



## **ND STATE INVESTMENT BOARD SPECIAL MEETING**

**Tuesday, June 15, 2021, 8:30 a.m. (CST)**  
**Workforce Safety & Insurance**  
**1600 E Century Avenue, Bismarck, ND**

[Teleconference 701-328-0950, Conference ID: 594222588#](https://www.zoom.us/j/594222588)

### **AGENDA**

#### **I. CALL TO ORDER AND ACCEPTANCE OF AGENDA**

#### **II. GOVERNANCE**

A. Presentation and Acceptance of Executive Director Resignation – Mr. Hunter

B. Joint Board Resolution for Mr. Hunter – Lt. Governor Sanford, Dr. Lech

C. Appointment of Executive Search Committee – Lt. Governor Sanford

D. Board Discussion ED/CIO Search – Ms. Murtha, Ms. Flanagan

2. Agency Background
3. Prior ED/CIO Searches
4. Executive Search Method
5. Staff Recommendation
6. Consultant Search RFP options

E. Interim Administration – Mr. Hunter

1. Interim Appointments
2. Workload Compensation Adjustment

F. Press Release – Ms. Murtha

#### **III. OTHER**

A. A reception in honor of Mr. Hunter will follow the SIB meeting.

#### **IV. ADJOURNMENT**

May 25, 2021

Dear SIB Chairman Lt. Governor Brent Sanford and Honorable SIB Members,

Please accept this letter as my formal resignation as Executive Director and Chief Investment Officer for the North Dakota Retirement and Investment Office. My last day will be on Tuesday, June 22, 2021, if acceptable to the Board.

This announcement comes with a heavy heart, as I have sincerely enjoyed my time serving the North Dakota State Investment Board and all of our valued clients and deserving constituents. With your guidance, support and leadership, this position has been one of the most rewarding professional work experiences in my life. All this was possible due to the unique culture, spirit and values of the State of North Dakota, its leaders and its hard-working citizens.

I look forward to enabling a successful transition with our exceptional team of investment and retirement benefit professionals over the next four weeks.

With sincerest gratitude and deepest respect,



David J. Hunter

ND TFFR and ND SIB Joint Board Resolution  
In Appreciation of  
Executive Director/Chief Investment Officer  
Dave Hunter

WHEREAS, Mr. Hunter has served as the Executive Director and Chief Investment Officer of the North Dakota Retirement and Investment Office for the past 7.5 years; and

WHEREAS, Mr. Hunter has diligently carried out his duties and responsibilities to the Retirement and Investment Office, the Teachers' Fund for Retirement and State Investment Board Programs, and the general population of the State of North Dakota; and

WHEREAS, Mr. Hunter has been a valued and dedicated State employee in helping maintain the integrity and stability of the TFFR and SIB Programs, and leader of this state agency.

NOW THEREFORE, BE IT RESOLVED that Mr. Hunter be duly recognized by these Boards for his years of unselfish dedication to the State of North Dakota through his service to the TFFR Board of Trustees and the SIB.

On Behalf of the TFFR Board

On Behalf of the SIB

\_\_\_\_\_  
Dr. Rob Lech, President

\_\_\_\_\_  
Lt. Governor Brent Sanford, Chair

\_\_\_\_\_  
Votes

\_\_\_\_\_  
Votes

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## MEMORANDUM

Item II.C.

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**TO: SIB**  
**FROM: Jan Murtha, Deputy Executive Director – Chief Retirement Officer**  
**DATE: June 9, 2021**  
**RE: Appointment of Executive Search Committee**

The Board may authorize and the Chair may appoint an Executive Search Committee to assist the Board during the Executive Search process.

Policy B-5(6) of the SIB Governance Manual states:

“6. The chairperson will appoint board committees authorized by the board. The operational life span of a board committee will be defined at the time of appointment.”

The SIB had authorized the creation of an Executive Search Committee during both the 2010 and 2012 executive search process. While there is no requirement to form a committee or that the committee be comprised entirely of Board members; the Board formed a committee comprised only of board members in both prior searches.

The specific tasks assigned to the committee need not be identified at the time of its creation; though the general scope and operational life span of the committee should be stated in the motion authorizing the creation of the committee.

### **BOARD ACTION.**

**Move to Approve the Creation of an Executive Search Committee to assist the State Investment Board with the Executive Search process.**

### **CHAIRPERSON ACTION.**

**If created, appoint Board Committee members.**

## MEMORANDUM

Item II.D.

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**TO:** SIB  
**FROM:** Jan Murtha, Deputy Executive Director – Chief Retirement Officer  
**DATE:** June 9, 2021  
**RE:** ED/CIO Search

### I. Introduction

In anticipation of the upcoming ED/CIO search, staff will provide the Board with an overview of agency organization background, prior executive search experiences, and options and recommendations for the search.

### II. Agency Organization Background

The RIO agency was created by the state legislature in 1989 to combine the activities of the TFFR and state investment programs under one agency. Existing state employees filled positions created within the new agency.

Initially the role of Executive Director and Chief Investment Officer was split. Mr. Engmann, the former Executive Director of the TFFR Program filled the new Executive Director (ED) position in RIO; and Mr. Gilbertson, the Chief Investment Officer (CIO) of the PERS investment program, assumed the CIO position within this new agency.

Steve Cochrane was hired to fill the position of CIO in 1997. Upon Mr. Engmann's retirement in 1999, the positions of ED and CIO were combined and Mr. Cochrane assumed this role.

The first ED/CIO search conducted by the Board occurred in 2010, subsequent to the tragic death of Mr. Cochrane in April of that year. As a result of Mr. Cochrane's death, the Board reassessed the need for strong succession planning and took the following actions: adding a new position of Deputy CIO in 2011, (filled by Mr. Schulz in January 2012) and amending its governance manual in 2014 (Policy A.1(8)) to require that the ED/CIO keep the Deputy ED, Deputy CIO and CFO informed of all matters to reduce the impact to the agency and its services during vacancies in the ED/CIO position.

### **III. Prior Searches – Connie Flanagan will brief the Board on these searches.**

A. **2010 ED/CIO Search:** The Board took the following actions:

- Created an Executive Search Committee.
- Issued an RFP for a Consultant - executive search firm.
- Firm retained.
- Retained a new ED/CIO in December, 2010.
- Interim duration April to December 2010 (approx. 7 months).
- Assets under management in 2010 totaled less than \$4 billion.

B. **2012 ED/CIO Search:** The Board took the following actions:

- Created an Executive Search Committee.
- Posted the position within the State system.
- While receiving more than 100 applications, the search committee determined the majority of applications did not meet the minimum qualifications of the position, and the remaining applicant pool lacked sufficient experience to pursue.
- Subsequent to closing the position posting, an RFP for a Consultant search firm was issued.
- Firm retained.
- Retained a new ED/CIO in December, 2013
- Interim duration May 2012 to December 2013 (approx. 18 months).
- Assets under management in 2013 totaled less than \$8 billion.

### **IV. Executive Search Method**

The two primary options for an executive search are:

- 1) Hiring an Executive Search firm to assist with the candidate search; or
- 2) Posting the position.

Please note that the executive search firm option does not foreclose the ability of an individual to apply for the position, rather applications will be routed through the consultant.

