

REQUEST FOR PROPOSAL

FOR

**North Dakota
Public Employees Retirement System**

**Uniform Group Insurance
Actuarial and Consulting Services**

November 2009

Prepared by:

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Request for Proposal Table of Contents

Section 1 – Introduction	3
Section 2 – Background	5
Section 3 – Scope of Services	7
Section 4 – Information Requests	11
Section 5 – Cost Proposal – Fees/Hours	16
Section 6 – Submission of Proposal	18
Section 7 – Review Process	19
Section 8 – Offer	20

SECTION 1 – INTRODUCTION

This Request for Proposal (RFP) is issued for actuarial and consulting assistance for the period January, 2010 through December, 2012. In addition, the Board intends that the successful bidder will have the opportunity to renew its contract for two subsequent two-year periods if an acceptable agreement can be reached between the contractor and the Board.

The Board is seeking fixed fee bids for the following efforts:

1. Development, issuance, and review of an RFP for a vision plan.
2. Development, issuance and review of an RFP for the life plan.
3. Development, issuance, and review of an RFP for a dental plan (note this work effort will continue to the end of 2012).
4. Development, issuance and review of an RFP for the long term care plan.

Based on its review, the successful bidder must also be prepared to make a recommendation to the NDPERS Board for each of the above efforts.

In addition, the Board is seeking a fee for service proposal for development, issuance and review of an RFP for the group health plan.

A fee for service proposal is requested for this effort since the Board may consider adding to its RFP for the group health plan a request for not only its traditional approach (selecting a single provider after considering responses for a fully insured versus a self funded plan) but also any new approach(s) as defined by the Board. The proposal will also need to address options for bidding our Part D prescription drug plan for retirees.

The Board is also seeking assistance for the following services on a fee for services basis for the period from July 1, 2010 to June 30, 2012: 1) general technical and consulting services relating to operations of the uniform group insurance program; 2) technical and actuarial evaluations of proposed legislation; and 3) review of the proposed renewals.

Following is a sequence of major activities.

- | | |
|----------------------|---|
| January, 2010 | Begin work on health and vision RFP's. The consultant and PERS will meet at the PERS office to discuss the upcoming work schedule. |
| March, 2010 | Submit analysis of PERS health bid process to PERS Board |
| April, 2010 | Submit draft health and vision RFP's to PERS staff. Proposed legislation relating to the health plan is referred to a consultant to do a technical and actuarial review with a report prepared for the Legislative Employee Benefits Committee by July of 2010. |

May, 2010 Submit final health and vision RFP's to PERS Board for approval. Consultant should be available either by teleconference or video conference to review and answer questions for the Board

June 1, 2010 Issue health RFP. Began work on life and long term care RFP. Report due to NDPERS for Legislative Employee Benefits Committee on technical and actuarial review of proposed legislation.

July, 2010 Health and vision proposals due.

August 12, 2010 Submit to PERS staff draft analysis of proposals and recommendations.

August 26, 2010 Review health and vision proposal analysis and recommendations with PERS Board. Also, review life and long term care RFP with PERS Board. The consultant should plan to attend this NDPERS meeting.

September, 2010 Issue life and long term care RFP. Meet with PERS to follow up on any issues relating to health, dental and vision RFP's from the August meeting and conduct interviews if necessary. PERS selects health, dental and vision insurance carriers. Submit final cost numbers for health plan to the Office of Management and Budget.

November, 2010 Life and long term care proposals due.

December, 2010 Review analysis of life and long term care bids and recommendations with PERS Board. The consultant should be available either by teleconference or video conference.

January, 2011 North Dakota Legislative session begins. Follow up with PERS Board on any issues from the December meeting, conduct interviews if necessary.

February, 2011 PERS Board selects life and long term care carrier.

February, 2012 Start work on dental RFP.

May, 2012 Submit RFP to PERS Board.

June, 2012 Issue RFP

August, 2012 Submit report to PERS Board.

September, 2012 Conduct interviews and select dental vendor.

SECTION 2 - BACKGROUND

A. The Agency:

The North Dakota Public Employees Retirement System is responsible for the administration of the State's retirement, health, life, dental, vision, deferred compensation, flex comp, retiree health insurance credit, long term care and EAP programs. This proposal is for assistance in the health, life, vision, dental and long term care areas.

