions or objections must be received at least seven days prior to the Solicitation End/Response deadline. The Procurement Officer may elect to respond to questions received after the deadline.

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

If an amendment (i.e., a new round) is issued for the solicitation in NDBuys and an Offeror has already submitted a response beforehand, Offerors are required to resubmit their response or submit a new response to remain under consideration.

A person or firm interested in submitting a response 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).

### **NDBuys State Procurement Website**

This IFB and any related amendment and notices will be posted on the North Dakota NDBuys State Procurement System. Offerors are responsible for checking the NDBuys system to obtain all information and documents related to this IFB, visit the link:

[NDBuys website](#)

Notices related to this IFB will be sent to the supplier list for the needed commodity or service and other known potential offerors.

Offerors that are registered for the supplier list and would like to receive notices related to this IFB, locate the solicitation in NDBuys and select the “Participate in RFx” button. If you do not see the “Participate in RFx” button, contact the Procurement Officer to confirm you are already included in the list of offerors to receive notices for the solicitation.

Offerors that have not yet registered for the supplier list and would like to receive notices related to this IFB and must complete the supplier registration. See [NDBuys Quick Reference Guides](#) for how to register.

**Supplier registration is required to submit a response to a solicitation posted in NDBuys. See Section 1, Subsection 4 – Supplier Registration.**

# Section 1

## Offeror Instructions

### 1. Offeror 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.

### 2. Definitions:

**Bid Response:** the executed document submitted by a Offeror 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 Offerors of a bidding opportunity.

**Solicitation Begin:** Date the solicitation was issued.

**Solicitation End:** Deadline for receipt of responses; also known as the Solicitation Closing

**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.

**Offeror:** any person or firm submitting a competitive bid in response to a solicitation.

**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.

**NDBuys:** a procurement information website maintained by the State Procurement Office pursuant to [N.D.C.C. § 54-44.4-14](#).

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

See the OMB [Guidelines to Vendor Registry](#) for more information.

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

Check the [Business Records](#) database to see if a business is registered.

Contact Secretary of State's office by [email](#) or call 701-328-2900 (choose menu item 2, then option 1) if you need to register, fees apply.

Vendors may need to obtain businesses licenses. See the [list of licenses required of businesses](#) in the State of North Dakota. The link includes information on who to contact, application fees, renewal dates, and the legal reference.

- 4. Supplier Registration:** Individuals or business entities desiring to be notified of bidding opportunities may complete supplier registration to be notified when solicitations are issued on the State's procurement information system (NDBuys) ([N.D.C.C. § 54-44.4-09](#)). Supplier registration does not guarantee a vendor will receive notice of every solicitation ([N.D.A.C. § 4-12-05-01](#)). There are no fees to register as a supplier.

Individuals or business entities completing Supplier registration must provide contact information for receiving solicitation notices, Tax ID, legal structure, address and phone information. Individuals or business entities must also select the commodity codes to identify categories of goods, services, and information technology.

Visit the OMB website for instructions:

[Bidders List Registration Website](#)

For assistance with supplier registration, contact State Procurement Help Desk at 701-328-2740 or [ndbuys@nd.gov](mailto:ndbuys@nd.gov).

**5. 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. Offerors assume the risk of the delivery method selected. Late Bid Responses will be rejected.

**Upload Response Through the State Procurement Online System (NDBuys):**

Offerors Must be registered in NDBuys in order to submit a response.

If you are not yet registered in NDBuys, complete the supplier registration. Visit [NDBuys Quick Reference Guides](#) for how to register.

Once registered, locate the solicitation in NDBuys and select the "Participate in RFX" button. If you do not see the "Participate in RFX" button, contact the Procurement Officer to confirm you are already included in the list of offerors to receive notices for the solicitation.

Offeror must electronically submit a response through the State's procurement information system (NDBuys) by the Bid Response deadline.

Visit the link: [NDBuys Website](#)

Do not wait until the "last minute to submit a response. We recommend uploading your response 24 hours prior to the Bid Response deadline.