### **V. Staff Recommendation**

Staff recommends retaining a consultant to assist the Board with the ED/CIO search. This recommendation is based on the following considerations:

- Current Assets under management exceed \$19 billion; an Executive search firm will have enhanced access to potential candidates with the qualifications and experience needed to oversee and continue to develop an investment program of this size.
- Use of an executive search firm in both the 2010 and 2012 searches resulted in a swift and successful candidate placement.

- Use of a posting alone in 2012 failed to produce sufficiently qualified candidates and prolonged the interim period.

## **VI. Consultant Search RFP Development and Issuance Options**

In the event the Board elects to proceed with retention of a consultant, the Board may:

- 1) At the June Special Board meeting - Authorize RIO staff to work with State procurement to develop and issue an RFP for consultant services. A draft RFP with a suggested scope of service will be provided to the Board prior to the meeting.
- 2) Defer authority for RFP development and issuance to the Executive Search Committee.
- 3) Retain full Board authority for RFP development and issuance.

### **BOARD ACTION.**

**Approve Executive Search method.**

**If applicable, approve method of RFP development and issuance.**

**STATE OF NORTH DAKOTA  
Office of Management and Budget  
State Procurement Office  
600 East Boulevard Avenue  
14th Floor Capitol Tower, Dept 012  
Bismarck, ND 58505-0310**

**REQUEST FOR PROPOSAL (RFP)**

**RFP Title:** Executive Recruitment Services for the ND Retirement and Investment Office

**RFP Number:** [Insert number](#)

**Issued:** [Insert day, month, year](#)

**Purpose of RFP:** The North Dakota State Investment Board (SIB), through its search committee, seeks a qualified independent contractor with expertise in executive recruitment services, specifically, with previous experience with the recruitment of public/private fund investment / retirement professionals responsible for the investment of funds in excess of \$19 billion, to identify and evaluate qualified candidates to fill the position of Chief Investment Officer/Executive Director (CIO/ED) with combined management / executive management experience for the North Dakota Retirement & Investment Office (RIO).



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## ATTACHMENTS

Attachment A - Current Position Description/SIB Governance Policies

Attachment B - Proposal Evaluation Worksheet

Attachment C - Contract

## SECTION ONE – INSTRUCTIONS

### 1.1 PURPOSE OF THE RFP

The North Dakota State Investment Board (SIB), through its search committee, seeks a qualified independent contractor with expertise in executive recruitment services, specifically, with previous experience with the recruitment of public fund investment / retirement professionals responsible for the investment of funds in excess of \$19 billion, to identify and evaluate qualified candidates to fill the position of Chief Investment Officer/Executive Director (CIO/ED) with combined management / executive management experience for the North Dakota Retirement & Investment Office (RIO).

### 1.2 PROCUREMENT OFFICER CONTACT INFORMATION

The procurement officer is the point of contact for this RFP. Offerors shall direct all communications regarding this RFP to the procurement officer. Please do not add the procurement officer to any marketing distribution lists.

PROCUREMENT OFFICER: Tricia Opp  
EMAIL: [topp@nd.gov](mailto:topp@nd.gov)  
PHONE: 701.328.1721  
TTY Users call: 7-1-1

Engaging in unauthorized communication or seeking to obtain information about an open solicitation with any state employee or official other than the responsible procurement officer or designee is sufficient grounds for suspension or debarment. [\[N.D.A.C. § 4-12-05-04\(7\)\]](#)

### 1.3 RFP SCHEDULE

EVENT	DATE
RFP issued	<a href="#">Insert date</a>
Deadline for Submission of Questions and Objections by <a href="#">Insert time AM or PM, C.T.</a>	<a href="#">Insert date</a>
Solicitation Amendment with Responses to Questions issued approximately (if required)	<a href="#">Insert date</a>
<a href="#">Deadline for Bidders List and Secretary of State Registration.</a>	<a href="#">Insert date</a>
Deadline for Receipt of Proposals (Solicitation Closing) by <a href="#">Insert time AM or PM, C.T.</a>	<a href="#">Insert date</a>
Notice of Intent to Award issued approximately	<a href="#">Insert date</a>
Contract start approximately	<a href="#">Insert date</a>

### 1.4 ASSISTANCE TO INDIVIDUALS WITH A DISABILITY

Contact the procurement officer, as soon as possible, if an individual with a disability needs assistance with the RFP, including any events in the RFP schedule, so reasonable accommodations can be made.

### 1.5 BIDDERS LIST AND SECRETARY OF STATE REGISTRATION REQUIREMENTS

Offerors must comply with requirements related for Office of Management and Budget (OMB) Bidders List application and Secretary of State registration [\[N.D.C.C. § 54-44.4-09\]](#). Bidders Lists are used to notify vendors when solicitations are issued on the State Procurement Online system (SPO Online).

Proposals will be accepted from offerors that are not on the Bidders List. The successful offeror must complete the Bidders List application process and comply with Secretary of State registration

requirements within 60 calendar days from the date a notice of intent to award is issued. If the successful offeror does not register within this time, its proposal may be rejected.

#### **Vendor Registration Information Websites:**

**Secretary of State Registration.** Complete the online Secretary of State registration process (fees apply): <https://firststop.sos.nd.gov/>. Select “Start a Business.” You will need to create a username and password. Contact the Secretary of State, Business Services at 701-328-2904 or [sosbir@nd.gov](mailto:sosbir@nd.gov) for assistance.

**Bidders List Application Process.** Complete the online Bidders List application process: <https://www.nd.gov/omb/vendor/bidders-list-application-and-maintenance>. Contact the OMB State Procurement Office for assistance at 701-328-2773 or email [infospo@nd.gov](mailto:infospo@nd.gov).

**Bidders List Used for this Solicitation.** Notices related to this RFP will be sent to the Bidders List for the needed commodity or service and other known potential offerors. The following commodity codes were used for the Bidders List for this solicitation: 918-06, 918-07, 918-21, 918-32, 918-49, 918-66, 918-69, and 918-75.

#### **1.6 STATE PROCUREMENT WEBSITE (SPO ONLINE)**

This RFP and any related amendments and notices will be posted on the North Dakota Office of Management and Budget website using the State Procurement Online system (SPO Online). Offerors are responsible for checking this website to obtain all information and documents related to this RFP:

<https://apps.nd.gov/csd/spo/services/bidder/main.htm>. Select “Recent Solicitations”. Recent Solicitations are listed by close date.

Notices related to this RFP will be sent to the Bidders List for the needed commodity or service and other known potential offerors.

Offerors not having completed the Bidders List registration may request to receive notices related to this RFP by contacting the procurement officer in writing with the following information: RFP title, business name, contact person, mailing address, telephone number, and email address.

#### **1.7 AMENDMENTS TO THE RFP**

If an amendment to this RFP is issued, it will be provided to all offerors on the Bidders List for the solicitation and to those prospective offerors who have contacted the procurement officer to receive notices related to the RFP. An offeror shall include in its proposal any required acknowledgements of amendments to the RFP.

#### **1.8 DEADLINE FOR QUESTIONS AND OBJECTIONS**

Offerors should carefully review the RFP including all attachments. Offerors may ask questions to obtain clarification and request additional information, or object to material in the RFP. Questions and objections must be submitted to the procurement officer in writing by the deadline identified in the RFP schedule. If no deadline is specified, questions or objections must be received at least seven days prior to the Proposal Receipt Deadline. The Procurement Officer may elect to respond to questions received after the deadline.