PERS is managed by a Board comprised of seven members:

- 1-Chairman appointed by the Governor
- 1-Member appointed by the Attorney General
- 1-Member elected by retirees
- 3-Members elected by active employees
- 1-State Health Officer

PERS is a separate agency created under North Dakota state statute and, while subject to state budgetary controls and procedures as are all state agencies, is not a state agency subject to direct executive control.

B. Group Health, Life, Dental, Vision, and Long Term Care Insurance:

1. Group Health:

The Uniform Group Health Insurance Plan is a fully insured plan underwritten by BCBSND. All state employees are eligible to be covered under the plan, including the staff at colleges and universities. Political subdivisions may participate in the health plan at their option. Estimated premiums for this biennium (2009-2011) will be approximately \$430,000,000, and the number of contracts under the plan is estimated to be 26,000.

2. Group Life:

The Uniform Group Life Insurance Plan is a fully insured plan underwritten by Prudential, out of Denver, CO. All state employees are covered under the plan, including the staff at colleges and universities. Political subdivisions may participate in the life plan at their option. Premiums collected for the past fiscal year totaled approximately \$2,930,000.

The Uniform Group Health and Life Insurance programs are under chapter 54-52.1 of the North Dakota Century Code (NDCC).

3. Dental:
The Uniform Group Dental Plan is a fully insured plan underwritten by CIGNA out of Denver, CO. All state employees are covered under the plan, including the staff at colleges and universities. As of January 1, 2009 there were 4,464 active contracts and 1,306 retired contracts. All premiums are paid by the employee. Premiums collected for the past fiscal year were approximately \$3,382,000.
4. Vision:
The Uniform Group Vision Plan is a fully insured plan underwritten by Ameritas out of Lincoln, NE. All state employees are covered under the plan, including the staff at colleges and universities. As of January 1, 2009 there were 3,580 active contracts and 737 retired contracts. All premiums are paid by the employee. Premiums collected for the past fiscal year were approximately \$430,000.
5. Long Term Care Plan:
The Uniform Group Long Term Care Plan is a fully insured plan underwritten by Unum out of Portland, MA. All state employees, including the staff and at colleges and universities and their spouses are covered under the plan. As of January 1, 2009 there were 36 contracts; 27 active employee and 9 spouse contracts. All premiums are paid by the employee. Premiums collected for the past fiscal year were approximately \$21,660.

SECTION 3 - SCOPE OF SERVICES

This Section outlines the scope of services.

A. Consulting Services: The consultant will be required to assist in the following areas relating to consulting services on a fee-for-service basis. Prior to initiating any efforts under this area, work must be authorized by the Executive Director on a not-to-exceed basis. Any work efforts the consultant completes or initiates that have not been authorized will not be reimbursed.

1. **General Consulting Services.** The consultant will be expected to serve on an ongoing basis in an advisory and review capacity to the PERS Board, Executive Director and PERS staff. In this capacity, the consultant will be expected to attend meetings and present findings and recommendations as required. The PERS Board meets on a monthly basis. The consultant must be able to provide the following:
 - a) The actuarial and administrative implications of particular interpretations of the health, life, vision, dental and long term care insurance statutes and administrative rules.
 - b) The effect of existing and proposed state and federal laws that affect, or may affect, the health, life, dental, vision and long term care insurance programs at PERS.
 - c) General assistance to PERS, as requested, regarding the ongoing administration of the group health, life, vision, dental and long term care programs, including the review of premiums and the development of procedures and forms.
 - d) Technical assistance relating to COBRA administration for health, dental and vision plans.
 - e) Technical assistance relating to plan design, PBM's, disease management programs; wellness programs, provider negotiations, provider networks, Part D plans and options, and plan documents.
 - f) Assistance with administrative and carrier issues relating to group insurance program.
 - g) Review of any renewals that may occur during the course of this relationship. NDPERS contract for a six-year period with two renewals occurring within that time period.
 - h) Compliance Assistance

- 2) **Proposed Legislation:** The consultant will be required to assist in the following areas relating to proposed legislation on a fee-for-service basis. Prior to initiating any efforts under this area, work must be authorized by the Executive Director on a not-to-exceed basis. Any work efforts the consultant completes or initiates that have not been authorized will not be reimbursed. The efforts under this task area include:

- a) Conduct a technical evaluation and cost analysis of proposed legislation or plan benefit modifications.
- b) Assist in the preparation and review of proposed changes to the governing laws.
- c) Pricing or general review work on legislation or plan benefit modifications shall specifically address each issue and give the basis for each finding. The consultant shall furnish its review in writing and, for pricing efforts, show the assumptions, pricing base, actuarial implications on total program, cost and alternatives, if appropriate.