Offeror 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 an Offeror's failure to timely submit a response due to any technical difficulties. If you experience any technical difficulties, contact the Procurement Officer or the State Procurement Office at [ndbuys@nd.gov](mailto:ndbuys@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.

Visit [NDBuys Quick Reference Guides](#) which describe how to submit an electronic response.

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

The maximum file size allowed is 56MB or 56,120 KB per file.

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

Offeror will be able to confirm that a response has been submitted by reviewing the History tab of the solicitation and confirming that response status is submitted. If Offeror

does not see that it has been submitted, the upload was not successful. Contact supplier support at +1 (701) 540 9648 or [support-northdakota@ivalua.com](mailto:support-northdakota@ivalua.com).

- 6. 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](#)).
- 7. Assistance to Offerors with a Disability:** Offerors with a disability that need an accommodation must contact the Procurement Officer prior to Bid Response deadline so reasonable accommodation can be made.
- 8. Bid Response Held Firm:** Bid Responses are not awarded at the bid opening. Offerors must hold their Bid Responses firm for 30 days, unless otherwise specified by the Procurement Officer in writing.
- 9. Bid Response Results:** Interested parties may contact the Procurement Officer to obtain a summary of all Bid Responses received and the award. Bid results summary may be requested from the Procurement Officer.
- 10. Suppliers List - Suspension and Debarment:** Placement on the supplier list does not guarantee a vendor will receive notice of every solicitation. A vendor may be removed from the supplier list if a solicitation notice is undeliverable. Vendors may be suspended or debarred from the supplier list for cause. ([N.D.A.C. ch. 4-12-05](#))
- 11.Changes/Corrections:** Offerors 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.
- 12.Multiple Bid Responses:** Offerors 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.
- 13.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.
- 14.Packaging:** All packaging must be strong and secure in accordance with accepted commercial practices.
- 15.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; N.D.A.C. ch. 4-12-14.)

**16. Signature:** The Offeror'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)

**17. Specifications, Compliance:** All Bid Responses must comply with the stated specifications, and the successful Offeror will be held responsible. Offeror 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.

**18. 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.

**19. Supplier/Payee Registration:** The successful Offeror will be required to complete Supplier/Payee Registration, if not already registered as a Supplier/Payee. 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.

**20. Withdrawal or changes to a Bid Response prior to the Bid Response deadline:** Before the Bid Response deadline, the Offeror's authorized representative may withdraw or change a Bid Response by making a written request to the Procurement Officer.

**21. 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. The Offeror'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 Offeror with the lowest priced Bid Response that is responsive to the specifications and all other requirements stated herein. Award will be made as follows:  
  
All or none.  
  
Bid Responses from nonresident (out-of-state) Offerors will be accepted. See Guidelines to North Dakota Purchasing Preference Laws.
2. **Award – Preference Law:** 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 Offerors with equal Bid Response prices or offerors with identical evaluation scores:
  - a. Preference must be given to a resident North Dakota Offeror, seller, vendor, offeror, or contractor as defined in N.D.C.C. § 44-08-02. (N.D.C.C. 54-44.4-05.1)
  - b. If a tie still remains, award shall be made in accordance with N.D.A.C. § 4-12-11-05.
4. **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 Offeror. (N.D.A.C. § 4-12-08-13)
5. **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)
6. **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 Offerors. (N.D.A.C. ch. 4-12-10)
7. **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.
8. **Responsibility of the Offeror:** The Procurement Officer, at any time, may make a supplementary investigation as to the responsibility of any Offeror, even though the Offeror may be on the supplier list. If an Offeror is determined to be not responsible, that Bid Response will be rejected even if it is the lowest Bid Response, and the Offeror may be debarred or suspended from the supplier list. (N.D.A.C. § 4-12-11-04)
9. **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:

- a. 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;
- b. the Bid Response is determined to be late;
- c. the Offeror fails to comply with supplier registration requirements by the stated deadline;
- d. the Offeror is determined to be not responsible, in accordance with N.D.A.C. § 4-12-11-04;
- e. the Bid Response is not legible.