Questions and objections should include a reference to the applicable RFP section or subsection. Email is the preferred method of submission with the RFP number cited in the email subject line.

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

## **1.9 OFFER HELD FIRM**

Offerors must hold proposals firm for at least 120 days from the deadline for receipt of proposals. The STATE may send a written request to all offerors to hold their offer firm for a longer time period of time.

## **1.10 OFFEROR RESPONSIBLE FOR COSTS**

Offeror is responsible for all costs associated with the preparation, submittal, presentation, and evaluation of any proposal.

## **1.11 TAXES**

The STATE is not responsible for and will not pay itemized local, state, or federal taxes. Purchases of tangible personal property made by a state government agency is exempt from sales tax. The state sales tax exemption number is E-2001, and certificates will be furnished upon requested by the purchasing agency. The contractor must provide a valid Vendor Tax Identification Number as a provision of the contract.

The purchasing agency will determine if services provided under this contract are 1099 reportable. The purchasing agency may require the contractor to submit an IRS Form W-9.

The state tax exemption number should not be used by contractors in the performance of a contract.

A contractor or service provider performing any contract, including service contracts, for the United States Government, State of North Dakota, counties, cities, school districts, park board or any other political subdivisions within North Dakota is not exempt from payment of sales or use tax on materials, tangible personal property, and supplies used or consumed in carrying out contracts. In these cases, the contractor is required to file returns and pay sales and use tax just as required for contracts with private parties. Contact the North Dakota Tax Department at 701-328-1246 or visit its website at <https://www.nd.gov/tax/tax-resources/> for more information.

A contractor performing any contract, including a service contract, within North Dakota is also subject to the corporation income tax, individual income tax, and withholding tax reporting requirements, whether the contract is performed by a corporation, partnership, or other business entity, or as an employee of the contractor. In the case of employees performing the services in the state, the contractor is required to withhold state income tax from the employees' compensation and remit to the state as required by law. Contact the North Dakota Tax Department at 701-328-1248 or visit its website for more information.

## **1.12 PROPOSAL RECEIPT DEADLINE – LATE PROPOSALS REJECTED**

An offeror is responsible for ensuring its proposal is received by the STATE prior to the proposal receipt deadline identified in the RFP schedule. A solicitation amendment will be issued if this deadline is changed. An offeror may contact the procurement officer to inquire whether its proposal has been received. Offerors assume the risk of the method of dispatch chosen. The STATE assumes no responsibility for delays caused by any delivery service. Postmarking by the deadline shall not substitute for actual proposal receipt by the STATE. Proposals delivered late will be rejected pursuant to [N.D.A.C. § 4-12-08-13](#).

## **1.13 PROPOSAL OPENING**

This is a formal sealed Request for Proposal (RFP) process. Proposals will be secured and held unopened until the proposal receipt deadline. A public opening will not be held. At the specified date and time, each proposal will be opened in a manner to avoid disclosure of the contents to the competing offerors.

## **1.14 AMENDMENT AND WITHDRAWAL OF PROPOSALS**

Offerors may amend or withdraw proposals prior to the deadline for receipt of proposals. No amendments will be accepted after the deadline unless they are in response to the STATE's request.

After the deadline, offerors may make a written request to withdraw proposals and provide evidence that a substantial mistake has been made, and the STATE may permit withdrawal.

#### **1.15 NEWS RELEASES**

Offerors shall not make any news releases related to this RFP without prior approval of the STATE.

#### **1.16 CONFLICT OF INTEREST**

Under state laws and rules, a state employee or official shall not participate directly or indirectly in a procurement when the state employee or officials knows of a conflict of interest. Potential conflicts of interest include state employees or their immediate family members employed by the firm, seeking employment with the firm, or with a financial interest in the firm. Potential conflicts of interest will be addressed in accordance with [N.D.A.C. § 4-12-04-04](#). [N.D.C.C. § 12.1-13-03].

Persons employed by the State of North Dakota, or within one year thereafter, may be prohibited from acquiring a pecuniary interest in a public contract or transaction. Offerors should review N.D.C.C. § 12.1-13-02 to ensure compliance and avoid such conflict(s) of interest.

#### **1.17 ATTEMPT TO INFLUENCE PROHIBITED**

Offerors must not give or offer to give anything to a state employee or official anything that might influence, or appear to influence procurement decisions. Suspected attempt to influence will be handled in accordance with [N.D.A.C. § 4-12-04-05](#).

#### **1.18 COLLUSION PROHIBITED**

Offerors must prepare proposals independently, without collusion. Suspected collusion will be handled in accordance with [N.D.A.C. § 4-12-04-06](#).

#### **1.19 PROTEST AND APPEAL**

An interested party may protest a solicitation pursuant to [N.D.C.C. § 54-44.4-12](#) and [N.D.A.C. § 4-12-14-01](#). When a solicitation contains a deadline for submission of questions and objections, protests of the solicitation will not be allowed if these faults have not been brought to the attention of the procurement officer before the specified deadline. If no deadline for questions is specified, protest based upon defects in the solicitation must be made at least seven calendar days before the deadline for receipt of proposals.

An offeror that has submitted a response to a solicitation and is aggrieved may protest an award or notice of intent to award pursuant to [N.D.C.C. § 54-44.4-12](#) and [N.D.A.C. § 4-12-14-02](#). The protest must be submitted in writing to the Procurement Officer during the protest period, which is seven calendar days beginning the day after the notice of intent to award is issued.

The protestor may appeal the decision of the procurement officer to the Director of Office of Management and Budget (OMB) within seven calendar days after receiving notice of the decision pursuant to [N.D.C.C. § 54-44.4-12](#) and [N.D.A.C. § 4-12-14-03](#).

## SECTION TWO – BACKGROUND

### 2.1 BACKGROUND INFORMATION

The North Dakota Retirement and Investment Office (RIO) was established in 1989 to coordinate the activities of the [State Investment Board \(SIB\)](#) and the [Teachers' Fund for Retirement \(TFFR\)](#) as stated in [Section 54-52.5-01 of the North Dakota Century Code](#).

The mission of RIO includes:

- SIB clients receive cost effective investment services directed at meeting their written financial goals under the Prudent Investor Rule.
- SIB clients receive investment returns consistent with their written investment policies and market variables.
- Potential SIB clients have access to information regarding the investment services provided by the SIB.
- TFFR benefit recipients receive their retirement benefits in a cost effective and timely manner.
- TFFR members have access to information which will allow them to become knowledgeable about issues and the process of retirement.
- SIB clients and TFFR benefit recipients receive satisfactory services from the boards and staff of the office.