B. Bid Solicitation and Evaluation for the Health, Life, Dental, Vision and Long Term Care Programs

The consultant will be expected to take a lead role in developing and issuing RFPs, and analyzing any proposals for the group health, dental, vision, long term care, and life insurance program. Four fixed fee bids and one fee for service bid are requested:

1. The first fixed fee bid is for RFP development, solicitation and evaluation for the vision program.
2. The second fixed fee bid is for RFP development, solicitation and evaluation for the life programs.
3. The third fixed fee bid is for the RFP development, solicitation and evaluation for the dental program.
4. The fourth fixed fee bid is for the RFP development, solicitation and evaluation for the long term care program.
5. The fifth is a fee for service bid for the RFP development, solicitation and evaluation for the group health plan.

These are major and significant tasks for PERS as the proper placement of these programs is critical. The consultant must provide the following service for all of the above efforts:

1. Sections 54-52.1-04 and 54-52.1-04.2 NDCC requires that the PERS Board solicit bids for the insurance programs. The consultant must prepare draft bid proposals pursuant to the schedule outlined previously. The consultant will be also responsible for developing a list of firms to be solicited. This list will be supplemented by requests PERS has received and those additional requests that come in as a result of a notice appearing in local newspapers in North Dakota.
2. The Board and staff will review draft RFP's pursuant to the schedule outlined previously.

3. The consultant shall review all bids within the timeframes previously outlined. The analysis shall include the following:
 - a) Confirm that all bidders meet the minimum requirements and eliminate any non-qualified bidders.
 - b) Evaluate the financial implications of each bid (quantitative factors). Section 54-52.1-04 of NDCC requires the Board to give consideration to the following:
 - (1) The economy to be effected
 - (2) The ease of administration
 - (3) The adequacy of the coverage
 - (4) The financial position of the carrier, with special emphasis as to its solvency
 - (5) The reputation of the carrier and such other information as is available tending to show past experience with the carrier in matters of claim settlement, underwriting and services.
4. Review the technical aspects of each proposal (qualitative factors).
5. In addition to the above requirements for the group health proposal, we are requesting:
 - a) A review of the methodology PERS has used to bid to the group health insurance plan to:
 - (1) Determine its strengths and weaknesses
 - (2) Identify opportunities to change the historical approach along with an analysis of the strengths and weakness of each approach with a recommendation
 - (3) Review of PERS Medicare retiree plan and its present plan design which combines the medical and Part D prescription drug program as a single offering for PERS retirees. Specifically PERS is interested in exploring this methodology versus others such as offering the medical and Part D coverage as separate options.
 - (4) Report to the PERS Board at its March 2010 meeting the analysis in 1 and 2.
 - b) The consultant will be required to estimate the required premiums for the group health insurance program for a twenty-four (24) month period beginning July 1, 2011 and ending June 30, 2013. The consultant will be supplied the proposed plan of benefits by July 2010. The consultant must have completed the estimates by August 15, 2010. In addition, the consultant shall prepare a report by August 15, 2010 detailing the assumptions and primary reasons for the premium estimates. The consultant shall also prepare probability estimates of the variation from the expected claim level. For example, what is the probability claims will vary by 2%, 4%, 6% or 10% from the expected claim level? The purpose of these estimates is to provide the Board an estimate of risk to be used in analyzing the merits of self-insured versus fully-insured product.