If all Bid Responses are rejected, the Procurement Officer will send written notice to Offeror, including the reason all Bid Responses were rejected. (N.D.A.C. § 4-12-11-09)

## Section 3

### Special Terms and Conditions

1. **Term of the Contract:** The term of the contract issued as a result of this solicitation will be as follows:
  - a. **Contract Period:** This Contract term (Term) begins on its Effective Date and ends on July 31, 2027.
  - b. **No Automatic Renewal:** This Contract will not automatically renew.
  - c. **Extension Option:** STATE may extend this Contract for an additional period, not to exceed twelve (12) months, beyond the current termination date of this Contract.
2. **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 Purchasing Agency. All invoice and payment inquiries must be directed to the Purchasing Agency.
3. **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)
4. **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.
5. **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 [Insert Number] days after the request by the Procurement Officer.

The report format will be determined by mutual agreement of the CONTRACTOR and the Procurement Officer.
6. **Order Confirmation:** The CONTRACTOR must confirm the receipt of orders by communicating with the Ordering Agency within two (2) working days of the order placement.
7. **Training:** CONTRACTOR will provide training to the STATE at 4201 Normandy Street, Bismarck, North Dakota. The scope, number of training sessions, and training delivery

requirements will be identified by STATE. STATE prefers in-person, on-site training, however, virtual training may be accepted upon mutual agreement of Parties.

8. **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 must be made within six (6) weeks after the CONTRACTOR receives an order from the Ordering Agency by issuance of a contract or purchase order or use of a purchasing card.
9. **Delivery Location - F.O.B. Point and Freight:** Delivery, freight, and passage of title shall under this contract shall be as follows:
  - F.O.B. Destination to the location in the Specifications of the solicitation. All freight and handling is to be included in the item price. Title will pass to Purchasing Agency upon delivery to the specified destination. The CONTRACTOR will file any claims.
13. **Descriptive Literature:** The Bid Response must include descriptive literature or detailed manufacturer specifications for the offered equipment or commodities. Offerors are instructed to clearly mark the literature that demonstrates compliance with the specifications. Indicate whether optional features are included to meet the specifications.
14. **New Equipment and Materials:** Unless otherwise indicated in the detailed specifications of this solicitation, all equipment and materials shall be new and under current production for use in the United States.
15. **Inspection and Acceptance or Rejection:** The STATE reserves the right to conduct inspections and investigations related to the Offeror 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 Offeror. 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 supplier 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.
16. **Invoicing:** All invoices and payment inquiries must be directed to the Purchasing Agency.
17. **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. Offerors may contact the Procurement Officer to obtain the Purchasing Agency's tax exemption number and tax-exempt certificate.

18. **Price Adjustment:** Pricing during the term of the contract will be as follows:
- **Firm-Fixed:** Pricing shall be firm for the period of the contract.
19. **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)
20. **Service – Local Requirement:** Services within Insert Number of Hours after placement of service call is required. CONTRACTOR must have facilities or service providers within a commuting distance to meet this requirement.
21. **Specifications, Brand Name or Equivalent:** Unless otherwise indicated in the solicitation specifications, the use of a specific brand name or make/model is for illustrative purposes only, and the STATE will consider equivalent products. If an alternate brand offered by an Offeror is rejected as not being equivalent, the Procurement Officer will send a rejection notice, including the reason for rejection.
22. **Travel:**
- Travel costs are covered by the Contractual Amount. CONTRACTOR may not invoice STATE for travel costs.

## Section 4

### Risk Management Requirements

**Offerors are instructed to review the following provisions. Objections to these provisions must be made in writing to the Procurement Officer by the deadline for questions.**

1. **Indemnification:** Indemnification provisions are incorporated and made part of this solicitation and resultant contract.

None.

2. **Insurance:** Insurance provisions are incorporated and made part of this solicitation and resultant contract. Offerors are instructed to review the Insurance Requirements. The successful Offeror will be required to provide the required proof of insurance prior to contract award, and failure to provide evidence of insurance coverage is a material breach and grounds for award rescission. Failure of the CONTRACTOR to keep the required insurance in effect during the term of the contract is grounds for termination of the contract.

Contractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$2,000,000 per occurrence.
- 2) Workers' compensation coverage meeting all statutory requirements.

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

- 1) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 2) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement.
- 3) The Contractor shall provide a certificate of insurance prior to commencement of this agreement and any required endorsements as soon as practicable electronically to:

Name: ITD Procurement

Email: [ITprocurement@nd.gov](mailto:ITprocurement@nd.gov)

Email Subject Line: Certificate of Insurance – 112-2637 CX300 Service Monitor

- 4) Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.

- 5) Contractor shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. An updated, current certificate of insurance shall be provided in the event of any change to a policy.

## **Section 5**

### **Bid Response Form**

### **Specifications**

The State of North Dakota is requesting bids for Communications Service Monitor system, meeting or exceeding the specifications of the VIAVI CX300 ComXpert Communications Service Monitor.

The system must include, at a minimum, the following required components and capabilities:

1. Required Base System
  - a. CX300 Communications Service Monitor approved by Motorola Solutions.
2. Required Features and Capabilities
  - a. Integrated 2-port Vector Network Analyzer (VNA).
  - b. Motorola APX Auto Tune compatibility/approval.
  - c. Advanced communications test and measurement functionality suitable for land mobile radio (LMR) systems.
3. Required Options / Configuration
  - a. CX300-Silver-5
  - b. CX300-SCAA
  - c. CX300-TPMA
  - d. CX300-DP25P1
  - e. CX300-DP25P2
  - f. CX300-ACS
  - g. CX300-ACBL
  - h. CX300-ACS10
  - i. CX300-ASOL
4. Additional Requirements
  - a. All equipment must be new, unused, and current production, approved by Motorola Solutions.
  - b. Vendor must include manufacturer warranty details that meets or exceed VIAVI Care Support Plan - Silver 5.
  - c. Vendor must provide documentation confirming Motorola APX Auto Tune compatibility/approval.
  - d. Delivery timeline must be clearly stated, including any freight and shipping.
  - e. Include all necessary cables, software, and licenses required for full operation.

Item No.	Qty	Unit		Unit Price	Total Price
1	8	EACH	VIAVI CX300 ComXpert Communications Service Monitor, configured as specified	\$	\$
2	1	EACH	Additional VIAVI CX300 ComXpert Communications Service Monitor, configured as specified	\$	\$
3	1	EACH	Required software/options/licenses needed for intended use	\$	\$
4	1	EACH	Standard accessories required for operation, including power supply, batteries, adapters, stylus, shoulder strap/case or equivalent	\$	\$
5	1	EACH	Initial factory calibration certificate	\$	\$
6	1	EACH	Warranty/support coverage, minimum VIAVI Care Support Plan - Silver 5.	\$	\$
7	1	EACH	Optional annual calibration/service maintenance pricing	\$	\$
8	1	EACH	Optional in-person, on-site training, if needed indicate any minimum or maximum persons	\$	\$
9	1	EACH	Optional virtual training	\$	\$

**Delivery Address:** 216 Airport Road, Bismarck, ND 58504

**Delivery Date Time Required:** six (6) weeks upon receipt of order

**Billing Address:** [ITaccts payable@nd.gov](mailto:ITaccts payable@nd.gov)

Confirm your ability to meet the delivery date requirement by checking the following box.

- Vendor Delivery Date (After Receipt of Order):
- How many days will it take for delivery after receipt of an order? Please add the amount of days:
- Offeror Prompt Payment Discount, if applicable:

**(Discounts not considered in evaluating prices.)**

**Service Provider:** The CONTRACTOR must provide a dedicated service provider to support for this contract. During the contract term, the CONTRACTOR shall notify the Procurement Officer if CONTRACTOR's service provider changes.