RIO is seeking to fill the position of Chief Investment Officer/Executive Director (CIO/ED). This position administers the investment program of the SIB as well as oversees the planning, supervising, and directing of the office operations, under the general direction of the SIB in accordance with governing statutes and board governance policies. (See Attachment A)

The SIB has statutory responsibility for the administration of investment programs of several funds, including the TFFR, the Public Employees' Retirement System (PERS), the Workforce Safety and Insurance Fund, Legacy Fund, as well as contractual relationships for investment management for certain political subdivisions. The SIB is an 11 person board, chaired by the Lt. Governor, and also includes the State Treasurer, the State Insurance Commissioner, the Executive Director of the Workforce Safety & Insurance office designee, the Land Commissioner and three representatives each of PERS and TFFR, appointed by their respective boards. Professional investment managers, consultants and custodians are retained to assist in the implementation of the investment program.

The investment program is highly sophisticated with ten asset classes and approximately 125 external investment manager relationships. The investments are pooled into two distinct groups, pension and insurance, and include 26 state and local government funds, among them the Legacy Fund, an endowment established in 2010 to be funded by 30% of the State's oil and gas tax revenues. All investments are managed externally.

#### Current Structure:

The CIO/ED has oversight responsibility of twenty (20) full-time employees, including a Deputy Chief Investment Officer who provides support to the CIO, assists in the selection and

monitoring of investment managers and performs analysis of existing and prospective investments and a Deputy Executive Director/Chief Retirement Officer who oversees the administration of the TFFR pension program in accordance with government statutes and rules.

The CIO/Executive Director is appointed by and serves at the pleasure of the SIB. Key areas of responsibility include the following:

#### **Investment Administration/Policy**

- Works with the TFFR and PERS boards, and other clients, including the Legacy Fund Advisory Board, to formulate investment policies pertaining to the kind or nature of investments and limitations, conditions and restrictions upon the methods, practices or procedures for investment, reinvestment, purchase, sale or exchange transactions that should govern the investment of funds.
- Monitors investment performance using both sophisticated software products and quantitative measurement methods based on performance benchmarks and risk characteristics to evaluate the performance of various funds, assets classes and individual external investment managers.
- Directs the preparation of all necessary reports to keep the SIB apprised of investment performance, managing compliance with stated investment policies and contractual guidelines.
- In conjunction with the external investment consultant, monitors and evaluates the various investment options and develops appropriate research and recommendations for the SIB to evaluate new investment vehicles and potential external investment managers.
- Subject to the limitations contained in the law and policies adopted by the SIB, the CIO/Executive Director may sign and execute all contracts and agreements to make purchases, sales, exchanges, investments and reinvestments relating to the funds under the management of the SIB.

#### **Pension Administration**

- Oversees the Deputy Executive Director/Chief Retirement Officer and subordinate staff responsible for administering accurate, prompt, and efficient pension benefits program to constituents and educational outreach initiatives, including pre-retirement seminars and individual benefits counseling sessions.

#### **Office Administration**

- Provides leadership, coaching and feedback to assigned staff, recommending measures to improve performance and increase efficiency.
- Directs the preparation and execution of the budget and legislative agenda. Assures follow through and evaluates results.
- Establishes and maintains working relationships across all organizational work units and levels.
- Represents the rio and promotes its various programs to various stakeholders, constituencies, political subdivisions and the state legislature.



- Assures accountability and compliance with all statutory and SIB prescribed policies and procedures.

This position is currently vacant. The SIB has named an Interim Chief Investment Officer to oversee the SIB portfolio and an Interim Executive Director to administer the Teacher's Fund for the retirement program while an executive search is conducted to find a candidate to fill this position. The Interim CIO and ED are not candidates for the position.

#### Estimated Salary:

For the purposes of this Request for Proposal, the salary for the Chief Investment Officer/Executive Director position is anticipated to be XXXXX. The actual salary will be dependent upon qualifications and experience of the selected candidate.

## **2.2 STATE LAWS, RULES AND POLICIES**

[N.D.C.C. Chapter 21-10](#) State Investment Board (SIB)

[N.D.C.C. Chapter 54-52.5](#) State Retirement and Investment Office

[N.D.C.C. Chapter 15-39.1](#) Teachers' Fund for Retirement

[N.D.A.C. 102-01](#) State Investment Board

[N.D.A.C. 103-1](#) State Retirement and Investment Office

[N.D.A.C. 82-01-01](#) Organization of the Teachers' Fund for Retirement

[North Dakota Constitution Article X Section 26 Legacy Fund](#)

[Current Position Description/SIB Governance Policies](#) - See Attachment A

## **2.3 BUDGET**

### **OPTION 1**

The funds for payment of this contract are already appropriated and identified.

### **OPTION 2**

The funds for payment of this contract are already appropriated and identified. The estimated budget for completion of this project is between \$[Insert low range](#) and \$[Insert high range](#). Proposals priced at more than \$[Insert dollar amount](#) will be rejected.

### **OPTION 3**

The funds for payment of this contract are contingent upon appropriation of funding. The STATE anticipates approval of funding in approximately [Insert time frame](#). Funds will be requested through [Insert funding source \(e.g. grant, legislative appropriation\)](#).

## SECTION THREE – SCOPE OF WORK

### 3.1 SCOPE OF WORK

The Contractor shall provide the SIB with executive recruiting services to fulfill the purpose of this RFP, including:

- Assistance in identifying desired skills and qualifications;
- Assistance with preparation of a search timeline;
- Assistance with review of the current job description and recommendations for amendments as appropriate;
- Identification and recruitment of nationwide candidates;
- Candidate appraisals, reference checks, mining of public domain information on the Internet, interviews and preparation of experience summaries, cultural fit assessment, and in-depth evaluations;
- Development and implementation of a process to narrow the candidate list;
- Assist in the development of the interview questions used by the search committee with the narrowed candidate list;
- Assistance with arrangements for search committee interviews;
- Responsible for finalists' background checks, including;
  - Credit Bureau Checks
  - Assist the State in conducting Criminal Background Checks in accordance with NDCC 12-60-24
- Assistance with arrangements for and interviews by the Board;
- Assistance negotiating a compensation package and employment terms and other customary or requested assistance in connection with the search;
- Provide SIB with progress reports.

#### Employment Guarantee

Offerors must guarantee continued employment of the individual hired for a minimum of one year, preferably two years. If the individual leaves prior to the employment guarantee timeframe from the date of hire, the Offeror must reengage in one equivalent replacement search on an expenses-only basis (no additional fee), unless the candidate's departure has been caused by significant changes in reporting structure or responsibility. The State will not reimburse the contractor for expenses exceeding the maximum specified amount unless the contractor obtains prior written approval from the State in an amendment to the contract.

#### Open Records

North Dakota is an open meetings and open records state. Upon award, all proposals will become public record, open and accessible to the public upon request (Ref. RFP sections 4.18 and 7.10). All employment applications, nominations, reference letters and other documents received or created by Board members, RIO employees, search committee members or their agents in connection with this search are public records. **(Update)** Meetings of the search committee and Board generally are open to the public; notice of meetings and posting of agenda are required. The State will work with the Contractor to respond to any open records requests.

In accordance with [OMB Fiscal Policy 517](#), the State will pay the reasonable costs of interviewees for jobs within the state, provided reimbursement for meals and lodging is at the same rate as for employees.

### **3.2 LOCATION OF WORK**

The Contractor shall determine the extent of on-site work required to fulfill stated requirements.

**State-Furnished Property/Services:** The State will provide access to office personnel, documents and data as required by the Contractor. If the Contractor is conducting on-site work in Bismarck, the State will provide the Contractor with a reasonable amount of office space. The State will also provide the Contractor with access to copy and fax machines.

