

North Dakota Department of Transportation
INVITATION TO BID

NDDOT Contract # 50180104

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| Bid Number: 946-20-18-050 | Bid Opening Date & Time: 02/14/2018 02:00 PM |
| Items: Audit Consultant Pool | Buyer: Gabriel Hoggarth |
| Bid Mailing Address: 608 E Blvd Ave | Telephone Number: 701-328-4465 |
| City, State, Zip: Bismarck, ND, 58505 | Email: ghoggarth@nd.gov |
| Contract Period: 02/15/2018 TO 01/31/2019 | Date Prepared: 01/30/2018 |

BID RESPONSE

Please submit your bid response on the attached forms in conformance with the instructions and specifications in the NDAC 04-12-01 – 04-12-16. One copy of your bid response must be returned to the North Dakota Department of Transportation (NDDOT) prior to the time and date specified for the bid opening. Bid responses received after the time and day specified for the bid opening will be rejected. Mark envelope with word "BID" and the opening time and date. **If your bid response is accepted by NDDOT, then your bid response will constitute a binding contract.**

CONTRACT

This contract is made and entered into by and between NDDOT for the state of North Dakota (hereinafter state) and

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| Vendor Name Markham & Associates, PC | Vendor Address 9200 W Cross Dr. Suite 306 Littleton, CO 80123 |
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(hereinafter vendor). In consideration of and for the acceptance by the state of the offer made by the vendor pursuant to the bid response, the vendor agrees and promises to sell, furnish, and deliver to the state, at the time, places, and prices specified in the bid response, all goods, merchandise, supplies, commodities, equipment, or other items contained in the bid response and for which the vendor has been awarded this contract by the state. The vendor shall fully perform this contract in accordance with the terms and conditions contained in the bid response including all specifications, rules, or regulations mentioned therein, and shall comply with all applicable provisions of the NDAC 04-12-01 – 04-12-16 promulgated by the State Purchasing Division; such manual being made a part of this contract by reference. The Risk Management Appendix and Appendices A and E of the Title VI Assurances, attached, are hereby incorporated into and made a part of this agreement.

The following must be completed by the vendor; failure to do so may result in the rejection of the vendors bid proposal.

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| Vendor Name Markham & Associates, P.C. | | |
| Mailing Address 9200 W. Cross Dr. Suite 306 Littleton, CO 80123 | | |
| Telephone Number (303) 972-8843 | Fax Number (303) 972-8843 | E-mail Address daniel.markham@markhamcpa.com |

Daniel Markham

Name & Title (Type or Print)

Daniel Markham
Signature

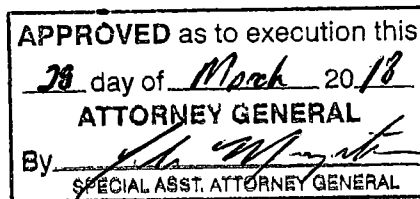
February 12, 2018

Date

To be signed by **Owner; Partner; Corp. Pres., Vice Pres., or other authorized Corp. Officer** or bid may be rejected. (if signed by other authorized Corp. Officer, please attach copy of Power of Attorney or other documentation showing authority to sign.)

FOR ND DEPARTMENT OF TRANSPORTATION USE ONLY Accepted by the state according to provisions of award.

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| Authorized Signature <i>Terry M. Boudry</i> | Recommended for Approval | Date 3/27/2018 |
| Recommended for approval <i>[Signature]</i> | Authorized Signature | Date 03/29/18 |
| | | Approximate contract amount \$ Unknown |



CLA 7480 (Div. 50)

MAILING INSTRUCTIONS

Mail only one completed and signed request for bid document per envelope, unless instructed otherwise. Request for bid documents not signed or received after the date and time specified in the request for bid will be rejected.

BID IS: ☒ SEALED ☐ NOT SEALED

Address the envelope containing your response in the following manner:

BID NUMBER – **946-20-18-050**
BID OPENING DATE/TIME – **FEBRUARY 14, 2018; 2:00 PM Central**
N. D. DEPT. OF TRANSPORTATION
PROCUREMENT SECTION
608 E BOULEVARD AVE
BISMARCK ND 58505-0700

BIDDERS INSTRUCTIONS

1. **Assistance to Bidders with a Disability.** Bidders with a disability and/or language assistance, contact Civil Rights Division, NDDOT, 701-328-2978 or civilrights@nd.gov or TTY 711, as soon as possible so that reasonable accommodations can be made. Additionally, the Request for Reasonable Accommodations form (SFN 60135) can be accessed at the following NDDOT website location: <http://www.dot.nd.gov/forms/sfn60135.pdf>.
2. **Award.** Contracts may not be awarded immediately. The Invitation to Bid information that is received by the NDDOT will be used to create an Audit Consultant Pool. An audit event will require contract activation.

The NDDOT will base contractor selection on the low bid meeting the knowledge and experience requirements, availability at the time required, and acceptance of anticipated audit program procedures. This means the lowest bid price submitted may not receive a contract.

The awarded contractor must offer and agree to furnish all items and services upon which any contract is made, at the prices offered, delivered according to the times specified, and as directed by the NDDOT.

NDDOT reserves the right to make multiple awards based on the audit requirements of the agency.

The NDDOT makes no guarantee as to the amount of work to be assigned to any Contractor and may exercise its option not to utilize the services requested herein. Selection will be at the sole discretion of the NDDOT. The NDDOT is under no financial obligation to any selected Contractor unless the Department issues a Contract and Work Order Request for a specific requirement. To the extent possible, pool contractors will be contacted on a rotation basis.
3. **Bid Bond.** Waived in this instance: however, bidder(s) failing to enter into a contract with this office, upon notification of award, may be subject to removal from the bidder's list.
4. **Bid Held Firm.** Bids are not awarded at the bid opening. Bid responses will be firm for 30 days, unless stated otherwise.
5. **Bid Opening.** All sealed bids received by the NDDOT Procurement Office will be opened and read at 608 East Boulevard Avenue, Bismarck, North Dakota, at the time specified in the solicitation. Interested parties are invited to attend the bid opening.
6. **Bid Summary.** Bid summaries are available when the bid has been awarded. When bids are issued using the State's electronic bidding system, the bid summary will be posted and available for download from:
<http://www.nd.gov/spo/>.

Bid summaries will be mailed to those bidders who supply a self-addressed, stamped envelope with their bid response. A copy of the bid summary may also be obtained by visiting the NDDOT Procurement Office during normal working hours.

7. **Bidder Checklist.** HAVE YOU REMEMBERED TO:

- Review all instructions, terms and conditions, and specifications to ensure your bid response complies?
- Prepare your price in the specified unit of measure, F.O.B. Destination, Freight Prepaid to the delivery location listed on the cover sheet?
- Sign your bid response on the cover sheet?
- Initial all changes and corrections?
- Submit any required samples or enclosures, if applicable?
- Mark the envelope as indicated above?
- Review and complete all requirements contained in this solicitation to ensure compliance.

8. **Clarifications, Bid Changes and Questions Deadline.** The Procurement Officer is the point of contact. Any irregularities, lack of clarity, requested bid changes and all questions regarding this bid and the procurement process must be addressed to the Procurement Officer referenced on the first page of this document not later than end of business February 7, 2018. (Contact information is indicated on cover page). If a bid amendment is required, it will generally be issued after this date.