**Sales Representative:** The CONTRACTOR must provide a dedicated sales representative to provide support for this contract. The sales representative will be required periodically visit ordering agencies to provide information regarding products available under the contract and

assistance with order placement. During the contract term, the CONTRACTOR shall notify the Procurement Officer if the CONTRACTOR's sales representative changes.

Service Provider/Sales Representative Name:

Address:

City & State & Zip:

Phone Number:

Cell Phone Number:

Toll Free Number:

E-Mail Address:

### **Offeror Information and Signature**

By submitting a Bid Response, the Offeror 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 Offeror 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 Offeror 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.

Offeror/Contractor Name:

Contractor Federal Employer Identification Number (FEIN)

Offeror 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 Offeror (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.**

a. 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.

b. Invoicing

The final cost set forth on each invoice must be equivalent to the cost for each service or goods as specified in the Scope of Work. CONTRACTOR may not submit an invoice for any service or goods specified in the Scope of Work that STATE has not fully accepted.

STATE may only expend public funds for any service or goods accepted within the Fiscal Year for which the funds are appropriated. STATE's Fiscal Year is July 1 through June 30. An invoice for any service or goods accepted within the Fiscal Year must be dated prior to July 1 and received by STATE no later than July 7 of each Fiscal Year.

c. Payment

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

- 4) For any amounts that are or will become due and payable to STATE by CONTRACTOR, STATE reserves the right to deduct the amount owed from payments that are or will become due and payable to CONTRACTOR under this Contract.
- d. Prepayment: STATE will not make any advance payments before performance by CONTRACTOR under this Contract.
- e. Payment of Taxes by State: STATE is not responsible for and will not pay local, state, or federal taxes. STATE sales tax exemption number is E 2001. STATE will furnish certificates of exemption upon request by the CONTRACTOR.
- f. Payment Methods:
  - 1) 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.
  - 2) STATE may make payment using an ACH transfer, wire transfer, or by issuing a check to CONTRACTOR.

#### 4. Termination

##### a. Termination for Convenience or by Agreement

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

##### b. 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.

##### c. Termination for Lack of Funding or Authority

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

1. If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or goods in the indicated quantities or term.
2. If federal or state laws or rules are modified or interpreted in a way that the services 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 CONTRACTOR license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.

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

d. **Termination for Cause**

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

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

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

7. **Force Majeure:** Neither Party will be held responsible for delay or default caused by fire, riot, terrorism, pandemic, acts of God, executive orders issued by the governor or U.S. President, or war if the event was not foreseeable through the exercise of reasonable diligence by the affected Party, the event is beyond the Party's reasonable control, and the affected Party gives notice to the other Party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default. If CONTRACTOR is the affected Party and does not resume performance within fifteen (15) days or another period agreed between the Parties, STATE may seek all available remedies, up to and including termination of this Contract pursuant to its Termination Section, and STATE is entitled to a pro-rata refund of any amounts paid for which the full value has not been realized, including amounts paid toward software subscriptions, maintenance, or licenses.
8. **Right to Remedies and Cumulation of Rights:** No remedy conferred by any of the specific provisions of this Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Contract, now or in the future existing at law or in equity or by statute or otherwise.
9. **Non-Waiver:** Either party's failure to exercise any of its rights under this Contract, its delay in enforcing any right, or its waiver of its rights on any occasion, shall not constitute a waiver of such rights on any other occasion. No course of dealing by either party in exercising any of its rights shall constitute a waiver thereof. No waiver of any provision of this Contract shall be effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced.
10. **Works for Hire:** 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 CONTRACTOR 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 exclusively for STATE are the sole property of STATE, and CONTRACTOR assigns and transfers all its right, title, and interest in the software and related materials to STATE. CONTRACTOR shall execute all necessary documents to enable STATE to protect STATE's intellectual property rights under this section.

11. **Work Product:** All work product, equipment or materials created for STATE or purchased by STATE under this Contract belong to STATE and must be immediately delivered to STATE at STATE'S request upon termination of this Contract.
12. **Confidentiality:** CONTRACTOR shall not use or disclose any information it receives from STATE under this Contract that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by STATE. STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the Term of this Contract.
13. **Compliance with Public Records Laws:** Under the North Dakota public records law 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 shall contact STATE immediately upon receiving a request for information under the public records law and shall comply with STATE's instructions on how to respond to that request.