**Contractor-Furnished Property/Services:** The Contractor must furnish all labor, equipment, specialized software and supplies.

### **3.3 EXPERIENCE AND QUALIFICATIONS**

In order for offers to be considered responsive, offerors must meet the mandatory qualification. An offeror's failure to meet this mandatory qualification will cause its proposal to be considered non-responsive and its proposal will be rejected.

#### **Mandatory Requirement**

The Offeror must have expertise in executive recruitment services, specifically; previous experience with the recruitment of public/private fund executives and public/private fund investment professionals responsible for the management of funds in excess of \$1 Billion.

Offerors must provide three (3) references from organizations where they provided similar executive search services, within the last five (5) years, as required by this RFP. Contact information for references should include contact names, addresses, telephone numbers, and valid email addresses. The State reserves the right to contact any references provided by the offeror. Offerors are invited to provide letters of reference from previous clients.

## SECTION FOUR – PROPOSAL INSTRUCTIONS

### 4.1 PROPOSAL PREPARATION

The STATE discourages overly lengthy and costly proposals. An offeror must prepare its proposal using the prescribed proposal format and provide all the requested information; this will enable the proposal to be evaluated fairly and completely. If an offeror submits more than one proposal, each proposal must be prepared in accordance with these instructions.

### 4.2 PROPOSAL SUBMISSION INSTRUCTIONS

#### **FORMAT**

Each proposal will include a technical proposal and a cost proposal prepared in accordance with these instructions. The technical proposal and cost proposal must be submitted as separate documents, clearly labeled with the name of the Offeror and marked “Technical Proposal” and “Cost Proposal.” Costs must not be revealed in the technical proposal. Options may be discussed in the technical proposal, but all cost information must be in the cost proposal only.

#### **EMAILED OR FAXED SUBMISSION**

Sealed proposals are required; therefore, proposals cannot be submitted by email or fax to the procurement officer. Offerors may email or fax proposals to a third party to place in a sealed envelope and deliver by the deadline for proposal submission.

#### **UPLOAD RESPONSE THROUGH THE STATE PROCUREMENT ONLINE SYSTEM (SPO ONLINE):**

Offerors must electronically submit proposals through the State Procurement Online system (SPO Online) by the Solicitation Closing date and time.

1. This solicitation is posted on SPO Online at: <https://www.nd.gov/omb/vendor>
2. Click on “Bidding Opportunities.” Go to “Recent Solicitations” and find this solicitation.
3. Use “Upload Response” to upload a maximum of five (5), clearly labeled documents before the deadline for receipt of proposals in the RFP Schedule.
4. Offerors must upload their Technical Proposal and Cost Proposal in separate files.
5. The maximum file size allowed is 50mb per file.
6. All field entries must be alphanumeric. Dashes and underscores are allowed, however the system does not accept other special characters such as apostrophe, & symbol, quotation marks, etc.
7. Offerors will receive an email confirmation from [infospo@nd.gov](mailto:infospo@nd.gov) that the upload response was received including the “File Description” for the uploaded files. Review this email to ensure all files were successfully uploaded. If you do not receive an email confirmation, the upload was not successful, and you will need to upload the files again. If you do not receive an email confirmation after the reattempt, contact the Procurement Officer or the State Procurement Office at [infospo@nd.gov](mailto:infospo@nd.gov) or 701-328-2740.

Visit <https://www.nd.gov/omb/vendor/bidder-resources> for the SPO Electronic Response Job Aid which describes how to submit an electronic response.

### 4.3 PROPOSAL FORMAT

Prepare the technical proposal and cost proposal in accordance with these instructions.

Technical Proposal – Format the proposal with the following labeled sections:

- Section 1 – Cover Letter
- Section 2 – RFP Amendments
- Section 3 – Scope of Work Strategy

Section 4 – Experience and Qualifications  
Section 5 – Contract Provisions  
Section 6 – Open Records and Confidentiality

Cost Proposal – The Cost Proposal must be a separate document. Format the cost proposal following the RFP instructions.

#### **4.4 TECHNICAL PROPOSAL**

##### **SECTION 1 – COVER LETTER**

Proposals shall include a cover letter that includes the following:

1. The name of the offeror, name of the person to contact regarding the proposal, email address, telephone number, and mailing address.
2. Offerors are instructed to review the “Conflict of Interest” provisions in RFP Section 1 “Instructions.” If the firm, its employees or subcontractors working on the contract have an apparent or actual conflict of interest, provide a statement disclosing the circumstances of the apparent or actual conflict of interest. Otherwise, provide a statement that your firm, employees and subcontractors do not have a conflict of interest.
3. The cover letter must be signed by an individual with authority to bind the offeror. By signing the cover letter, an offeror certifies that it complies with:
  - a. All the requirements, terms and conditions as set forth in this RFP.
  - b. The requirement that the offeror’s proposal accurately describes the goods and services being offered to the STATE, and the proposal will be held firm for the period specified.
  - c. All local, state, and federal laws, rules, code laws, rules, code, regulation, and policies, including those relating to nondiscrimination, accessibility, civil rights and equal employment.
  - d. The requirement that this proposal was prepared independently without collusion.

##### **SECTION 2 – RFP AMENDMENTS**

Provide signed copies of all Solicitation Amendments issued by the STATE that were required to be acknowledged by offerors.

##### **SECTION 3 –SCOPE OF WORK STRATEGY**

Offerors must provide a comprehensive Executive Recruitment Strategy that details the approach being proposed to accomplish the scope of work set forth in Section 3.1 and 3.2 of this RFP.

- Offerors must provide comprehensive narrative statements that set out the recruitment strategy it intends to employ to accomplish the purpose of the RFP. Offerors must illustrate how the proposed approach will serve to accomplish the scope of work.
- Offerors must describe how they will provide the SIB with progress reports
- Offerors must provide a proposed schedule for completion of the work in this RFP.
- Offerors must provide a narrative or organizational chart that describes the composition of the Recruitment Team, including a description of the type of work each individual will perform.
- Offerors must address pertinent issues and potential problems related to the recruitment, such as not being able to fill the position, selected candidate declining, or successful candidate resigning shortly after beginning work and the length of employment guarantee, etc.

- Offerors must describe the extent of on-site work that will be utilized to perform the requested services.

## **SECTION 4 –EXPERIENCE AND QUALIFICATIONS**

### **Personnel**

Offerors must provide information specific to the experience and qualifications of each person on the Recruitment Team who will perform the work called for in section 3 of this RFP, including:

- a) Title;
- b) Resume, and or narrative description of experience and qualifications;
- c) Technological acumen in recruitment programs and software used to complete the scope of work;
- d) Description of professional experience related to the recruitment of public and private fund executives and public and private fund investment professionals;
- e) Lead consultant contact information and network of public and private fund investment industry contacts and resources;
- f) Professional certifications, licenses, and permits, if required by federal, state, or local law, to publicly perform recruitment services identified in the Contractor's work strategy.

### **Firm**

Offerors must provide information specific to the experience and qualifications of the firm that will perform the work called for in section 3 of this RFP, including:

**Mandatory Requirements.** An offeror must provide information to demonstrate meeting the Offeror Experience and Qualifications Mandatory Requirement in RFP Section 3, Scope of Work, [Experience and Qualifications](#).