- c) Review the group insurance proposals when received in terms of self-insured versus fully insured and prepare an analysis of the cost of each method. The consultant shall prepare a recommendation to the Board as to which method and proposal, or combination of proposals, represents the best value to the State of North Dakota, including a breakeven analysis.
 - d) Do all other analysis that will be required based upon the outcome of the review of the bidding methodology
6. Present findings to the Board pursuant to the schedule previously outlined.
 7. The consultant shall assist in developing contracts with the successful bidder.

SECTION 4 - INFORMATION REQUESTS

The proposal must comply with the format as set forth below and contain your organization's response to the requested information. The request must be restated followed by your response.

Part I - Executive Summary

Discuss your view of the entire project as requested in this RFP and provide a flow chart depicting your understanding of the major work efforts and timeframes for beginning and completing tasks.

Part II - Minimum Requirements

The successful vendor must have a multidisciplinary staff including a health actuary with experience in the work requirements outlined herein. The firm must also have demonstrated experience in doing the work outlined herein. In this section you will summarize your staffing and experience. The individuals/firm shall also summarize any potential conflicts of interest here as well.

Part III – Proposal

1) Technical Approach.

a) Fixed Fee Work efforts

1. Dental Plan

- (a) Generally discuss your understanding of the work requested.
- (b) Timeline – discuss your understanding of the timeline for this effort
- (c) Approach- discuss your project plan for this effort, identify major steps, timeframes and products
- (d) Exceptions- identify any exceptions or variations in your proposal from the work effort identified in this RFP
- (e) Outline the product PERS will receive from you

2. Vision Plan

- (a) Generally discuss your understanding of the work requested
- (b) Timeline – discuss your understanding of the timeline for this effort
- (c) Approach- discuss your project plan for this effort, identify major steps, timeframes and products
- (d) Exceptions- identify any exceptions or variations in your proposal from the work effort identified in this RFP
- (e) Outline the product PERS will receive from you

3. Life Insurance Plan

- (a) Generally discuss your understanding of the work requested
- (b) Timeline – discuss your understanding of the timeline for this effort
- (c) Approach- discuss your project plan for this effort, identify major steps, timeframes and products

- (d) Exceptions- identify any exceptions or variations in your proposal from the work
- (e) Outline the product PERS will receive from you
- 4. Long Term Care Plan
 - (a) Generally discuss your understanding of the work requested.
 - (b) Timeline – discuss your understanding of the timeline for this effort
 - (c) Approach – discuss your project plan for this effort, identify major steps, timeframes and products. NDPERS is also interested in reviewing using group products versus individual products. We also want to explore requiring the LTC product to meet partnership requirements. Finally we interested in exploring different methods for enrollments and contracting including using broker networks. Discuss your experience in with these options and include planning time to review these methods in your fixed fee.
 - (d) Exceptions – identify any exceptions or variations in your proposal from the work effort identified in this RFP.
 - (e) Outline the product PERS will receive from you.
- b) Fee for Service Efforts
 - 1. General Consulting
 - (a) Discuss your understanding of the requested work
 - (b) Discuss the range of capabilities of your firm to respond to requests for general consulting as discussed previously for each of the benefit areas in this RFP (dental, vision, life, LTC and health)
 - 2. Legislative
 - (a) Discuss your understanding of the requested work
 - (b) Discuss the range of capabilities of your firm to respond to requests for legislative consulting as discussed previously for each of the benefit areas in this RFP (dental, vision, life, LTC and health)
 - 3. Group Insurance
 - (a) Generally discuss your understanding of the requested work
 - (b) Timeline – discuss your understanding of the timeline for this effort
 - (c) Approach – discuss your project plan for this effort, identify major steps, timeframes and products
 - (d) Describe the method used by your firm to project expected claims. Also, provide specific details of how your firm decides the appropriate medical trend; what factors are considered; (i.e., historical claims trends, cost shifting, leveraging, intensity, etc.) and how these factors are weighted or allocated in the final decision. Please discuss how this relates to the PERS renewal.
 - (e) Specifically address how you would approach the review of the PERS bidding process, the product we could expect and the range of considerations you may review.
 - (f) Exceptions – identify any exceptions or variations in your proposal from the work effort identified in this RFP.
 - (g) Outline the product PERS will receive from you.

2) Experience.