14. **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.
15. **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 under this Contract if there is a change of control or sale of all or substantially all of CONTRACTOR's assets related to this Contract, whether by merger, reorganization, operation of law, or otherwise. If Assignee is a business or entity with whom STATE is prohibited from conducting business, STATE may terminate this Contract in accordance with the Termination for Cause section of this Contract.

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

16. **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.
17. **Merger and Modification, Conflict in Documents:** This Contract, including the following documents, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This Contract may not be modified, supplemented, or amended, in any manner, except by written agreement signed by both parties.

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

- a) The terms of this Contract as may be amended;
- b) STATE’s Solicitation Amendments related to this Invitation for Bid;
- c) STATE’s Invitation for Bid;
- d) CONTRACTOR’s Bid Response submitted in response to this Invitation for Bid.

Unless negotiated between the Parties and incorporated into this Contract by reference, 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.

18. **Unanticipated Amendments:** If additional work is required within the scope of this Contract due to a legitimate unforeseen circumstance, STATE shall provide CONTRACTOR a written description of the additional work and request CONTRACTOR to submit a proposal for accomplishing the scope of work. CONTRACTOR will not commence additional work until all Parties agree in writing.
19. **Severability:** If any term of this Contract is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the Parties are to be construed and enforced as if this Contract did not contain the illegal or unenforceable term.
20. **Applicable Law and Venue:** This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each Party consents

to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

21. **Alternative Dispute Resolution – Jury Trial:** STATE does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The Parties may enforce the rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.
22. **Attorney Fees:** If a lawsuit is initiated by STATE to obtain performance due under this contract, and STATE is the prevailing Party, CONTRACTOR shall pay STATE's reasonable attorney fees and costs in connection with the lawsuit, unless prohibited by N.D.C.C. § 28 26 04.
23. **Americans with Disabilities Act (ADA) - Nondiscrimination and Compliance with Laws:**
  - a. 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.)
  - b. ADA Compliance –CONTRACTOR shall ensure that all user-facing components of the solution comply with the Americans with Disabilities Act (ADA) and at a minimum, conform to 28 CFR § 35.200 federal Requirements for Web and Mobile Accessibility; available at: 28 CFR § 35.200. CONTRACTOR shall verify accessibility compliance through automated and manual testing prior to delivery and shall provide reports to STATE quarterly or as mutually agreed by STATE and CONTRACTOR.

CONTRACTOR is responsible for maintaining accessibility compliance of the solution throughout the Term of the Contract, including all renewals and extensions. If a compliance issue is discovered, CONTRACTOR shall provide a remediation plan, including timelines and impacts, to STATE. CONTRACTOR shall indemnify STATE for any and all claims, including penalties, costs, and expenses, related to accessibility claims under the ADA related to the solution.
  - c. CONTRACTOR shall file all required reports timely, make required payroll deductions, and pay all taxes and premiums owed timely, including sales and use taxes, and unemployment compensation and workers' compensation premiums.
  - d. CONTRACTOR shall have and keep current and in good standing all licenses and permits required by law during the Term of this Contract.
  - e. 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 is a material breach by CONTRACTOR and STATE may terminate this Contract in accordance with its Termination for Cause section.

24. **State Audit:** Pursuant to N.D.C.C. § 54-10-19, all records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. CONTRACTOR shall maintain these records for at least three (3) years following completion of this Contract and be able to provide them upon reasonable notice. STATE, State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.
25. **Counterparts:** This Contract may be executed in multiple, identical counterparts, each of which is deemed an original, and all of which taken together constitute one and the same contract.
26. **Effectiveness of Contract:** This Contract is not effective until fully executed by both parties. If no start date is specified in the Term of Contract, the most recent date of the signatures of the parties shall be deemed the Effective Date.