- a) The experience of their firm in recruitment of public fund executives and investment professionals.
- b) List of similar recruitment projects, including those for local or state governments, and private sector companies. Provide contact information and references for previous clients with recruitment services similar to this project. The State reserves the right to contact any references the offeror provides.
- c) Certification that the firm meets the requirement to be independent and without conflicts related to RIO
- d) Demonstration of a network of national public and private fund investment industry contacts and resources for purposes of locating candidates for this position.
- e) Offerors must provide three (3) references from organizations where they provided similar executive search services, within the last five (5) years, as required by this RFP. Contact information for references should include contact names, addresses, telephone numbers, and valid email addresses. The State reserves the right to contact any references provided by the offeror. Offerors are invited to provide letters of reference from previous clients.

### **Subcontractors**

If an offeror intends to use subcontractors, the offeror must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform. All subcontractors identified in the proposal who will perform work under the contract must meet or exceed all requirements of this RFP.

## **SECTION 5 – CONTRACT PROVISIONS**

Offeror shall review the RFP Section 6 and the STATE's Contract – Attachment C.

The proposal must include indicate whether or not the offeror accepts the terms and conditions in the STATE's Contract.

An offeror may state that they accept the STATE's Contract as written.

An offeror may state any objections or propose changes or additions to the STATE's Contract. Describe the changes to the Contract being proposed or provide a red-line of the STATE's Contract. Offerors are not to submit their own contract or standard terms and conditions with their proposals. Offeror should address the specific language in the attached contract and submit any proposed changes.

North Dakota procurement statutes, rules, and policies allow some negotiation of the terms and conditions. No changes to the terms and conditions will be permitted without prior written approval from the STATE.

## **SECTION 6 – OPEN RECORDS AND CONFIDENTIALITY**

All proposals and other material submitted become the property of the State and may be returned only at the State's option. The State of North Dakota has broad open records laws. Proposals received are exempt from open record requirements until an award is made, in accordance with [N.D.C.C. § 54-44.4-10\(2\)](#). After award, proposals are subject to the North Dakota open records laws. Proposals or portions of proposals may be confidential only if specifically stated in law.

Offerors are instructed not to mark their entire proposal as "confidential."

Offeror must provide one of the following in their proposal:

- Provide a statement indicating that their proposal does not contain any confidential information; or
- Make a written request to hold confidential any trade secrets and other proprietary data contained in its proposal. Offeror must clearly identify the material considered confidential and explain why the material is confidential. See the North Dakota Office of the Attorney General website for additional information. <https://www.legis.nd.gov/cencode/t44c04.pdf> and <https://attorneygeneral.nd.gov/open-records-meetings>

If the STATE receives a request for public information, the procurement officer, in consultation with the Office of the Attorney General, shall determine whether the information is an exception to the North Dakota open records laws, and the information shall be processed accordingly.

### **4.5 COST PROPOSAL**

The cost proposal must identify:

- 1) The fixed fee for the proposed services (e.g. fixed cost or percentage of base salary).
- 2) The total estimated expenses based upon the proposed recruitment strategy, including a detailed description of those expenses.

If fixed fee based upon percentage of base salary is proposed, that fee will be evaluated using a salary of XXXXX. The actual fee paid to the Contractor will be based upon the final base salary accepted by the successful candidate.

The total estimated expenses will establish the maximum amount for expenses in the Contract. The State will not reimburse the Contractor for expenses exceeding that amount, unless the Contractor obtains prior written approval from the State in an amendment to the Contract.

All costs associated with the contract must be stated in U.S. currency. Any commodities being imported must be identified, and the price must include any applicable customs, brokerage agency fees, and duties.

Offerors should describe any discount terms for prompt payment. Discounts for prompt payment will not be considered in evaluating cost.

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## SECTION FIVE – AWARD AND PROPOSAL EVALUATION

### 5.1 AWARD

The STATE intends to award a contract to the responsible offeror whose proposal is determined to be responsive to the requirements of the solicitation and is determined to be most advantageous in consideration the RFP evaluation criteria.

### 5.2 RESPONSIVENESS

All proposals will be evaluated to determine if they are responsive to the requirements of the solicitation. The STATE reserves the right to waive minor informalities in accordance with [N.D.A.C. chapter 4-12-10](#). Minor informalities are insignificant omissions or nonjudgmental mistakes that are matters of form rather than substance, evident from RFP document, with a negligible effect on price, quantity, quality, delivery, or contractual conditions that can be waived or corrected without prejudice to other offerors. Responsive proposals will be evaluated by the procurement officer or evaluation committee using the evaluation criteria stated in the RFP.

### 5.3 RESPONSIBILITY – SUPPLEMENTARY INVESTIGATION

The STATE reserves the right to contact references, other customers, including state and local government agencies, regarding past experience with the offeror. Prior experience of the state agency or institution with any prospective offeror may also be taken into consideration during evaluation.

The STATE may, at any time, may make a supplementary investigation as to the responsibility of any offeror in accordance with [N.D.A.C. § 4-12-11-04](#). This investigation may include, but is not limited to, financial responsibility, capacity to produce, sources of supply, performance record, or other matters related to the offeror's probable ability to deliver if a contract is awarded to the offeror. If it is determined that an offeror appears not to be sufficiently responsible, the proposal will be rejected.

### 5.4 EVALUATION CRITERIA

Proposals will be evaluated using a 100 point scale. The evaluation committee will award points based on the questions in the Technical Proposal Evaluation Worksheet – Attachment B. The technical proposal evaluation score and cost proposal evaluation score will be added together to determine the total evaluation score. After the initial evaluation, the evaluation committee may determine which proposals are reasonably susceptible for award and continue the evaluation process with only those offerors. Offerors whose proposals are not selected for further evaluation may request a debrief from the procurement officer after an award notice is issued. The final evaluation score will consider information received by the State, including but not limited to, discussions with offerors, demonstrations, presentations, site visits, reference checks, and best and final offers.

The evaluation criteria and relative weight is as follows:

Technical Proposal Evaluation: 80 Points

- A. Scope of Work Strategy – 40 Points
- B. Experience and Qualifications – 40 Points

Cost Proposal Evaluation: 20 Points

Minimum Technical Score: Technical proposals must receive at least [Insert number, \(e.g. 70 percent or 42 points\)](#) of the total points available for the Technical Score to be considered responsive to the RFP requirements.

The technical proposal evaluation score and cost proposal evaluation score will be added together to determine the total evaluation score.

### 5.5 COST PROPOSAL EVALUATION – RECIPROCAL PREFERENCE

The STATE will calculate evaluation points awarded to cost proposals. Any prompt payment discount terms proposed by the offeror will not be considered in evaluating cost.

The cost amount used for evaluation may be affected by the application of North Dakota preference laws in accordance with [N.D.C.C. § 44-08-01](#). The preference given to a resident offeror will be equal to the preference given or required by the state of the nonresident offeror (i.e. reciprocal preference). For more information, refer to [Guidelines to North Dakota Purchasing Preference Laws](#).

The cost amount used for evaluation may also be affected by the application of other costs required to implement the proposed solution to determine the total cost of the solution (i.e. cost for ITD to host a STATE hosted solution).