The bidder is cautioned that the requirement of this solicitation can be altered only by written amendments and that verbal communications from whatever source are of no effect.

9. **Corrections.** The bidder's authorized representative must initial any corrections and alterations (i.e. erasures, whiteouts, correction tape, etc.) made to the bid response. Those bid responses with corrections and alterations that are not initialed are subject to confirmation by the Procurement Officer.

10. **Definitions.**

- Bidder - any person or firm submitting a competitive bid in response to a solicitation.
- Bid summary - a summary of all bid responses received by the NDDOT Procurement Office.
- Bid response - the executed document submitted by a bidder in response to a solicitation.
- Contract - a deliberate written agreement between two or more competent persons to perform specific act or acts.
- Contractor - any person or firm having a contract with a governmental body.
- Solicitation - the process of notifying prospective bidders that the State wishes to receive bids for furnishing goods or services.

11. **Electronic & Facsimile Bids.** Bid responses are not to be email attached or faxed to the NDDOT unless this transmittal method has been authorized by the Procurement Officer or bid document. (Contact the Procurement officer regarding additional requirements and exceptions.) Bid responses electronically submitted or faxed may be rejected as non-responsive. Bids may be faxed to a third party who will put it in a properly-addressed envelope and deliver it to the NDDOT Procurement Office before the date and time specified in the solicitation.

12. **Freight/F.O.B. Destination.** Freight and transportation charges are to be included in the price of the products, unless otherwise specified in the solicitation. (F.O.B. - Free On Board).

13. **Indemnification.** Bidders must review the attached Risk Management Appendix for indemnification and insurance requirements. The indemnification and insurance provisions are incorporated and made part of this solicitation and the resultant final contract. Objections to any of the provisions of the indemnification and insurance requirements must be made in writing to the attention of the Procurement Officer by the time and date set for receipt of questions. No alteration of these provisions will be permitted without prior written approval from the Purchasing Agency or Entity in consultation with the North Dakota Risk Management Division. Upon receipt of the Notice of Award, the successful bidder must obtain the required insurance coverage and provide the Procurement Officer with proof of coverage prior to contract approval. The coverage must be satisfactory to the Purchasing Agency or Entity, in consultation with the North Dakota Risk Management Division. A bidder's failure to provide evidence of insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.

14. **Late Bids.** It is the bidder's responsibility to ensure that a bid response is physically deposited with the NDDOT Procurement Office prior to the date and time specified for the opening. Late bid responses will not be opened and will be rejected and returned regardless of the degree of lateness or the reasons.

15. **Minor Informalities.** The State reserves the right to waive minor informalities in bid responses in accordance with N.D.A.C. 4-12-10. Minor informalities are insignificant omissions or nonjudgmental mistakes that are matters of form rather than substance, evident from the bid document, with a negligible effect on price, quantity, quality, delivery, or contractual conditions that can be waived or corrected without prejudice to other bidders.

16. **Negotiation.** NDDOT reserves the right to negotiate with the successful bidder to ensure the best possible consideration is afforded to all concerned.

17. **Open Records.** After the bid opening, bid documents will be subject to the North Dakota open records law. Records are closed or confidential only if specifically stated in law. If a request for public information is received, the procurement officer will determine whether the information is an exception to the North Dakota open records law, and the information will be processed appropriately. Those interested in reviewing the bid file are to make arrangements with the NDDOT Procurement Office. The NDDOT Procurement Office hours are 8:00 a.m. - 12:00 p.m. and 1:00 p.m. - 5:00 p.m. Monday through Friday.

18. **Performance Bond.** Successful bidders will not be required to furnish a performance bond; however, failure to perform satisfactorily will result in the immediate termination of the contract(s) and bidders may be subject to removal from the bidder's list.

19. **Preparation of Bid.** Bids will be accepted on NDDOT forms only. If the document is located on the State Procurement Office website, then bidder is to download the document and type or write their responses as indicated by the bid document. Alteration of the bid document may be cause for bid rejection. Bidders are cautioned to examine specifications and all instructions. Failure to do so will be at the bidder's risk.

20. **Pricing.** Unit prices are to be stated in United States currency and based on the unit of measurement specified in the solicitation, F.O.B. Destination, to the NDDOT delivery locations specified herein.

In the event of mathematical differences between the unit price and extended total, the unit price will prevail.

21. **Protest of Award.** An interested party may protest the award within seven days after receiving notice in accordance with N.D.C.C. 54-44.4-12 and N.D.A.C. 4-12-14. Notice of award will be issued only to those bidders who submitted responses to this IFB. 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.

22. **Rejection.** Bid responses may be rejected if:

- The bid response is not legible.
- The bid response is not submitted on the form supplied.
- The bid response is not completed as requested.
- The bid response is faxed to the procurement office.
- The bid response is not responsive to the specifications or other requirements of the solicitation.
- The bid response is received after the time and date specified.
- The bidder has not met Vendor Registration requirements or is suspended or debarred.
- The bid document has been altered by the bidder.
- The price is not fair and reasonable
- The bidder is determined to be not responsible (N.D.A.C. 4-12-11-04).

23. **Signature.** The bid must be signed manually in ink. The name and title of the person signing the bid response must be typed or printed above the signature. The bid must be signed by **Owner, Partner, Corp. Pres., Vice Pres., or other authorized Corp. Officer** or the bid may be rejected. If signed by other authorized Corp. Officer or representative, please attach a letter signed by the Owner, Partner, Corp. Pres., or Vice Pres. indicating the individual has authority to enter into a contract on behalf of the company (or a Power of Attorney).

24. **Specifications, Compliance.** All bids submitted in response to this Invitation for Bid must comply with the specifications contained herein, and the successful bidder will be held responsible. Noncompliance with specifications is grounds for rejection of the bid response. Bidders who desire to submit commodities or services that deviate from these specifications or have any objections to the specifications stated herein must be clearly pointed out PRIOR TO THE DEADLINE FOR RECEIPT OF QUESTIONS; otherwise, it will be considered that the items offered are in strict compliance with these specifications, and the bidder will be held responsible.

25. **Supplemental Terms and Conditions.** Bids including supplemental terms and conditions will be accepted, but supplemental conditions that conflict with any conditions contained in this ITB or that diminish the State's rights will be considered null and void. The State is not responsible for identifying conflicting supplemental terms and conditions before issuing a contract award.

After award of contract:

- a) If a conflict arises between a supplemental term or condition included in the bid and a term or condition of the ITB, the term or condition of the ITB will prevail, and,
- b) If the State's rights would be diminished as a result of application of a supplemental term or condition included in the bid, the supplemental term or condition will be considered null and void.

Changes, modifications, additions, or alterations to the bid document could be cause for rejection of the submitted bid at the sole discretion of the NDDOT. Contact the Procurement Officer in writing prior to the deadline for clarifications.

26. **Taxes.** The State does not pay sales tax or federal excise tax. The state sales tax exemption number is E-2001. The federal tax-free transaction number is 45-70-0010K. The Purchasing Agency will furnish a tax exempt certificate upon request.