- a) General firm experience - a brief description of the size, structure and services provided by your organization.
- b) Describe your organization's approach to actuarial/benefit consulting for health, dental, vision, LTC and life insurance programs.
- c) For the fixed efforts:
 1. Detail your experience preparing, issuing and analyzing bids for each of the efforts in the fixed fee area (dental, vision, life and LTC)
 2. Discuss what you find are the primary considerations for doing these efforts and special considerations of doing it in the public sector
 3. Based upon your experience detail the expected level of analysis your firm will conduct for each of the fixed efforts, what distinguishes your firm's approach from others and any special insights your experience will bring to the proposed efforts
 4. Provide a listing of public and private sector clients for whom your organization provides group vision, LTC, life and dental insurance program consulting and actuarial services. References should identify the appropriate contact person(s), addresses and telephone numbers.
 5. Discuss your firm's responsibilities in similar projects with other public or private clients. Discuss your understanding of the difference between a public bid process versus a private bid process
- d) For the fee for service efforts:
 1. Detail your experience in preparing, issuing and analyzing health insurance bids.
 2. Discuss how your experience will allow you to provide a comprehensive assessment of the PERS bidding process and what special insight your experience will lend to such an assessment.
 3. Discuss your experience in working with Part D products in general and in the public sector. Also identify the types of arrangements or options.
 4. Discuss your experience in doing health premium projections such as that requested in this RFP.
 5. Provide a list of clients for whom your organization has performed similar tasks and specifically highlight efforts in the public sector.
 6. Indicate your organization's depth of experience in each of the following areas:
 - (a) Benefit Design (health)
 - (b) Retiree Health Insurance
 - (c) Preparation of Plan Documents
 - (d) Preparation of Member Booklets
 - (e) Provider Contract Negotiations
 - (f) PPO Formulation and Development
 - (g) Actuarial Analysis and Reporting
 - (h) Preparation of Contracts, Bid Specifications and RFPs
 - (i) COBRA Administration and Interpretation
 - (j) Legal Issues
 - (k) Disease Management Programs
 - (l) Wellness Programs
 - (m) RX Carve out Programs

- (n) Legal Assistance
7. Describe your organization's experience and availability regarding legislative hearings and testimony.
 8. Explain how your organization develops premium rates for health insurance plans.
 9. What new cost containment programs does your organization foresee being implemented in the next 2-3 years and how are you positioned to provide assistance.
 10. For the general consulting efforts discuss the range of experience your firm can provide to PERS relating to:
 - (a) Responding to national health insurance reform initiatives. What is your firm's experience in following, analyzing and assessing the implications of federal initiatives? Please provide specific examples. How do you get your information on national initiatives?
 - (b) Please discuss the range of your experience in providing general consulting assistance to clients and especially public sector clients.

3) Staffing.

- a) This Section should include individual resumes for the personnel who are to be assigned to the project and should indicate the proposed project role or assignment of each individual. The project team should include staff with experience in developing RFP's of the type requested herein, evaluating responses, doing the required actuarial analysis and assisting with implementation.
- b) The offeror shall provide a schedule at the beginning of this Section that shows the number of hours that each person is assigned to each of the fixed fee projects. A separate schedule should be provided for the fee for service efforts identifying the four individuals that you anticipate will be doing most of the work relating to the fee for service efforts. Also identify the % of time you anticipate they will spend on the efforts outlined.
- c) Resume information should identify not only educational and work history but also specific information on what clients the individual has worked for and in what role. Please note we may use this information to contact past clients to gather information on the individual.

Please note that it is critical that the information presented in this section is specific enough for us to understand who is being assigned to each major effort proposed in the RFP and that their role, responsibility and experience demonstrates their ability to successfully complete the required tasks.

4) Additional Information.

- a) This section is optional and can include any additional information the offeror deems relevant to this procurement and the satisfaction of the Board's objectives.

5) Conflicts of interest.

- a) In this Section the offeror shall identify and discuss any potential conflicts of interest. The contractor cannot receive any other compensation relating to this work effort

except as provided in the cost proposal. Any other arrangements/relationships/contracts the offeror may have with vendors that could be a part of this solicitation must be identified herein and may serve as cause to disqualify the offeror.

6) Company Literature (if applicable).