After applying any reciprocal preference, the lowest cost proposal will receive the maximum number of points allocated to cost. Cost proposals will be evaluated using the following formula.

$$\frac{\text{Price of Lowest Cost Proposal}}{\text{Price of Proposal Being Rated}} \times \text{Total Points for Cost Available} = \text{Awarded Points}$$

## **5.6 CLARIFICATIONS OF PROPOSALS – DISCUSSIONS**

In order to determine if a proposal is reasonably susceptible for award, communications by the procurement officer or evaluation committee are permitted with an offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal and determine responsiveness to the RFP requirements. Discussions will be limited to the specific section of the RFP or proposal indicated by the STATE. Discussions are generally conducted by telephone or internet-based conference.

In conducting discussions, there may be no disclosure of any information derived from proposals submitted by competing offerors. Clarifications may not result in material or substantive change to the proposals. Evaluation scores may be adjusted based in consideration of information obtained through discussions.

## **5.7 RIGHT OF REJECTION**

The STATE reserves the right to reject any proposals, in whole or in part. Proposals received from suspended or debarred bidders will be rejected. Proposals determined to be nonresponsive to the requirements of the RFP will be rejected. The STATE reserves the right to reject the proposal of an offeror determined to be not responsible. The STATE reserves the right to refrain from making an award if determined to be in its best interest.

## **5.8 PRESENTATIONS/DISCUSSIONS**

After the initial evaluation, STATE may require vendors to complete online presentations/discussions for the evaluation committee. If they are required, STATE may determine which proposals are reasonably susceptible for award and continue the evaluation process with only those offerors. Offerors shall be responsible for all associated costs, including any travel and per diem. Offerors whose proposals are not selected for further evaluation may request a debrief from the procurement officer after an award notice is issued.

## **5.9 BEST AND FINAL OFFERS**

The STATE is not obligated to request best and final offers; therefore, offerors should submit their best terms (technical and cost) in response to this RFP.

If the STATE determines there is a need for any additional information, substantial clarification or changes to the RFP or proposals, the STATE may request for best and final offers from offerors that have submitted proposals determined to be reasonably susceptible for award. The best and final offer request will describe the additional information, clarification, or change being requested.

A date and time will be established for receipt of revised proposals. If an offeror does not submit a best and final offer, the STATE shall consider its original proposal as its best and final offer.

Best and final offers will be evaluated using the evaluation criteria stated in the RFP. The STATE may request more than one Best and Final Offer.

#### **5.10 NEGOTIATIONS**

Contract negotiations will be conducted in accordance with [N.D.A.C. § 4-12-12](#). The STATE may enter into negotiations with one or more offeror whose proposals received the highest scores and are reasonably susceptible for award. During negotiations, the STATE and offeror may agree to alter or otherwise change the terms and conditions and price of the proposed contract. Negotiation, if held, will be within the scope of the RFP and limited to those items that would not have an effect on the ranking of proposals.

Each offeror will be responsible for all costs it incurs as a result of negotiations, including any travel and per diem expenses. Contract negotiations will be conducted primarily by email, conference calls, or internet-based conference. Any on-site negotiation, if needed, will be held in Bismarck, North Dakota.

The STATE may terminate negotiations, reject a proposal as nonresponsive, and continue or commence negotiations with other offerors reasonably susceptible for award, if the offeror:

- fails to provide necessary information for negotiation in a timely manner,
- fails to negotiate in good faith,
- is unable to successfully negotiate contract terms that are acceptable to the STATE, or
- indicates that it cannot perform the contract within the budgeted funds.

#### **5.11 NOTICE OF INTENT TO AWARD**

After proposals have been evaluated and the successful offeror selected, notice of intent to award will be promptly issued to all offerors that submitted proposals. Upon issuance of this notice, the procurement file becomes an open record.

The successful offeror named in the Notice of Intent to Award is advised not to begin work, purchase materials, or enter into subcontracts until the successful offeror and the STATE sign the contract.

#### **5.12 CONTRACT APPROVAL**

This RFP does not, by itself, obligate the STATE. The STATE's obligation shall commence when the STATE signs the contract. Upon written notice to the contractor, the STATE may set a different starting date for the contract. The STATE shall not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the STATE.

#### **5.13 EVALUATION DEBRIEFING**

After the notice of intent to award is issued, offerors may contact the Procurement Officer to schedule an evaluation debrief. The debrief will provide information about the evaluation process and proposal scores.

## SECTION SIX – CONTRACT INFORMATION

### 6.1 NORTH DAKOTA CONTRACTUAL REQUIREMENTS – BACKGROUND

As a public institution and government entity of the State of North Dakota (the STATE), there are a number of statutes, rules, and policies (Requirements) that may restrict or prevent the STATE from entering into certain types of contracts or certain contractual terms and conditions, some of these Requirements are non-negotiable.

While these Requirements occasionally make the process of negotiating a contract with the STATE more challenging than negotiating with a private industry business, these are not unique to any one agency of the State of North Dakota. These Requirements apply to all public institutions and government entities of the State of North Dakota. Although some are unique to North Dakota, the majority of these Requirements are common to public institutions and government entities throughout the United States.

### 6.2 STATE CONTRACT TERMS AND CONDITIONS – OFFEROR’S PROPOSED CHANGES

The STATE intends to execute a contract substantially similar to the Contract – Attachment C. The offeror will be required to sign the Contract attached to this RFP and must comply with the terms and conditions. The STATE may deem any failure to object to a contract provision as the offeror’s acceptance of that provision.

North Dakota procurement statutes, rules, and policies allow some negotiation of the terms and conditions. No changes to the terms and conditions will be permitted without prior written approval from the STATE.

Pursuant to [N.D.A.C. § 4-12-11-06](#), proposals subject to conditions imposed by the offeror may be rejected as nonresponsive, as determined by the STATE. Proposed terms and conditions that conflict with those contained in the attached contract or that diminish the STATE’s rights under the contract shall be considered null and void. The terms and conditions in the attached contract shall prevail in the event a conflict arises between a term or condition in the proposal and a term or condition in the attached contract.

Part or all of this RFP and offeror’s proposal may be incorporated into the attached contract.

The STATE may deem any failure to object to a contract provision as the offeror’s acceptance of that provision.

### 6.3 CONTRACT PROVISIONS

#### Contract Type

Firm Fixed Price. The contractor will be required to hold the price firm for the contract period, except as otherwise provided in the contract.

#### Payment Procedures

Compensation and payment terms will be set forth in the contract based upon the successful offeror’s proposal. The STATE will not make any advanced payments before performance by the contractor under this contract.

- The STATE will make payments based on a negotiated payment schedule. Each billing must consist of an invoice and progress report. No payment will be made until the progress report and the project director has approved invoice.

### Inspection & Modification

The contractor is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the STATE. The STATE may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract.

Should the STATE determine that corrections or modifications are necessary in order to accomplish its intent, the STATE 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 STATE 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.

### Contract Changes – Unanticipated Amendments

During the course of the contract entered as a result of this solicitation, the contractor may be required to perform additional work due to a legitimate unforeseen circumstance. That work will be within the general scope of the initial contract. When additional work is required, the STATE shall provide contractor a written description of the additional work and request contractor to submit proposal for accomplishing the scope of work. CONTRACTOR will not commence additional work until all parties agree in writing.