27. **Vendor Registration.** Bids will be accepted from bidders who are not currently Approved Bidders for the State of North Dakota; however, the successful bidder may be required to become approved prior to award, in accordance with N.D.C.C. 54-44.4-09. To become an Approved Bidder, you must: 1) register with the North Dakota Secretary of State (fees apply), and 2) submit a completed Bidder List Application to the ND State Procurement Office. Registration instructions and forms are available on-line at: www.nd.gov/spo/vendor. Contact the ND State Procurement Office at 701-328-2683 or infospo@nd.gov for assistance.

Placement on the bidders list does not guarantee a bidder will receive notice of every formal solicitation. Bidders must maintain current information by submitting a Notice of Change form to the State Procurement Office (Fax 701-328-1615). Visit the website for forms: www.nd.gov/spo/vendor.

28. **Withdrawal or changes to a bid response prior to the bid opening date and time.** A bidder may withdraw or make a change to his bid response prior to the bid opening date and time. The request to make a change or withdraw must be in writing by a representative of the firm. The request to withdraw or change must be signed by the bidder or his designated representatives.

29. **Withdrawals after the bid opening date and time.** After the bid opening, no changes may be made to the bid response. The bidder may make a written request to withdraw the bid response, subject to approval by the NDDOT Procurement Office. Vendors continually withdrawing bids after the bid opening may be removed from the Vendor Database.

GENERAL CONTRACT TERMS AND CONDITIONS

1. **Affirmative Action.** The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of individuals with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin, or disability.

2. **Applicable Law and Venue.** Any dispute arising out of this agreement will be resolved under the laws of the State of North Dakota.

3. **Billing and Payment Procedures:** Invoices are to be submitted to Terra Miller Bowley, NDDOT Audit Division, 608 East Boulevard Avenue, Bismarck, ND 58505-0700. Failure to submit correct invoices to the appropriate NDDOT office may delay contractor payment.

Payment will normally be made within thirty days after delivery and acceptance of commodities or services under this contract and receipt of a correct invoice. All invoice and payment inquiries must be directed to the purchasing agency.

4. **Binding Contract.** The acceptance of a bid response in writing by the purchasing agency constitutes a contract between the bidder and the State. Written acceptance from the purchasing agency will be in the form of a purchase order, notification of award, or contract. Any oral agreement or arrangement by a bidder with a State employee or purchasing agency will have no force or effect unless reduced to writing.

5. **Compliance with Laws.** The contractor must, in performance of work under this contract, fully comply with all applicable federal, state or local laws, rules, regulations and policies, including those relating to nondiscrimination, affirmative action, accessibility and civil rights including Title VI of the Civil Rights Act of 1964. The contractor agrees to file all required reports on time, to make required payroll deductions, and to pay all taxes and premiums owed on time, including sales and use taxes and unemployment compensation and workers' compensation premiums. The contractor shall have and keep current at all times during the term of this contract all licenses and permits required by law.

6. **Confidentiality.** Awarded contractors must conform to current North Dakota statutes and administrative code provisions regarding confidentiality of audit records and files accessed in the performance of services under a contract. The contractor must refer all requests for information received from outside parties, sought under the Open Records laws of the state, to the NDDOT Contract Manager.

7. **Contract Amendments, Waivers.** After a binding contract has been entered into, no changes (i.e. additions, substitutions, subcontracting or a price adjustment) may be made, unless prior approval has been obtained from the purchasing agency and Procurement Officer.

The terms of this contract shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties. 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 instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.

8. **Contract Price Adjustment.** The Contract Unit Prices shall be firm for the twelve (12) months of the contract period. On an annual basis, all unit prices may be subject to price adjustment (increase / decrease). The request for a price adjustment shall be submitted to the Procurement Office at least forty five (45) days before the scheduled contract expiration date and must include justification for the proposed change. The Procurement Officer will respond as follows:

- 1) The request may be granted,
- 2) The contract may be cancelled and solicitation may be re-advertised, or
- 3) The contract may be continued without change.

If a price increase is approved by the NDDOT, the date the increase will be effective along with the new unit prices will be included in an amendment document. Approval of any price increase renews the twelve month firm price period.

The State shall also be advised of and receive the benefit of any price decrease. The same notification and review process will apply to a decrease in cost.

9. **Contract Term and Renewal Option.** The NDDOT will enter into a contract with an effective date **beginning February 15, 2018, and ending January 31, 2019, inclusive.** This contract may be renewed upon satisfactory completion of the initial contract term. The NDDOT reserves the right to execute up to two options to renew this contract for a period of twelve (12) months each, not to exceed thirty-six (36) months total. Renewals will be documented by amendment.

The NDDOT reserves the right to renegotiate price and terms provided that such negotiated price and terms fall within the original scope of work for this bid. Negotiations may be conducted annually or at such times that additional and unexpected services falling within the scope of the contract may occur. Such changes will be documented by amendment to the contract.

10. **Contract Termination.**

- a. **Termination without Cause.** This contract may be terminated by mutual consent of both parties, or by either party upon 30 days' written notice.
- b. **Termination for Lack of Funding or Authority.** The State may terminate this contract effective upon delivery of written notice to the contractor, or on any later date stated in the notice, under any of the following conditions:
 - i. If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.
 - ii. If federal or state regulations or guidelines are modified, changed or interpreted in such 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.
 - iii. If any license or certificate required by law or regulation to be held by the contractor to provide the services required by the contract is for any reason denied, revoked or not renewed.Any such termination of this contract under (i), (ii), or (iii), above, shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.
- c. **Termination for Cause.** The State by written notice to the contractor may terminate the whole or any part of this contract:
 - i. If the contractor fails to provide services required by this contract within the time specified herein or any extension thereof; or
 - ii. If the contractor fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms and after receipt of written notice from the State, fails to correct such failures within ten days or such longer period as NDDOT may authorize.
 - iii. The rights and remedies of the State provided in the above clause related to defaults by the contractor are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- d. **Termination, Deliveries.** If the contract is terminated for any reason, the contractor is responsible for delivery of all commodities and services ordered prior to the termination, unless those orders had been canceled by the Purchasing Agency or Entity.

11. **Inspection and Investigations.** The State reserves the right to conduct inspections and investigations related to the bidder and offered commodities or services, including but not limited to the firm, its facility, personnel, qualifications, and the commodities and/or services offered to make determinations regarding compliance with the bid requirements and responsibility of the bidder.

12. **Materials and Workmanship.** All material and workmanship shall be subject to inspection and testing at the discretion of the purchasing agency either at the point of manufacturer, place of storage, or upon receipt.

13. **Receiving.** Deliveries must arrive at the designated destination(s) during normal business hours unless other shipping/receiving instructions are issued by NDDOT personnel. The contractor shall contact the NDDOT to schedule delivery dates and times at least 24 hours in advance of delivery.

All NDDOT offices will be closed in recognition of State holidays. Any day declared a holiday by the President or Governor will also be recognized by office closure.

14. **Subcontracts, Assignment.** The contractor shall not subcontract, assign or transfer the contractor's interests or duties under this contract without express written consent of the purchasing agency.

15. **Successors in Interest.** The provisions of this agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
SPECIFICATIONS
FOR THE REVIEW OF CPA AUDITS OF CONSULTING
ENGINEERS' INDIRECT COST RATES**

The intent of this specification is to create a qualified Audit Consultant Pool for the review of CPA audits of consulting engineering firms' indirect cost rates. The North Dakota Department of Transportation (NDDOT) seeks the services of audit firms knowledgeable in the completion of indirect cost rate audits.

Engineering and design services contracts funded with Federal-aid highway funds must be audited in compliance with cost principles and procedures contained in Part 31 of the Federal Acquisition Regulation (FAR) of Title 48, Code of Federal Regulations (CFR). The indirect cost rate must also be audited in compliance with Generally Accepted Government Auditing Standards (also known as "GAGAS" or "Yellowbook" standards) and Generally Accepted Auditing Standards (GAAS), applicable Cost Accounting Standards (CAS) of 48 CFR chapter 99, and the AASHTO Uniform Audit and Accounting Guide.

Contracts may not be awarded at the time of the bid opening. The Invitation to Bid information that is received by the NDDOT will be used to create an Audit Consultant Pool of qualified audit firms.

There are variables that come into play in identifying how much audit work may be needed by the NDDOT, including the size and number of firms submitting rates for review and the workload of NDDOT audit services staff.

Contractors will be selected primarily to review CPA audits of consulting engineering firms' indirect cost rates. Emphasis of the review(s) will be placed on the following:

1. Internal controls
2. Billing systems and controls (including computerized systems)
3. Support for direct charges
 - a. Labor
 - b. Travel
 - c. Other expenses such as computer-aided design and drafting (CADD), reproduction, mileage, etc.
4. Direct labor base (used to allocate indirect costs)
5. Indirect costs (overhead)

Contractors shall perform reviews in accordance with GAGAS, applicable CAS, and the AASHTO Uniform Audit and Accounting Guide. Contractors shall use the "Review Program for CPA Audits of Consulting Engineers' Indirect Cost Rates" found in Appendix A of the 2016 (or subsequent version) edition of the AASHTO Uniform Audit & Accounting Guide. The review program can be located at the following web address:
<https://audit.transportation.org/>.

Allowability of costs must be determined in accordance with specific contract / agreement requirements. The requirements shall include, but not be limited to:

1. The Code of Federal Regulations, Title 48, Chapter 1, (FAR), Part 31 – Contract Cost Principles and Procedures.
2. 2016 (or subsequent version) Uniform Audit & Accounting Guide for Audits of Transportation Consultant Indirect Cost Rates, published by the American Association of State Highway and Transportation Officials (AASHTO). Special attention should be made to Appendix A "Review Program for CPA Audits of Consulting Engineers' Indirect Cost Rates". Information available at this weblink: <https://audit.transportation.org/>.
3. The American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guides, Audits of Federal Government Contractors and Construction Contractors.
4. National Compensation Matrix available at this weblink: <https://audit.transportation.org/>.
5. 2017 A/E Financial Performance Benchmark Survey Report by PSMJ Resources, Inc.
6. Any compliance supplements noted in specific contracts / agreements.

Contractor shall prepare reports at the completion of each review. Such reports must be prepared in accordance

with GAGAS. Prior to submission of the final report, a draft report and related working papers shall be made available to the NDDOT Director of Audit Services for review.

Contractor shall submit one (1) electronic copy of the final report. The report should include the scope of work performed, an opinion (if applicable), results of the review, a statement of costs (if applicable), and a summary of findings related to:

1. Allowability of amounts billed, if applicable
2. Internal control, if applicable
3. Instances of noncompliance with laws and regulation and / or selected contract provisions, if applicable
4. Other material matters
5. Recommendations for corrective actions, when applicable
6. Report detaining fraudulent acts must be prepared when such items are discovered.

Work papers submitted for NDDOT review must include documentation sufficient to demonstrate an adequate basis for relying on another auditor's work. Work papers shall be based on and include:

1. Criteria outlined in the 2016 (or subsequent version) Uniform Audit & Accounting Guide for Audits of Transportation Consultant Indirect Cost Rates, published by AASHTO. Contractor must provide a completed "Review Program for CPA Audits of Consulting Engineers' Indirect Cost Rates" found in Appendix A. This includes completion of reviewer comment and workpaper number sections.
2. Consultation with NDDOT audit services to ensure issues and concerns are incorporated into the audit plan and documented.
3. Schedule of allowable costs for each audited year, listing the originally submitted indirect cost accounts and adjustments made by the engineering firm, adjusted or questioned costs, and final indirect costs. Notes on the schedule should include FAR basis or other references to explain the adjustments.
4. Correspondence with the auditee, including e-mails, other written communication, and log of phone conversations (including dates).
5. Tick marks showing footing and cross footing of critical information for accuracy and completeness, and cross referencing of information to supporting documentation and related working papers.
6. Index to working papers.
7. Draft and final audit reports.
8. Key audit working paper schedules, specifically schedules of allowable costs, schedules of billings, and schedules documenting any adjustments made to direct labor, other direct costs, sub-consultant costs, indirect costs, fees, penalties and interest, if any.
9. Audit documentation of risk assessments, methodology and criteria addressing reasonableness of costs for executive compensation, fringe benefits, indirect labor, marketing / selling / bid and proposal, and other costs. Detail analysis, testing, results, and follow-up contact with CPA firm who performed the review of the indirect cost rate. Ensure adequate labor testing and review of unallowable expenses has been performed.
10. Audit conferences at beginning and throughout audit should be documented. An exit conference shall be documented, showing discussion of the audit findings and draft report with the auditee, and comments obtained regarding the reports' findings, adjustments and recommendations, if any.
11. Notice to proceed with audit project.

The Contractor shall provide accurate, quality and timely information and services required in solicitation. Contractor shall work in close coordination with the NDDOT to review the progress on each project and solicit input. Meetings will be held as required. NDDOT will make available all pertinent documents and information for audit engagements. NDDOT will review and approve Contractor(s) working papers, documents and reports in a timely manner. NDDOT will provide general directives as necessary and will be responsible for decisions pertaining to work under this Contract.

Travel to offices located in North Dakota or other out-of-state locations is not required and should not be undertaken. If the contractor believes travel is necessary to complete the required work, all travel will require NDDOT pre-authorization.

Payments will be made in accordance with the N.D. Office of Management and Budget (OMB) Policy 505 for in state and U.S. General Services Administration (GSA) per diem rates for out of state travel. A travel expense itemization with supporting receipts will be submitted to the NDDOT along with the contract payment invoice.

To view the N.D. OMB travel reimbursement policies, visit the website: <http://www.nd.gov/fiscal/accounting/rates/>

The use of subcontractors will not be allowed.

The NDDOT will not supply work space.

Contractors will be selected from the approved Audit Consultant Pool based on price and availability when services are required to complete a timely and efficient review of the CPA audits of indirect cost rates submitted by engineering firms.

To qualify for the Audit Consultant Pool, companies must meet the applicable FAR and AASHTO audit guide knowledge and experience requirements. This means the low bid per audit hour will not always be the successful contractor. Minimum qualifications include:

1. A Certified Public Accountant (CPA) firm and partner in-charge must be properly licensed to practice in the State of North Dakota.
2. The CPA firm and audit team members must be independent in accordance with GAGAS.
3. Auditors engaged in the audit must meet continuing education requirements of GAGAS, including training regarding the FAR and AASHTO audit guide.
4. The CPA firm's most recent peer review, or quality review report, must have been unqualified.
5. The CPA firm shall have conducted at least three federal highway funded indirect cost rate audits within the past three years.
6. Registered N.D. Vendor – Required prior to entering into contract if previous 5 qualifiers are met (Bidders Instruction #25, Page 3 of 10).

Qualification Affirmation: Company's affirmation that they are certified to perform audits with these requirements and have, at a minimum, conducted three federal highway funded audits within the past three years. The signature of a company representative authorized to enter into contract on behalf of the company is required.

Daniel Markham

President

Printed Name

Title of Individual signing

Signature

2/12/18

Date

The NDDOT is requesting pricing for anticipated audit engagements, which may vary by size of audit or engineering firm to be audited. Prices as submitted must be held firm for the term of the contract as indicated herein. Bidders shall use Cost Proposal, Attachment 3, to submit pricing for this solicitation.

Awarded Contractor(s) must provide their own insurance in all instances and must meet the requirements of the attached Risk Management Appendix. When an audit engagement is awarded, then the selected Contractor will provide a certificate of insurance meeting the attached risk management appendix and the Invitation to Bid document will be signed by the NDDOT creating the contract document. A Work Order Request will be created to document the particular circumstances and conditions of the event.

A company selected to perform an audit will only be required to complete the requirements of the contracting process prior to the first audit performed during the term of this contract. Work Order Requests documenting the audit circumstance and conditions will be required for each audit assignment.

Contract payment shall be paid as follows:

1. It is the NDDOT's preference that 100% of the total cost of hours used based on the bid price shall be paid upon satisfactory completion of the audit engagement.

BIDDER

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2. Depending upon the scope of any individual audit, progress payments may be allowed at the sole discretion of the NDDOT.
3. Invoices shall be addressed to the NDDOT Audit Services Division.

Inspection & Modification - Reimbursement For Unacceptable Deliverables:

The contractor is responsible for the completion of all work set out in the contract. All work, including audit documentation is subject to inspection, evaluation, and approval by the NDDOT Contract Manager. The NDDOT Contract Manager will complete a review of the draft audit report within two weeks after receipt of the draft report. The NDDOT Contract Manager will send to the CPA firm comments for correction and clarification within one week after the completion of the review. The CPA firm must respond to the questions and comments, in writing, within the following week, and final resolution of all points must take place within the subsequent week.

Final approval of the audit will not be given until all points raised by the NDDOT Contract Manager have been satisfactorily resolved. Should the NDDOT Contract Manager determine that corrections or modifications are necessary in order to accomplish the contracts intent; the NDDOT Contract Manager may direct the contractor to make changes. The contractor will not unreasonably withhold changes.

Substantial failure of the contractor to perform the contract may cause the NDDOT to terminate the contract. In this event, the State may require the contractor to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages.

In the event that the audit report or audit documentation is found to be substandard and deficiencies not corrected to the satisfaction of the NDDOT Contract Manager, one or more of the following additional steps may be taken by the NDDOT:

- Refuse to give final approval of the audit report.
- Immediate removal of the firm from the NDDOT Audit Contract Pool.
- Refer the firm to the State Board of Accountancy, and/or the American Institute of Certified Public Accountants.

All pertinent records and audit documentation must be retained by the contractor for three years after the report has been finalized, or until advised otherwise by the NDDOT Contract Manager.

The CPA firm must make available with the audit documentation a listing of the actual number of hours used on the audit, by audit area and individual, and a copy of the management letter.

Audit documentation must be made available without additional charge to the NDDOT in Bismarck, for examination by representatives of the NDDOT or the Federal Government.

In order to be responsive to this solicitation, the following are to be submitted:

1. The completed Invitation to Bid document.
2. Pricing proposed by the firm for contracted audit work. Fees should be identified on a per hour basis for each level of staff or key personnel anticipated to be involved in the audit project(s). Please use the attached Cost Proposal document.
3. A minimum of two (2) references describing recent experiences and demonstrating expertise in performing work of a similar or related nature for the public sector. The following information shall be provided for each reference:
 - a. Brief description of project
 - b. Inclusive project dates
 - c. Name and address of client organization
 - d. Name, address, telephone number and email address of individual in the client organization who is familiar with the project.

4. Bid amendments if any are issued and their return is required.

General Contract Terms and Conditions, #11, Page 6 of 18, reserves the right to investigate potential contractors. If an investigation is conducted; then the following information will be required in a written response by a date yet to be determined. Bidders may also reference N.D. Administrative Rule 4-12-11-04, Responsibility of the Bidder or Offeror. <http://www.legis.nd.gov/information/acdata/pdf/4-12-11.pdf?20140103122456>

After opening of the bids and prior to inclusion in the Audit Contract Pool, bidders may be required to submit the following documentation.

1. A clear and concise statement demonstrating the Bidder's overall understanding of the services required and a description of the strategy for accomplishing the work
2. Background information regarding the CPA firm, including but not limited to contact information, number of employees, brief history of firm, and office locations.
3. Detailed explanation that speaks specifically to each discipline being proposed, describing how the Bidder is qualified to provide services indicated in the solicitation, including the following:
 - a. Demonstrate how the Bidder meets the independence standards of the current United States Government Accountability Office (GAO) "Government Auditing Standards".
 - b. Describe the capability of the firm to audit internal controls and related computerized systems.
 - c. Identify the role, responsibility and level of participation of personnel that would be involved in contracted audits with the NDDOT.
 - i. Provide resumes for these key personnel showing technical education and training. Include certifications, licenses and memberships in professional associations, and relevant experience. Resumes should specifically define the experience and knowledge regarding the FAR, cost accounting, and work for other government entities in performing similar audits as described in this solicitation.
 - ii. Specify personnel experience and knowledge working with statistical sampling techniques as it relates to use in auditing and other auditing techniques used by key personnel.
4. Proof of the company's qualifications as affirmed above. Including a copy of the firm's most recent peer review report.

The NDDOT Contract Manager:

Terra Miller Bowley, NDDOT Director of Audit Services (or designee)
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700
701-328-2486, tmillerbowley@nd.gov

Contractor's Service Representative:

The contractor must provide a dedicated customer service representative to provide support for this contract. The contractor shall notify the Procurement Officer in the event the representative is changed.

NAME: Daniel Markham, CPA
(Name of person servicing this contract)

BUSINESS NAME: Markham & Associates, P.C.

MAILING ADDRESS: 9200 W. Cross Dr. Suite 306
(Address to which payments are to be sent)

CITY & STATE: Littleton, CO ZIP CODE: 80123

PHONE NUMBER: (303) 972-8843 TOLL FREE: _____

FAX NUMBER: (303) 972-8843 E-MAIL: daniel.markham@markhamcpa.com

BIDDER: DM 2/12/18

ITB 946-20-18-050, AUDIT CONSULTANT POOL

WORK ORDER REQUEST PROCESS AND PROTOCOL

- 1) The State will provide the Vendor with a written Work Order Request that includes a Statement of Work (SOW) describing the required services. (See Example Next 4 Pages)
 - a) The Work Order Request will describe the work to be done and deliverable due dates where applicable.
 - b) The Work Order Request will specify a proposal due date for the Vendor to respond to the request. This time frame will be no less than two weeks. The Vendor must either affirm or deny their ability to provide the personnel in the required project time frame. During this response period, if necessary, the Vendor may seek clarifications of the work involved.
 - c) If the Vendor is unable to provide the personnel requested, it must state the reason in the appropriate section on the Work Order Request form, sign and return the form to NDDOT by the proposal due date.
 - d) In the event NDDOT requests the vendors to propose on an individual audit engagement and if the Vendor is capable of fulfilling the work order, vendor will complete and attach a "Project Proposal" to the Work Order Request form, sign and return the form to NDDOT by the proposal due date. The Proposal is to include the information as requested on the Work Order Request.
- 2) NDDOT may award projects by direct assignment or competitively within the Audit Consultant Pool.
 - a) Direct Assignment – NDDOT may issue a Work Order Request directly to any of the awarded vendors.
 - b) Competitive – NDDOT may elect to conduct a competitive process by requesting project proposals from two or more vendors in the pool. NDDOT will select the vendor's proposal that best meets the SOW requirements based upon the selection criteria stated in the work order request.
- 3) A change order process will be used to manage issues and changes during the life of a work order project. A change request must be in writing to document the potential change. The change will be reviewed and, if acceptable to NDDOT, the Vendor will submit an estimate of the charges and the anticipated changes in the delivery schedule that will result from the proposed change in the scope of work. A change order must be approved and signed by both parties prior to implementation of the change. (See Attachment 2.)
- 4) The Work Order Request forms become effective as of the date it has been signed by both parties. NDDOT may terminate the Work Orders at any time upon notice to contractor. If not so terminated then the Work Order will terminate upon satisfactory completion of the work. Upon termination, contractor will return all of NDDOT's property in its possession that is related to the Work Order Request, including confidential information and work products whether finished or not.
- 5) Regardless of how the individual engagements are assigned/awarded, the selected vendor would be expected to work with NDDOT Contract Manager to schedule the onsite fieldwork, secure staff and make necessary travel/lodging arrangements.
- 6) Prior to finalizing a Work Order Request, the selected vendor must disclose any instances where the firm or any individuals working on the contract has a possible independence problem or conflict of interest, and if so, the nature of that conflict (e.g. nonaudit services performed for the Client). The NDDOT Contract Manager reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the auditor or auditor independence. The NDDOT Contract Manager's determination regarding any questions of independence or conflict of interest is final.

North Dakota Department of Transportation - Audit Consultant Pool Work Order Request (WOR)

| | | | |
|--------------|-----------------|------------------|------------|
| Contractor | Contract Number | WOR Number | Issue Date |
| Contact Name | E-Mail Address | Telephone Number | Fax Number |
| Address | City | State | Zip Code |

| | | | |
|------------------------------|----------------|------------------|------------|
| NDDOT Contact for this Audit | E-Mail Address | Telephone Number | Fax Number |
|------------------------------|----------------|------------------|------------|

Reference: In accordance with the terms and conditions of ITB , Audit Consultant Pool, this Work Order Request authorizes completion of the deliverables described in accordance with the description and terms specified below.

1. Description of Services/Scope of Work

| |
|-------------------------|
| Name of Audit |
| Objectives |
| Desired Audit Timeframe |

2. Deliverables (to be completed subsequent to assignment)

| Deliverable | Completion Date |
|---|-----------------|
| Contractor to return proposed staffing plan and fieldwork schedule to NDDOT | |
| NDDOT completes review and approval of staffing plan and schedule | |
| Contractor plans audit and provides proposed audit objectives, scope and audit program tailored to NDDOT for review and approval (no later than 6 weeks prior to commencement of onsite fieldwork) | |
| NDDOT reviews and approves audit objective, scope and audit program (to be completed one week after receipt) | |
| Preliminary request list due four weeks prior to commencement of onsite fieldwork | |
| NDDOT completes review and approves proposed audit objectives, scope and audit program | |
| Contractor completes on-site audit services | |

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| Deliverable | Completion Date |
|---|-----------------|
| Contractor completes draft audit report and work papers and provides to NDDOT for review and approval (typically required no later than 30 days after completion of onsite fieldwork) | |
| NDDOT completes review of audit report and supporting work papers and provides review comments | |
| Contractor will satisfactorily address NDDOT work paper/draft report review comments | |
| NDDOT completes an evaluation of services provided | |
| Contractor participates in final reporting (as applicable) | |

3. Contractor Staffing

| Name | Position |
|------|----------|
| | |
| | |
| | |
| | |

4. Price and Payment for Staff assigned to this Work Request

NDDOT will pay for the services provided by CONTRACTOR under this Work Order based on the rates established by contract, not including actual travel, lodging or per diem costs, to be paid upon completion of deliverables. Actual receipts for travel (airfare or mileage) and lodging will need to be provided prior to reimbursement.

| Staff Name | Number of Hours | Hourly Rate | Total |
|------------|-----------------|-------------|-------|
| | | \$ | \$ |
| | | \$ | \$ |
| | | \$ | \$ |
| | | \$ | \$ |
| Total | | \$ | |

| | |
|---|----|
| CONTRACTOR's estimated cost of the following: | |
| Travel costs | \$ |
| Lodging | \$ |
| Per diem | \$ |
| Total | \$ |

5. Type of Proposal

- ☐ Direct Assignment
☐ Competitive

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Contractor Proposal (For Competitive Work Orders)

Contractor shall attach its proposal to this Work Order Request when responding. The Contractor's proposal will include, at a minimum, the following items. If the company has previously been requested to submit the following information, then it is only necessary to respond to the items which are specific to this Work Order Request.

A clear and concise statement demonstrating the Bidder's overall understanding of the services required and a description of the strategy for accomplishing the work

Background information regarding the CPA firm, including but not limited to contact information, number of employees, brief history of firm, and office locations.

Detailed explanation that speaks specifically to each discipline being proposed, describing how the Bidder is qualified to provide services indicated in the solicitation, including the following:

- a. Demonstrate how the Bidder meets the independence standards of the current United States Government Accountability Office (GAO) "Government Auditing Standards".
- b. Describe the capability of the firm to audit internal controls and related computerized systems.
- c. Identify the role, responsibility and level of participation of personnel that would be involved in contracted audits with the NDDOT.
 - i. Provide resumes for these key personnel showing technical education and training. Include certifications, licenses and memberships in professional associations, and relevant experience. Resumes should specifically define the experience and knowledge regarding the FAR, cost accounting, and work for other government entities in performing similar audits as described in this solicitation.
 - ii. Specify personnel experience and knowledge working with statistical sampling techniques as it relates to use in auditing and other auditing techniques used by key personnel.

Proof of the company's qualifications as affirmed above. Including a copy of the firm's most recent peer review report.

Detail a timeline for completion of the work order request.

References submitted with the Invitation to Bid will apply.

| Evaluation Criteria (For Competitive Work Orders) The criteria below will be used to select the most advantageous proposal. | Points (100 total) |
|--|---------------------------|
| Project proposal solution | 30 |
| Qualifications and availability of staff | 40 |
| Cost | 30 |

If Vendor is unable to bid this work order, please return the work order to requesting agency and provide the reason:

| |
|--|
| |
|--|

This Audit Consultant Work Order becomes effective as of the date it has been signed by both parties.

WITNESS:

CONTRACTOR:

Name (Type or Print)

Company Name

Signature

Officer's Name (Type or Print)

Signature

Title

Date

WITNESS:
TRANSPORTATION

NORTH DAKOTA DEPARTMENT OF

Name (Type or Print)

Director

Signature

Signature

Date

APPROVED as to substance by:

Division Director (Type or Print)

Signature

Date

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ATTACHMENT 2

AUDIT CONTRACTOR POOL
CONTRACT CHANGE ORDER

| | |
|---|---------------------|
| Audit Project Name | Date of Request |
| Work Order Number | Change Order Number |
| Requested By | |
| Request Description | |
| Reasons/Goals for Change | |
| <p>Recommendations</p> <p><i>(Include recommendations by the party that is bringing the change request forward. There is a potential for multiple recommendations for solutions based on analysis.)</i></p> | |
| <p>Impacts on Cost, Scope, Schedule, Quality</p> <p><i>(For each recommendation, a narrative of the impacts to CSSQ should be included.)</i></p> | |
| <p>Solution</p> <p><i>(Define the most appropriate solution to attain the desired objective. This is determined by the approving authority.)</i></p> | |

Approval Signature(s) and Date(s).

| | |
|---|------|
| Signature – ND Director of Audit Services | Date |
| Signature - Contractor | Date |

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ITB 946-20-18-050, AUDIT CONSULTANT POOL

ATTACHMENT 3

COST PROPOSAL

| A. | Direct Salary Cost for Audit Consultant Staff | *Rate Per Hour | **X One Employee | Total |
|---|---|----------------|---------------------------|-----------|
| | Partner \$ | 60.00 | X 1 | \$ 60.00 |
| | Manager \$ | 50.00 | X 1 | \$ 50.00 |
| | Staff \$ | 35.00 | X 1 | \$ 35.00 |
| | Clerical \$ | 25.00 | X 1 | \$ 25.00 |
| *This rate is firm for the first year of the contract. | | | | |
| **X One - for purposes of Cost Proposal only. Actual staffing requirements TBD dependent upon audit requirements. | | | | |
| | | | Total Direct Salary | \$ 170.00 |
| B. | Payroll Additive Costs | | | |
| | Worker's Compensation, Insurance, Social Security, other. | | | |
| | Payroll Additive Rate as a Percentage of the Direct Salary (A.) | 30.00 % | Times the Total in A. | \$ 51.00 |
| C. | Indirect Operating Costs (Overhead) | | | |
| | Business location cost, printing, supplies | | | |
| | Indirect Cost Rate as a Percentage of the Direct Salary (A.) | 110.00 % | Times the Total in A. | \$ 187.00 |
| D. | Profit | | | |
| | Profit Applied as a Percentage of the Direct Salary (A.) | 20.00 % | Times the Total in A. | \$ 34.00 |
| E. | Total | | | |
| | | | Total all - A., B., C., D | \$ 442.00 |

Direct Operating Costs - Travel Related

- Must be pre-authorized by the Contract Manager and specific to this contract's activity.
- Transportation, Lodging, Meals and Mileage- based upon the services required for the contract period will be reimbursed pursuant to the State of N.D. Travel Expense Policies
- Airfare, Parking, Taxi fares, and Car Rentals to be itemized and reimbursed at cost with presentation of receipts at time of invoice.

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**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
APPENDIX A OF THE TITLE VI ASSURANCES**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

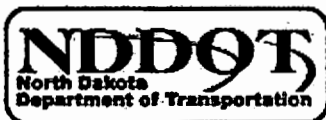


**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
APPENDIX E OF THE TITLE VI ASSURANCES**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).



Risk Management Appendix

Professional Services Agreement (non-Engineer and Architect Consultants):

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Contractor shall secure and keep in force during the term of this agreement and for **at least 12 months thereafter** from an insurance company authorized to do business in North Dakota, **professional liability** insurance covering its liability for acts, errors, or omissions in providing or failing to provide professional services, with a minimum coverage limit of **\$1,000,000 per claim**, and **\$1,000,000 aggregate**. Coverage shall be in force during the term of this agreement, and for a period of at least 12 months after.

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**
- 2) **Automobile liability**
- 3) **Workers compensation insurance**

Contractor shall produce certificates of insurance or copies of insurance policies upon request by the State.

When a portion of a Contract is sublet, the Contractor shall obtain insurance protection (as outlined above) to provide liability coverage to protect the Contractor and the State as a result of work undertaken by the Subcontractor. In addition, the Contractor shall ensure that any and all parties performing work under the Contract are covered by public liability insurance as outlined above. All Subcontractors performing work under the Contract are required to maintain the same scope of insurance required of the Contractor. The Contractor shall be held responsible for ensuring compliance with those requirements by all Subcontractors.

LD Approved 6-1-00
RM Consulted 2007
Revised 6-07



Amendment No. 1

To: ALL INTERESTED SUPPLIERS
From: North Dakota Department of Transportation
Date: February 8, 2018
Re: Amendment to Bid 946-20-18-050, AUDIT CONSULTANT POOL

Bidders Instruction #8 of the solicitation established a deadline for receipt of questions. The responses to these questions are provided as addenda to the solicitation. When necessary, the solicitation has been amended.

Question 1: If a firm has previously provided indirect cost rate audit services on behalf of the ND Dept. of Transportation (NDDOT), and since Daryl Splichal has since retired, who may the firm list in response to the requirement for a client contact familiar with the project?

Answer 1:

If the CPA firm previously worked with another member of the audit services team who remains actively employed with the NDDOT they may list that staff member. If the firm has no NDDOT contact, simply identify the audit or project on which the firm worked along with an appropriate contact at the firm reviewed.

The documentation on specific projects and/or audits will still be available given records retention requirements. NDDOT can reference a prior work product as a reflection of the work done.

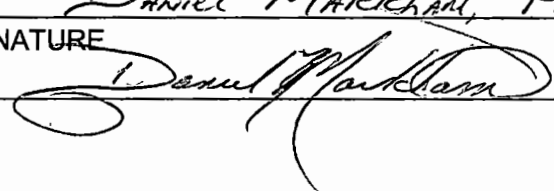
The solicitation is hereby amended.

Vendors are instructed to acknowledge receipt of and compliance with this amendment by signing below and returning this acknowledgement with your bid or proposal.

Any questions regarding this amendment must be submitted in writing to the undersigned Procurement Officer.

Gabriel Hoggarth, Procurement Officer
PHONE: 701-328-4465
FAX: 701-328-0310
E-MAIL: ghoggarth@nd.gov

By my signature below, I hereby acknowledge receipt of and compliance with this amendment to the above referenced solicitation.

| | |
|---|---------|
| PRINTED NAME OF BIDDER OR OFFEROR <u>and</u> TITLE | |
| Daniel Markham, President Markham & Associates P.C. | |
| SIGNATURE | DATE |
|  | 2/12/18 |



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/09/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | | | |
|---|--|--|--|
| PRODUCER GIA Risk Management LLC PO Box 1246 Arvada CO 80001 | | CONTACT NAME: Monica A or Yana Long PHONE (A/C, No, Ext): 3034230162 ext 154 E-MAIL: marchuleta@e-gia.com ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: THE HARTFORD INSURER B: INSURER C: INSURER D: INSURER E: INSURER F: NAIC # 00914 | |
| INSURED Markham & Associates, P.C. 12044 W Capri Ave Littleton CO 80127 | | | |

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDITIONAL SUBROGATION | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|----------|---|------------------------|---------------|-------------------------|-------------------------|------------|--|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: <input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$ <input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below | Y | Y | 34SBAIW8801 | 07/01/2017 | 07/05/2018 | EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ EACH OCCURRENCE \$ AGGREGATE \$ PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> |
| | | | | | | | E.L. EACH ACCIDENT \$ 1000000 E.L. DISEASE - EA EMPLOYEE \$ 1000000 E.L. DISEASE - POLICY LIMIT \$ 1000000 |
| | | | | | | | |
| | | | | | | | |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

| | |
|--|--|
| CERTIFICATE HOLDER North Dakota Department of Transportation 608 E Blvd Ave Bismarck, ND 58505 | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE JL-MLA |
|--|--|

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/8/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | | |
|---|--|-----------------------|
| PRODUCER Affinity Insurance Services, Inc. 159 East County Line Rd Hatboro, PA 19040-1218 | CONTACT NAME: | |
| | PHONE (A/C, No, Ext): | FAX (A/C, No): |
| INSURED Dan Markham Markham & Associates, P.C. 12044 W Capri Avenue Littleton, CO 80127-2366 | E-MAIL ADDRESS: | |
| | INSURER(S) AFFORDING COVERAGE | |
| | INSURER A: Continental Casualty Company | |
| | INSURER B: | |
| | INSURER C: | |
| | INSURER D: | |
| INSURER E: | | |
| INSURER F: | | |
| NAIC # | | |
| 218-20443 | | |

| | | |
|---|----------------------------|-------------------------|
| COVERAGES | CERTIFICATE NUMBER: | REVISION NUMBER: |
| THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. | | |

| INSR LTR | TYPE OF INSURANCE | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|---|----------|---------------|-------------------------|-------------------------|---|
| | GENERAL LIABILITY | | | | | | |
| | <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY | | | | | | EACH OCCURRENCE \$ |
| | <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ |
| | | | | | | | MED EXP (Any one person) \$ |
| | | | | | | | PERSONAL & ADV INJURY \$ |
| | | | | | | | GENERAL AGGREGATE \$ |
| | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | | | PRODUCTS - COMPIOP AGG \$ |
| | <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | | | | | | \$ |
| | AUTOMOBILE LIABILITY | | | | | | COMBINED SINGLE LIMIT (Ea accident) \$ |
| | <input type="checkbox"/> ANY AUTO | | | | | | BODILY INJURY (Per person) \$ |
| | <input type="checkbox"/> ALL OWNED AUTOS | <input type="checkbox"/> SCHEDULED AUTOS | | | | | BODILY INJURY (Per accident) \$ |
| | <input type="checkbox"/> HIRED AUTOS | <input type="checkbox"/> NON-OWNED AUTOS | | | | | PROPERTY DAMAGE (Per accident) \$ |
| | | | | | | | \$ |
| | UMBRELLA LIAB | <input type="checkbox"/> OCCUR | | | | | EACH OCCURRENCE \$ |
| | EXCESS LIAB | <input type="checkbox"/> CLAIMS-MADE | | | | | AGGREGATE \$ |
| | <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$ | | | | | | \$ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | | | | <input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) | <input type="checkbox"/> Y <input type="checkbox"/> N | N/A | | | | E.L. EACH ACCIDENT \$ |
| | If yes, describe under DESCRIPTION OF OPERATIONS below | | | | | | E.L. DISEASE - EA EMPLOYEE \$ |
| | | | | | | | E.L. DISEASE - POLICY LIMIT \$ |
| X | Professional Liability/Error and Omissions Insurance | | | APL-188121183 | 8/22/17 | 8/22/18 | Limit \$1,000,000/2,000,000 Deductible \$1,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Prior Acts Date: Retro: 8/22/00

| | |
|---|--|
| CERTIFICATE HOLDER | CANCELLATION |
| North Dakota Department of Transportation | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
| | AUTHORIZED REPRESENTATIVE |

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North Dakota Department of Transportation

Thomas K. Sorel
Director

Doug Burgum
Governor

March 9, 2018

Markham & Associates, P.C.
9200 W. Cross Dr. Suite 306
Littleton, CO 80123

Dear Contractor:

You have submitted to the North Dakota Department of Transportation (NDDOT), in connection with your certificate of insurance, additional pages or language on the certificate which either purports to limit or qualify the information reflected on the certificate of insurance or which purports to change, modify or amend your company's insurance policies. NDDOT policy is to not solicit, review or approve contractors' insurance policies, endorsements or amendments to insurance policies, or insurance documents other than properly completed certificates of insurance. NDDOT contracts specify that contractors are responsible for acquiring and maintaining specified coverages and proof of insurance.

Please have a company executive authorized to execute contract documents sign and date the statement below attesting that your company has insurance coverage consistent with the contract provisions and immediately fax and mail it back to us.

Be advised that execution of this contract will be delayed until these issues have been resolved.

Sincerely,

Vanessa Brosten, Procurement Officer II
Financial Management Division

BID NO. 946-20-18-050

Markham & Associates, P.C. hereby states that the company has, and will maintain in force, insurance coverages (including proof of coverages) consistent with the contract specifications.

Date

3/14/18

Daniel Markham, President

Type or Print Name & Title

Signature



MARKHAM ASSOCIATES PC

Certified Public Accountants

March 26, 2018

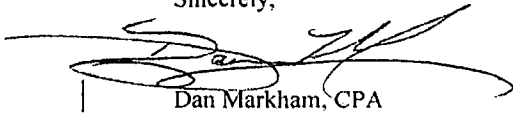
Gabriel Hoggarth, Procurement
North Dakota Department of Transportation
608 East Boulevard Ave.
Bismarck, ND 58505

Dear Gabriel:

Per the solicitation number 946-20-18-050., Markham & Associates does not own any automobiles and does not intend to utilize vehicles in the performance of any work assigned by NDDOT under the above solicitation.

In the event that a vehicle is needed, I will transfer one of my personal vehicle to the corporation and obtain the needed insurance.

Sincerely,



Dan Markham, CPA



North Dakota Department of Transportation

Thomas K. Sorel
Director

Doug Burgum
Governor

March 16, 2018

To: Gabriel Hoggarth, Procurement

From: Terra L. Miller Bowley, Director Audit Services

Re: Markham & Associates, P.C. - Automobile Liability Insurance Coverage

The North Dakota Department of Transportation (NDDOT) recently announced an award decision for solicitation number 946-20-18-050. Markham & Associates, P.C. was included in the audit consultant pool to review CPA audits of consulting engineers' indirect cost rates. Upon receipt of the Notice of Award, successful bidders must obtain the required insurance coverage and provide proof of coverage prior to contract approval. Required insurance coverage is detailed in the Risk Management Appendix attached to solicitation 946-20-18-050. Required insurance coverage includes commercial general liability, automobile liability, and workers compensation insurance.

Markham & Associates, P.C. has notified the Procurement Division of the NDDOT that they are unable to provide proof of automobile liability coverage given that the firm owns no automobiles. The NDDOT is willing to waive this requirement as travel, including travel to offices located in North Dakota or other out-of-state locations, is not required and should not be undertaken by any firm included in the audit consultant pool. An authorized representative of Markham & Associates, P.C. must provide a statement to the NDDOT indicating that the firm will not be utilizing vehicles in the performance of their duties as assigned by the NDDOT as a requirement of this waiver.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION:

Terra L. Miller Bowley

Division Director (Type or Print)

Terra L. Miller Bowley

Division Director Signature

3/16/2018

Date