- a) If company literature or other material is intended to respond to any RFP requirement, it must be included in this section. The offeror's responses in previous sections of the proposal must include reference to the document by name and page citation.

SECTION 5 – COST PROPOSAL - FEES/HOURS

THE COST PROPOSAL SHALL BE UNDER SEPARATE COVER AND NOT PART OF THE RESPONSES TO THE OTHER INFORMATION REQUESTS.

Your proposal for fees for the consulting and actuarial services requested must be made as identified below. All services discussed in Sections III are to be provided on a fixed fee or fee for service basis. Expenses for travel, lodging, meals and other out-of-pocket expenses will be paid on an incurred basis if the Executive Director of PERS has given prior approval for each individual to incur such expenses. PERS is under no obligation to reimburse the consultant if no approval was given.

Vision Plan
 Fixed Fee \$ _____

Staff Assigned	Estimated Hours	Rate

Dental Plan
 Fixed Fee \$ _____

Staff Assigned	Estimated Hours	Rate

Life Plan

Fixed Fee \$ _____

Staff Assigned	Estimated Hours	Rate

Long Term Care Plan

Fixed Fee \$ _____

Staff Assigned	Estimated Hours	Rate

Group Health Plan

Fee for Service

Please identify here the four individuals that you anticipate will be doing most of the work relating to the fee for service efforts. Also identify the % of time you anticipate they will spend on the efforts outlined in Section 3.B relating to the group health plan. PERS will use these rates to compare proposals relating to cost for the fee for service effort.

Staff Assigned	Rate	Percent

SECTION 6 - SUBMISSION OF PROPOSAL

- A. Proposals should be prepared in a straightforward manner to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content. Costs for developing proposals are entirely the responsibility of the proposer and shall not be chargeable to PERS.
- B. Section 8 - Offer, should be signed by a partner or principal of the firm and included with your proposal. If changes are proposed they should be added and then a signed offer included. Each addition shall be identified along with the reason why.
- C. Address or deliver the RFP to: Mr. Sparb Collins, Executive Director
North Dakota Public Employees Retirement System
400 E. Broadway, Suite 505
PO Box 1657
Bismarck, ND 58501

Questions concerning the RFP shall be directed, in writing, to the above individual by 5:00 p.m. CST on December 1, 2009. Responses will be posted on the PERS website (www.nd.gov/ndpers) by December 4, 2009 under "Request for Proposals". If you would like a copy emailed to you, please notify us at cstocker@nd.gov

- D. Ten (10) copies of the proposal must be received at the above listed location by **5:00 p.m. CST on December 10, 2009**. The package the proposal is delivered in must be plainly marked "PROPOSAL TO PROVIDE CONSULTING AND ACTUARIAL SERVICES". In addition, we would request an electronic version of your proposal.

A proposal shall be considered late and will be rejected if received at any time after the exact time specified for return of proposals.

- E. The policy of the PERS Board is to solicit proposals with a bona fide intent to award a contract. This policy will not affect the right of the PERS Board to reject any or all proposals.
- F. The PERS Board may request that representatives of your organization appear before them for interviewing purposes. Travel expenses and related costs will be the responsibility of the organization being interviewed.
- G. The PERS Board will award the contract for services no later than February of 2010.
- H. In evaluating the proposals, price will not be the sole factor. The Board will consider the staff review as outlined herein and may consider any other factors it deems necessary and proper to make a determination.
- I. The failure to meet all procurement policy requirements shall not automatically invalidate a proposal or procurement. The final decision rests with the Board.

SECTION 7 – REVIEW PROCESS

Proposals will be evaluated in a three-step approach. The first step will be done by a review team composed of PERS staff and will be an initial screening of each proposal to determine if it is sufficiently responsive to the RFP to permit a valid comparison and meets the minimum qualifications of having completed past projects similar to the efforts requested herein. The qualifying factor will be on a Yes/No basis. The proposal will be dropped from consideration if a majority of reviewers respond "No".