### Purchasing Card

STATE may make payments under this contract using a state purchasing card. See the contract related to payments using the STATE purchasing card.

## 6.4 CONTRACTUAL TERMS AND CONDITIONS – NO MATERIAL CHANGES

### **A. Indemnification and Insurance**

[N.D.C.C. § 32-12.2-17](#) requires that the Office of Management and Budget establish guidelines for indemnification and insurance provisions in state contracts. The indemnification and insurance requirements contained in the attached contract are pursuant to those guidelines. The STATE shall not be deemed to have accepted any alteration of these provisions without prior written approval to offeror from the STATE acting in consultation with the North Dakota Risk Management Division.

### **B. Indemnification**

Indemnification is a contractual clause by which one party to a contract asks the other party to defend it against any claims of third parties who might be injured as a result of something that occurs while the parties are performing their duties and obligations under the contract. Without specific authority to do so, the STATE agencies cannot enter into agreements indemnifying contractors, or any other entity, against third party claims.

Any clause that has the intent of seeking indemnification from the STATE, whether or not the clause contains the words “indemnity” or “indemnify,” are not clauses to which the STATE may agree.

The STATE will also not agree to clauses to indemnify a contractor “to the extent permitted by law.” This is because the STATE knows that the extent to which the law permits it to indemnify contractors is no extent whatsoever, and as a result would be disingenuous for the STATE to imply in a contract that there might be some set of circumstances under which the STATE would

defend the contractor against a third party claim(s). Simply put, the STATE is not going to agree to something it knows it cannot do. In this circumstance an “extent” clause is merely an invitation to litigate the matter in the event a third party claim(s) arises, and the STATE does not enter into agreements that invite litigation. Do not ask the STATE to indemnify you against third party claims because it is a contractual obligation to which the STATE cannot agree.

### **C. Insurance**

Upon receipt of the Notice of Intent to Award, the successful offeror 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 STATE, in consultation with the North Dakota Risk Management Division. The successful offeror’s failure to provide evidence of insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.

### **D. Limitation of Liability**

[N.D.C.C. § 32-12.2-15](#) establishes that the STATE is prohibited from limiting direct damages, including those resulting from property damage or personal injury. Any request by an offeror for the STATE to limit direct damages is a request to which the STATE cannot agree. The law provides the STATE some discretion to limit liability for indirect damages, but that discretion may only be exercised: a) in contracts for the purchase or lease of, or services related to, software, communication, or electronic equipment and economic forecasting; and b) after consultation with the Office of the Attorney General and Risk Management.

### **E. Waivers of Jurisdiction and Venue; Alternative Dispute Resolution**

The North Dakota Attorney General is the STATE’s attorney for all purposes, including management of litigation and claims against the state. The STATE may not usurp the Attorney General’s authority by agreeing in advance to control the way litigation may be managed in the event of a dispute. The STATE cannot, without specific authority, agree to the jurisdiction or the laws of another state or federal courts, nor can it contractually agree to participate in any form of alternative dispute resolution.

Although the STATE cannot contractually agree to such terms, this does not mean that in the event of a dispute, the STATE would not agree to participate in alternative dispute resolution. It simply means that this is a decision that must be made by the Attorney General and is a decision that is made at the time a dispute arises.

### **F. Confidentiality**

All state agencies of North Dakota are subject to North Dakota public records laws. The STATE cannot agree to contractual terms that attempt to prevent it from having to disclose records that are declared public records under applicable statutes. Although some confidentiality and exemptions are allowed under the public records laws, the STATE may not agree to more restrictive obligations concerning its records. Under North Dakota public records laws, contracts are records that are open to the public and may be reviewed at the request of the public.

### **G. Unliquidated Expenses (i.e., attorney’s fees, add-ons, cost increases)**

Because the STATE may only obligate those funds that have been appropriated to it by the Legislative Assembly and may only obligate those funds for the purposes for which the funds were appropriated, the STATE may not agree to clauses which may obligate it to pay for claims that might exceed its current funding appropriation. Certainly, this is one of numerous reasons why the STATE cannot indemnify a contractor against third party claims, but it may also be said for clauses that purport to obligate the STATE to pay a contractor’s attorneys’ fees, unknown cost increases during the life of the contract, add-ons that were not contemplated or priced in the contract.

## **6.5 SCOPE OF WORK**



The Scope of Work agreed upon by the parties will be incorporated into the attached contract.

**6.6 CONTRACT TERM**

The contract term will be set forth in the contract, including any options for extension, renewal, and renegotiation.

**6.7 RIGHT TO INSPECT PLACE OF BUSINESS**

At reasonable times, the STATE may inspect those areas of the contractor's place of business that are related to the performance of a contract. If the STATE makes an inspection, the contractor must provide reasonable assistance.

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## MEMORANDUM

Item II.E.

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**TO:** SIB  
**FROM:** Dave Hunter, Executive Director – Chief Investment Officer  
**DATE:** June 10, 2021  
**RE:** Interim Administration

### **I. Interim Appointments**

Succession planning supports an agency's ability to operate successfully during interim or transition periods. As discussed during the presentation of agenda item II.D., between 2010 to 2014, this Board undertook review and policy development of succession planning for the ED/CIO position, including a policy amendment to the Executive Limitations detailed in Policy A-1(8). In addition, during the annual Executive Limitations Audit, Executive team members are requested to affirm their ability to assume interim responsibilities should the need arise.

Policy A-1(8) of the SIB Governance Manual states:

“8. In order to protect the board from sudden loss of executive services, the executive director may not have fewer than three other executive's familiar with board and chief executive issues and processes. The executive director shall not fail to inform the Deputy Executive Director, the Deputy Chief Investment Officer, and the Chief Financial Officer of executive and board issues and processes.”

During the 2012 Executive search, the position of the Executive Director- Chief Investment Officer was split, with the Deputy Executive Director assuming the Interim ED role, and the Deputy Chief Investment Officer assuming the Interim CIO role.

Therefore, absent any objection by the Board, Mr. Schulz will serve as Interim Chief Investment Officer, and Ms. Murtha will serve as Interim Executive Director, after my departure and until such time as this position is replaced permanently.

### **II. Workload Compensation Adjustment**

During the interim period, Mr. Schulz and Ms. Murtha will be required to fulfill the duties of their current positions as well as assume a substantial increase in workload attributed to their interim duties. Therefore, in recognition of this substantial increase in workload I recommend that the Board authorize a temporary 20% increase in salary for both Mr. Schulz and Ms. Murtha during the interim period as authorized under N.D.A.C. Section 4-07-02-16, which states:

4-07-02-16. Temporary increase. An appointing authority may grant a temporary increase if



all of the following requirements are met:

1. An increase may not be given for a temporary situation of less than thirty days.
2. An employee may not continue to receive a temporary increase for more than thirty days after the special circumstances ceased to exist.
3. Consideration is given to the magnitude of the change in responsibility level.

**BOARD ACTION.**

**Move to Approve Temporary Increase in Pay for Mr. Schulz and Ms. Murtha during the Interim Period until such time as the ED/CIO position is filled permanently.**