The proposals that pass the initial screening will then be reviewed by the same review team. Each individual will review the proposal for all areas but price. For the fixed fee efforts each proposal will be awarded points for specified areas by the reviewers. Points for price are awarded automatically. Following is the weighting factor for each area:

- Technical Approach 30 Point
- Prior Experience 20 points
- Staffing/Organization 20 Points
- Pricing 30 points

For the fee for service efforts the rating will be:

- Technical Approach 25 Point
- Prior Experience 30 points
- Staffing/Organization 30 Points
- Pricing 15 points

Please note the Board may award the entire bid to one bidder or may award the fee for service efforts separate from the fixed fee efforts. The Board may also consider awarding the fixed fee efforts separately if the responses warrant such consideration. Please note in the cost proposal any conditions that would limit such consideration by the PERS Board.

The final step will be a review by the PERS Board. The PERS Board will use any and all information in making its determination and will use the staff's review as a guide but is not bound by that review.

SECTION 8 - OFFER

AGREEMENT FOR SERVICES

Contractor's proposal constitutes a formal offer to provide services to the North Dakota Public Employees Retirement System (NDPERS). The terms of this Contract, the RFP and the proposal shall constitute the consulting services agreement ("Agreement").

Contractor and NDPERS agree to the following:

- 1) **SCOPE OF SERVICES:** Contractor agrees to provide the above-accepted service(s) as specified in the RFP and proposal. The terms and conditions of the RFP and the proposal are hereby incorporated as part of the Contract.
- 2) **TERM:** The term of this contract shall commence January 2010 and end December 2012.
- 3) **FEES:** NDPERS shall only pay pursuant to the terms in the proposal and RFP.
- 4) **BILLINGS:** The Contractor shall receive payment from NDPERS upon the completion of the services identified under this Agreement.
- 5) **TERMINATION:** Either party may terminate this agreement with respect to tasks yet to be performed with thirty (30) days written notice mailed to the other party.
- 6) **EMPLOYMENT STATUS:** The Contractor acknowledges that any services performed in connection with the Contractor's duties and obligations, as created and provided for in this agreement, are performed in the capacity of an independent contractor. At no time during the performing of services as required by this contract will the Contractor be considered an employee of the State of North Dakota.
- 7) **SUBCONTRACTS:** Subcontractors to the Contractor shall be considered agents of the Contractor and agree to provide services as specified in the proposal and RFP.
- 8) **ACCESS TO RECORDS:** PERS agrees that all participation by its members and their dependents in programs hereunder is confidential. The Contractor shall not disclose any individual employee or dependent information to the covered agency or its' representatives without the prior written consent of the employee or family member. The Contractor will have exclusive control over the direction and guidance of the persons rendering services under this agreement. The Contractor agrees to keep confidential all PERS information obtained in the course of delivering services.

- 9) **OWNERSHIP OF WORK PRODUCT:** All work products of the Contractor, including but not limited to, data, documents, drawings, estimates and actuarial calculations which are provided to NDPERS under this agreement are the exclusive property of NDPERS.
- 10) **APPLICABLE LAW AND VENUE:** This agreement shall be governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be brought in the District Court of Burleigh County, North Dakota.
- 11) **MERGER AND MODIFICATION:** This contract, the RFP and the proposal shall constitute the entire agreement between the parties. In the event of any inconsistency or conflict among the documents making up this agreement, the documents must control in this order of precedence: First – the terms of this Contract, as may be amended and Second - the state’s Request for Proposal and Third – Contractor’s Proposal. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.
- 12) **INDEMNITY:** Contractor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State’s contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Contractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against Contractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.
- 13) **INSURANCE:** 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 \$250,000 per person and \$1,000,000 per occurrence.
 - 2) Professional errors and omissions, including a three year “tail coverage endorsement,” with minimum liability limits of \$1,000,000 per occurrence and in the aggregate.
 - 3) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$500,000 per occurrence.
 - 4) Workers compensation coverage meeting all statutory requirements.

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

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.
 - 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
 - 3) The insurance required in this agreement, through a policy or endorsement, shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State representative.
 - 4) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement.
 - 5) Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.
- 14) **SEVERABILITY:** If any term in this contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms must not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

IN WITNESS WHEREOF, Contractor and NDPERS have executed this Agreement as of the date first written above.

**NORTH DAKOTA PUBLIC
EMPLOYEES RETIREMENT SYSTEM**

CONTRACTOR

By: _____

By: _____

WITNESS:

WITNESS:
