

**IT Professional Technical Services
Master Contract
T# 902TS**

**Statement of Work (SOW) – #DHS11-007
For Technology Services
Issued By**

Minnesota Department of Human Services

DHS IBM FileNet P8 4.5.x Buildout

Service Category(ies):

**Responders must be approved for both categories in order to be considered.
Architecture Planning & Assessment - Information/ Data
Architecture Planning & Assessment - Technical**

Overview

The overall objective is for Vendor to provide architectural and technological services to the Minnesota Department of Human Services (DHS) to upgrade their current IBM FileNet P8 3.5.x system to IBM FileNet 4.5.x.

IBM FileNet is an Enterprise Content Management system servicing multiple administrations at DHS and over 1,500 central office and State Operated Services users. It is used by approximately a dozen, trusted, external business partners who currently come to the IBM FileNet application via Secure Socket Port technology – SSP (Citrix).

We are seeking an organization with a proven track record of IBM FileNet P8 3.5 to P8 4.5.x upgrades that can provide and support a senior level certified resource to implement the project deliverables. The expectation is that this senior resource will be dedicated to this SOW through its completion and not be substituted without prior acceptance and approval by DHS.

Business Need

1. System support continuity and current business expectations:

IBM's active support of their FileNet P8 3.5 product expired September 2010, resulting in need to move project quickly.

Current users are not satisfied with current performance of IBM FileNet P8 3.5 and also need more functionality that is either available in 4.5, or can be created with P8 4.5.x and/or can be remedied by companion work on deliberately creating an enterprise-grade architectural framework and related enterprise-grade hardware installation.

2. Enterprise grade infrastructure to more appropriately meet current customer needs, meet additional customer needs, and manage content as an enterprise:

Use the transition to IBM FileNet 4.5.x as an interval to create and move to an enterprise-grade infrastructure that can meet current DHS business needs but can be scalable to handle the needs of additional users. This includes but is not limited to providing the underlying infrastructure to make IBM FileNet at DHS:

- Well architected anew as informed by IBM FileNet preferred practices and DHS business and information security protocols.
- A highly reliable application available 24-7 so that business areas like the Minnesota Sex Offender Program (MSOP) can be a FileNet user given their clinical needs, highly available application, capable of

silent upgrades, that will eliminate the need for maintenance windows that cause the system to be unavailable during critical business periods (including weekends).

- An application that has faster query load speeds and that can easily return between 2,500 to 5,000 work items into workflow queues per user query without degrading load speeds. This is especially important to anchor users like MinnesotaCare who need to see many work items in a work queue at one time and their status in order for staff processing applications to efficiently know what items to pick up and work on next.
- Ability to securely expose critical data to external trusted business partners (e.g. Minnesota counties and partners) without reliance on Citrix.
- An application that has a strong storage and back up posture reflective of a mission critical business-content management system.
- An application that has mirrored development, testing, staging and production environments.
- An application positioned well to integrate with SharePoint; able to work smoothly with legacy systems; and able to integrate with eForms applications like Liquid Office and InfoPath.
- An application bounded by real-time system performance monitoring tools to make it easier to prevent problems, trouble shoot, and cordon what is a "FileNet" issue from other elements that are necessary at the operating system level to deliver FileNet functionality and services.
- An enterprise system will be highly available, scalable, and have no single points of failure.

Deliverables

- With the help of the DHS Project Team, review the proposed DHS FileNet architecture. System features will include:
 - Application Engine (Workplace / WorkplaceXT)
 - Content Engine
 - Business Process Manager
 - Records Manager
 - Content Search Engine
 - FileNet System Monitor for the Production environment
 - Process Analyzer
 - Process Simulator
 - SharePoint Web Parts (InfoSphere Content Collector)
 - ECM Widgets
 - Mashup Hub/Business Space
 - Business Activity Monitor (CognosNow!)
 - Visio Connector
- Identify project risks and propose risk mitigation plan
- Deliver a work plan and schedule for meeting the need for a highly reliable and scalable enterprise-wide FileNet environment and conforming to IBM product "best practices."
- Install, configure, and migrate IBM FileNet P8 4.5.x in the MN-DHS four virtualized environments (Dev, QA/T, Staging, PROD).
- The proposed IBM FileNet P8 4.5.1 upgrade anticipates utilizing Windows Server 2008, WAS 7.0, and MS SQL 2005.
- Criteria and documentation for System Testing and Acceptance including demonstrating that the system is performance tuned.
- The vendor will migrate current production content, Process Analyzer data, and workflow data structures to the new Staging, and Production environments and the Process Analyzer data, workflow data structures, and sample data to the new Development and QA/Test environments.

Milestones and Schedule

- Anticipated contract start date: December 2010
- Key deliverable dates:
 - Architecture is reviewed, validated, and finalized January 2011
 - DEV environment is complete January 2011
 - QA/Testing environment is complete February 2011
 - Staging environment is complete March 2011
 - Production environment is complete April 2011
- Anticipated contract end date: May 2011

Project Environment (State Resources)

- The vendor will perform the work both onsite and, at times, remotely in conjunction with the DHS FileNet 4.5 Upgrade and Migration team.
- The primary work will be performed at DHS offices in St. Paul, Minnesota.
- State resources will include Architecture and Engineering staff, FileNet Administrator, WebSphere Application Service (WAS) Administrator, network, database base, storage, security, Business Analysis, , and project management staff.
- The state is responsible for providing the necessary hardware, software, and licensing.

Agency Requirements

- Work must be accomplished within the context of the DHS business and technical environment, meet the Department's security requirements as well as the vision for a longer-term portal with enhanced features and functionality.
- Planning and implementation must include the entire DHS enterprise, with an estimated 6000 potential end users.
- Actual deployment must be done in the context of the state reference architecture. Due to co-location and architecture consolidation plans now being developed, the implementation plan will need to be accomplished under the guidance of the DHS Office of Enterprise Architecture.

Responsibilities Expected of the Selected Vendor

- Provide and support a senior level certified resource to implement the project deliverables. The expectation is that this resource will be dedicated to this SOW through its completion and not be substituted without prior (21 days or greater) acceptance and approval by DHS.
- Validate the architecture as highly available, easily scalable, and conformity to IBM and industry best practices.
- Provide project management for vendor resource(s) and coordinate with DHS FileNet project manager on all activities.
- Plan the IBM FileNet P8 FileNet 4.5 Installation, Configuration and Migration in four (4) virtual environments (Dev, QA/T, Staging, and Production) to include gathering all required information including the completion of documentation to support implementation planning; (It is important to note that DHS requires as minimal downtime in production as possible and plans must not impair a user's ability to retrieve content.)
- Provide a project plan that includes project documentation to be delivered. Current FileNet P8 3.5 Production includes:
 - 15 workflow maps
 - No eForms currently utilized
 - 4 Object Stores:
 - ObjectStore001 (Administration), DocVersion Row Count: 1,351,970, Data 2.6 GB, Index 1.2 GB - Total Size of DB: 7763.38 MB
 - ObjectStore002 (Programs), DocVersion Row Count: 30,843,298, Data 45.3 GB, Index 39.7 GB - Total Size of DB: 256312.56 MB

- ObjectStore003 (Universal), DocVersion Row Count: 2, Data 0.023 MB, Index 0.070 MB - Total Size of DB: 5320.00 MB
 - ObjectStore004 (MSOP), DocVersion Row Count: 3, Data 0.039 MB, Index 0.070 MB - Total Size of DB: 3500.00 MB
- Current planning does not include relocation of Object Stores.
- Formalize a project schedule for the FileNet 4.5 upgrade and migration, and implementation for business units currently using FileNet 3.5. This includes a rigorous, pre-implementation testing plan and clearly articulated roles for which entity (IBM, DHS, other) is best suited to conduct the testing given expertise, time.
- Produce regular status reports measuring progress against the plan to the DHS project manager.
- Knowledge Transfer and Mentoring: Provide DHS all project documentation relative to the installation, configuration, and migration including training and knowledge transfer to state employees that will continue to maintain and sustain the delivered FileNet environments after the vendor deliverables are complete.
- Warranty the architecture and IBM FileNet P8 4.5.x build out as conforming to latest IBM “best practices”
- Provide criteria and documentation for Testing and Acceptance criteria.
- Demonstrate that under a system test load that the system is tuned for optimum performance.
- Contractor must provide warranty to guarantee that the structural integrity of the electronic documents in both the source and destination system is retained. No documents in the source system shall be modified in any manner and any document(s) or image(s) found to be corrupted during the transfer in the destination system will be re-transferred at no additional cost to the State.
- Submit summary of deliverables accomplished each month to the DHS project manager.
- Submit a copy of the completed application documentation, long-term project plan, and all supporting paper and electronic documents to DHS prior to project completion and final payment.

Required Qualifications

Required Qualifications will initially be evaluated on a pass/fail basis. **The Response must specifically indicate how the Responder meets all of these minimum qualifications.** If DHS determines, at its sole discretion, that the Responder fails to meet one or more of these requirements (or if the Responder has not submitted sufficient information to make the pass/fail determination), then the Response will be eliminated from further review.

DHS is seeking a certified and qualified IBM FileNet partner/vendor with proven and extensive expertise in designing, building, and implementing a highly available, scalable, enterprise IBM FileNet P8 4.5.x content management system. The vendor will have expert knowledge in all aspects of the finalized enterprise architecture. The vendor will demonstrate successful IBM FileNet P8 3.5 to P8 4.5 upgrade projects.

Organizational - vendor must meet the following minimum qualifications:

- Minimum of 3 years of successfully installing FileNet P8 and its core services.
- Minimum of 3 successful FileNet upgrades from IBM FileNet P8 3.5.x to P8 4.5.x (installation, configuration, and data migration).
- Minimum of 1 successful deployment of IBM FileNet P8 4.5.x in a virtual environment including a virtual Production environment.

Senior Architect/Engineer - senior level certified resource must meet the following minimum qualifications:

- Minimum of 2 successful FileNet upgrades from IBM FileNet P8 3.5.x to P8 4.5.x (installation, configuration, and data migration)
- Demonstrated expertise in the training and/or mentoring of client FileNet support personnel.

Desired Qualifications

- Experience that demonstrates flexibility in utilizing either MS Windows Server 2008, WAS 7, and MSSQL 2008 or Solaris OS and Oracle database for this IBM FileNet P8 4.5.x upgrade.
- Demonstrated excellent communication skills

Process Schedule

- Deadline for Questions December 1, 2010 3:00 PM CST
- Posted Response to Questions December 3, 2010
- Proposals due December 7, 2010 3:00 PM CST
- Anticipated proposal evaluation begins December 8, 2010
- Anticipated evaluation completed & decision December 17, 2010

Questions

Any questions regarding this Statement of Work must be submitted via e-mail by 3:00 PM, Central Standard Time (CST), on December 1, 2010 to:

Name: Grant Hiesterman
E-mail Address: grant.hiesterman@state.mn.us

It is anticipated that questions and answers will be posted on the Office of Enterprise Technology's Website by the end of the day, December 3, 2010.

SOW Evaluation Process

Responses received by the due date and time will be evaluated according to the evaluation process below. Responses must contain information needed to evaluate these factors. Detailed information on the content, format and submittal requirements is provided in the next section of this SOW, Response Requirements.

1. Pass/Fail on Response Requirements
2. Initial Pass/Fail evaluation of Required Qualifications. The Response must specifically indicate how the Responder meets all of these minimum qualifications. If DHS determines, at its sole discretion, that the Responder fails to meet one or more of these requirements (or if the Responder has not submitted sufficient information to make the pass/fail determination), then the Response will be eliminated from further review.
3. Evaluation of responses (that pass Step 1 and Step 2) based on the criteria below. References may be contacted at this point. DHS reserves the right to contact other State agencies and consider performance on past and current contracts.
 - Cost (30%)
 - Organizational qualifications (25%)
 - Senior level certified resource qualifications (25%)
 - Work plan (20%)
4. Interview top-rated Responders as needed. Reevaluation of points for qualifications and workplan for those Responders interviewed, based on information determined from interview. DHS reserves the right to eliminate Step 4 interviews if, in the judgment of the DHS evaluation team, an interview is not required.

Response Requirements

At any time during the evaluation phases, the State may, at the State's discretion, contact a vendor to provide further or missing information or clarification of their Response. However, there is no guarantee that the State will look for information or clarification outside of the submitted written response. Therefore, it is important that the vendor ensure that their Response is complete and **all** requirements have been completely met in order to avoid the possibility of failing an evaluation phase or having their score reduced for lack of information.

1. Responses must be submitted no later than **December 7, 2010 3:00 PM**, Central Standard Time, via email to **dhs.it-responses@state.mn.us**. The Statement of Work # and Project Title should be included in the subject line of your Response e-mail.

Responses sent to any other e-mail address will not be considered.

It is the vendors sole responsibility to ensure that their submittal is **received** at the dhs.it-responses@state.mn.us email address by the response deadline. Responses **received** after the deadline will not be considered, regardless of any documentation showing when the response email was sent. Please note that there is a 20MB size limit on emails.

2. The Responder must be qualified for both of the services categories indicated on this SOW, under its 902TS Professional/Technical Services Master Contract with the Office of Enterprise Technology, before the response deadline.
3. Responses must include the following:
 - a. **Cover letter** identifying the responded and the respondent's representative during the procurement process.
 - b. **Conflict of interest statement** as it relates to this project (see General Requirements section)
 - c. **Statement of acceptance of all terms and conditions** stated within this SOW or a detailed statement of exception for each item excepted by the Responder (see General Requirements section).
 - d. **Organizational qualifications:**
 - Information demonstrating 3 years experience successfully installing FileNet and its core services
 - Work description, references and contact information for three (3) successful FileNet upgrades from IBM FileNet P8 3.5.x to 4.5.x (installation, configuration, and data migration).
 - Work description, a reference and contact information for at least one (1) successful deployment of IBM FileNet P8 4.5.x in a virtual Production environment.
 - Information demonstrating how vendor meets any Desired Qualifications
 - e. **Senior Architect/Engineer qualifications**
 - Resume for senior level certified resource dedicated to this SOW through its completion. Resume must clearly demonstrate how resource meets Required Qualifications and any Desired Qualifications.
 - References and contact information for at least 2 successful FileNet upgrades from IBM FileNet P8 3.5x to P8 4.5x (installation, configuration and data migration).
 - f. **Work Plan** – proposed work plan, with enough information to be used as schedule and managing tool. Include the following:
 - High-level overview that demonstrates understanding of the services requested.
 - Project management methodology
 - Task groupings
 - Detailed tasks within these groupings, with deliverables and staff allocation defined
 - Resource allocation – vendor and state staff
 - Realistic timelines that meet DHS's needs for this SOW
 - Risk assessment and mitigation plan

- g. **Total Cost** – detailed total cost proposal to complete all work, based on the following structure:
 - Cost per deliverable for installation and configuration
 - Hourly rate and total estimated hours for migration and implementation support
- 4. Required forms. These forms must be signed by the appropriate individual within the company, scanned into a file, and included with the e-mail submission. If you do not have access to a scanner, please send an e-mail dhs.it-responses@state.mn.us and other options will be considered.
 - i) Affidavit of non-collusion
 - ii) Location of Service Disclosure
 - iii) State of Minnesota – Immigration Status Certification
 - iv) Certification Regarding Lobbying
 - v) Affirmative Action Certificate of Compliance
- 5. If applicable, documentation showing Targeted or Economically Disadvantaged Vendor status
- 6. If applicable, documentation showing eligible veteran-owned small businesses status.

Please note that when verifying eligible service categories and hourly rates, DHS uses the information on the Office of Enterprise Technology's Website. It is the Responder's responsibility to verify that the website information matches their current records and inform the Office of Enterprise Technology of any discrepancies.

Constraints or rules on respondents

- DHS personnel other than the designated contacts indicated are NOT authorized to discuss this SOW with responders, before the proposal submission deadline and during the evaluation prior to the award, unless approved in advance by the designated contacts.
- Contact regarding this Statement of Work with any personnel other than the designated contacts could result in disqualification.
- The designated contacts will only provide information that clarifies this statement of work, and the projected date for the award announcement.
- After the question submittal deadline, all allowable communication should be directed to dhs.it-responses@state.mn.us.

General Requirements

Proposal Contents

By submission of a proposal, Responder warrants that the information provided is true, correct and reliable for purposes of evaluation for potential award of a work order. The submission of inaccurate or misleading information may be grounds for disqualification from the award as well as subject the responder to suspension or debarment proceedings as well as other remedies available by law.

Exceptions to SOW Terms

The contents of this SOW and the Proposal(s) of the Successful Responder(s) may become part of the final work order contract if awarded. Each Responder's Proposal must include a statement of acceptance of all terms and conditions stated within this SOW or provide a detailed statement of exception for each item excepted by the Responder.

Responder should be aware of the additional terms and conditions of the attached work order contract in preparing its response. These are supplemental to the terms and conditions set forth in the master contract. A sample work order contract is attached for your reference. Much of the language reflected in the work order contract is required by statute. If you take exception to any of the terms, conditions or language in the work order contract, you must indicate those exceptions in your response to the SOW. Only those exceptions indicated in your response to the SOW will be available for discussion or negotiation.

Responders are cautioned that any exceptions to the terms of the State work order contract which give the Responder a material advantage over other Responders may result in the Responder's Proposal being declared nonresponsive. Proposals being declared nonresponsive will receive no further consideration for award of the work order. Also, Proposals that take blanket exception to all or substantially all boilerplate contract provisions will be considered nonresponsive Proposals and rejected from further consideration for contract award.

Indemnification

Responder must agree to the following indemnification language for this Statement of Work:

In the performance of this contract by CONTRACTOR, or CONTRACTOR'S agents or employees, the CONTRACTOR must indemnify, save, and hold harmless the STATE, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the STATE, to the extent caused by CONTRACTOR'S:

- 1) Intentional, willful, or negligent acts or omissions; or
- 2) Actions that give rise to strict liability; or
- 3) Breach of contract or warranty.

The indemnification obligations of this clause do not apply in the event the claim or cause of action is the result of the STATE'S sole negligence. This clause will not be construed to bar any legal remedies the CONTRACTOR may have for the STATE'S failure to fulfill its obligation under this contract.

Disposition of Responses

All materials submitted in response to this SOW will become property of the State and will become public record in accordance with Minnesota Statutes, section 13.591, after the evaluation process is completed. Pursuant to the statute, completion of the evaluation process occurs when the government entity has completed negotiating the contract with the selected vendor. If the Responder submits information in response to this SOW that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minn. Stat. § 13.37, the Responder must: clearly mark all trade secret materials in its response at the time the response is submitted, include a statement with its response justifying the trade secret designation for each item, and defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments or damages awarded against the State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the State's award of a contract. In submitting a response to this SOW, the Responder agrees that this indemnification survives as long as the trade secret materials are in possession of the State.

The State will not consider the prices submitted by the Responder to be proprietary or trade secret materials.

Conflicts of Interest

Responder must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals. The list should indicate the name of the entity, the relationship, and a discussion of the conflict.

The responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, a vendor is unable or potentially unable to render impartial assistance or advice to the State, or the vendor's objectivity in performing the contract work is or might be otherwise impaired, or the vendor has an unfair competitive advantage. The responder agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the Assistant Director of the Department of Administration's Materials Management Division ("MMD") which must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the contract. In the event the responder was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to MMD, the State may terminate the contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms "contract," "contractor," and "contracting officer" modified appropriately to preserve the State's rights.

Preference to Targeted Group and Economically Disadvantaged Business and Individuals

In accordance with Minnesota Rules, part 1230.1810, subpart B and Minnesota Rules, part 1230.1830, certified Targeted Group Businesses and individuals submitting proposals as prime contractors shall receive the equivalent of a six percent preference in the evaluation of their proposal, and certified Economically Disadvantaged Businesses and individuals submitting proposals as prime contractors shall receive the equivalent of a six percent preference in the evaluation of their proposal. Eligible TG businesses must be currently certified by the Materials Management Division prior to the response due date and time. For information regarding certification, contact the Materials Management Helpline at 651.296.2600, or you may reach the Helpline by email at mmdhelp.line@state.mn.us. For TTY/TDD communications, contact the Helpline through the Minnesota Relay Services at 1.800.627.3529.

Veteran-Owned Preference

In accordance with Minnesota Statute §16C.16, subd. 6a, veteran-owned businesses with their principal place of business in Minnesota and verified as eligible by the United States Department of Veterans Affairs' Center for Veteran Enterprises (CVE Verified) will receive up to a 6 percent preference in the evaluation of its proposal.

Eligible veteran-owned small businesses include CVE verified small businesses that are majority-owned and operated by either recently separated veterans, veterans with service-connected disabilities, and any other veteran-owned small businesses (pursuant to Minnesota Statute §16C.16, subd. 6a).

Information regarding CVE verification may be found at <http://www.vetbiz.gov>.

Eligible veteran-owned small businesses should complete and **sign** the **Veteran-Owned Preference Form** in this solicitation. Only eligible, CVE verified, veteran-owned small businesses that provide the required documentation, per the form, will be given the preference.

Contingency of Operations Planning Requirement

Functions identified under this Statement of Work have been designated as Priority 1 or Priority 2 services under the Minnesota Department of Human Service's Continuity of Operations Plan. Due to this designation, the successful responder will be required to develop a continuity of operations plan to be implemented in the event of a gubernatorial or commissioner of the Minnesota Department of Health declared health emergency. The successful responder will be expected to have a continuity of operations plan available for inspection by the State upon request. The continuity of operations plan shall do the following:

- (a) ensure fulfillment of Priority 1 or Priority 2 obligations under the contract;
- (b) outline procedures for the activation of the contingency plan upon the occurrence of a governor or commissioner of the Minnesota Department of Health declared health emergency;
- (c) identify an individual as its Emergency Preparedness Response Coordinator (EPRC), the EPRC shall serve as the contact for the State with regard to emergency preparedness and response issues, the EPRC shall provide updates to the State as the health emergency unfolds;
- (d) outline roles, command structure, decision making processes, and emergency action procedures that will be implemented upon the occurrence of a health emergency;
- (e) provide alternative operating plans for Priority 1 or Priority 2 functions;
- (f) include a procedure for returning to normal operations; and
- (g) be available for inspection upon request.

Foreign Outsourcing of Work Prohibited

All services under this contract shall be performed within the borders of the United States, except as may be otherwise required by the World Trade Organization Government Procurement Agreement (WTO-GPA) of 1996. This includes all storage and processing of information and work performed by subcontractors at all tiers. In the case of this SOW, a contract would have to exceed the threshold amount (\$554,000) in order to be subject to the WTO-GPA requirement.

Responder must agree to the following information privacy and security language for this Statement of Work:

For purposes of executing its responsibilities and to the extent set forth in this contract, the CONTRACTOR will be considered part of the "welfare system," as defined in Minnesota Statutes, section 13.46, subdivision 1.

Information Covered by this Provision. In carrying out its duties, CONTRACTOR will be handling one or more types of private information, collectively referred to as "protected information," concerning individual STATE clients. "Protected information," for purposes of this agreement, includes any or all of the following:

- (a) Private data (as defined in Minn. Stat. §13.02, subd. 12), confidential data (as defined in Minn. Stat. §13.02, subd. 3), welfare data (as governed by Minn. Stat. §13.46), medical data (as governed by Minn. Stat. §13.384), and other non-public data governed elsewhere in the Minnesota Government Data Practices Act (MGDPA), Minn. Stats. Chapter 13;
- (b) Health records (as governed by the Minnesota Health Records Act [Minn. Stat. §§144.291-144.298]);
- (c) Chemical health records (as governed by 42 U.S.C. § 290dd-2 and 42 CFR § 2.1 to § 2.67);
- (d) Protected health information ("PHI") (as defined in and governed by the Health Insurance Portability Accountability Act ["HIPAA"], 45 CFR § 164.501); and
- (e) Electronic Health Records (as governed by Health Information Technology for Economic and Clinical Health Act (HITECH), 42 USC 201 note, 42 USC 17931); and
- (f) Other data subject to applicable state and federal statutes, rules, and regulations affecting the collection, storage, use, or dissemination of private or confidential information.

Duties Relating to Protection of Information.

- (a) Duty to ensure proper handling of information. CONTRACTOR shall be responsible for ensuring proper handling and safeguarding by its employees, subcontractors, and authorized agents of protected information collected, created, used, maintained, or disclosed on behalf of STATE. This responsibility includes ensuring that employees and agents comply with and are properly trained regarding, as applicable, the laws listed above in paragraph 7.1.
- (b) Minimum necessary access to information. CONTRACTOR shall comply with the "minimum necessary" access and disclosure rule set forth in the HIPAA and the MGDPA. The collection, creation, use, maintenance, and disclosure by CONTRACTOR shall be limited to "that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government." See, respectively, 45 CFR §§ 164.502(b) and 164.514(d), and Minn. Stat. § 13.05 subd. 3.
- (c) Information Requests. Unless provided for otherwise in this Agreement, if CONTRACTOR receives a request to release the information referred to in this Clause, CONTRACTOR must immediately notify STATE. STATE will give CONTRACTOR instructions concerning the release of the data to the requesting party before the data is released.

Contractor's Use of Information. CONTRACTOR shall:

- (a) Not use or further disclose protected information created, collected, received, stored, used, maintained or disseminated in the course or performance of this Agreement other than as permitted or required by this Agreement or as required by law, either during the period of this agreement or hereafter.
- (b) Use appropriate safeguards to prevent use or disclosure of the protected information by its employees, subcontractors and agents other than as provided for by this Agreement. This includes, but is not limited to, having implemented administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic protected health information that it creates, receives, maintains, or transmits on behalf of STATE.

- (c) Report to STATE any privacy or security incident regarding the information of which it becomes aware. For purposes of this Agreement, "Security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Privacy incident" means violation of the Minnesota Government Data Practices Act (MGDPA) and/or the HIPAA Privacy Rule (45 C.F.R. Part 164, Subpart E), including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached. This report must be in writing and sent to STATE not more than 7 days after learning of such non-permitted use or disclosure. Such a report will at least: (1) Identify the nature of the non-permitted use or disclosure; (2) Identify the PHI used or disclosed; (3) Identify who made the non-permitted use or disclosure and who received the non-permitted or violating disclosure; (4) Identify what corrective action was taken or will be taken to prevent further non-permitted uses or disclosures; (5) Identify what was done or will be done to mitigate any deleterious effect of the non-permitted use or disclosure; and (6) Provide such other information, including any written documentation, as STATE may reasonably request.
- (d) Consistent with this Agreement, ensure that any agents (including Contractors and subcontractors), analysts, and others to whom it provides protected information, agree in writing to be bound by the same restrictions and conditions that apply to it with respect to such information.
- (e) Document such disclosures of PHI and information related to such disclosures as would be required for STATE to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (f) Mitigate, to the extent practicable, any harmful effects known to it of a use, disclosure, or breach of security with respect to protected information by it in violation of this Agreement.

State's Duties. STATE shall:

- (a) Only release information which it is authorized by law or regulation to share with CONTRACTOR.
- (b) Obtain any required consents, authorizations or other permissions that may be necessary for it to share information with CONTRACTOR.
- (c) Notify CONTRACTOR of limitation(s), restrictions, changes, or revocation of permission by an individual to use or disclose protected information, to the extent that such limitation(s), restrictions, changes or revocation may affect CONTRACTOR's use or disclosure of protected information.
- (d) Not request CONTRACTOR to use or disclose protected information in any manner that would not be permitted under law if done by STATE.

Disposition of Data upon Completion, Expiration, or Agreement Termination. Upon completion, expiration, or termination of this Agreement, CONTRACTOR will return to STATE or destroy all protected information received or created on behalf of STATE for purposes associated with this Agreement. A written certification of destruction or return to Authorized Representative listed in 6.1 is required. CONTRACTOR will retain no copies of such protected information, provided that if both parties agree that such return or destruction is not feasible, or if CONTRACTOR is required by the applicable regulation, rule or statutory retention schedule to retain beyond the life of this Agreement, CONTRACTOR will extend the protections of this Agreement to the protected information and refrain from further use or disclosure of such information, except for those purposes that make return or destruction infeasible, for as long as CONTRACTOR maintains the information. Additional information for destruction and handling is available in the DHS Information Security Policy, Policy numbers 3.7, and 2.19, found at <http://edocs.dhs.state.mn.us/lfsrver/Legacy/DHS-4683-ENG>.

Sanctions. In addition to acknowledging and accepting the terms set forth in Section 10 of this Agreement relating to indemnification, the parties acknowledge that violation of the laws and protections described above could result in limitations being placed on future access to protected information, in investigation and imposition of sanctions by the U.S. Department of Health and Human Services, Office for Civil Rights, and/or in civil and criminal penalties.

Criminal Background Check Required

The State is responsible for providing a safe work environment for its employees and customers as well as protecting and safeguarding protected information about individuals and the State's financial, physical, technological and intellectual property. As State provides employment opportunities for qualified persons, it must also ensure the safety and security of all State employees, customers and assets.

Therefore, all contracted employees who are working in State's Central Office locations are required to either:

- 1) Provide evidence of a computerized criminal history systems background check (hereinafter CCH background check") performed by the contractor within the last 12 months for each of contractor's employee's working in State's Central Office. "CCH background check" is defined as a background check including a search of the computerized criminal history system of the Minnesota Department of Public Safety's Bureau of Criminal Apprehension.

or

- 2) Fill out and submit an informed consent form for criminal background check provided by State for each of contractor's employee's working in State's Central Office. State will conduct a criminal background check using the computerized criminal history system of the Minnesota Department of Public Safety's Bureau of Criminal Apprehension.

An unsatisfactory background check may result in withdrawal of a contract offer.

IT Accessibility Standards

Responses to this solicitation must comply with the Minnesota IT Accessibility Standards effective September 1, 2010, which entails, in part, the Web Content Accessibility Guidelines (WCAG) 2.0 (Level AA) and Section 508 Subparts A-D which can be viewed at:

http://www.mmd.admin.state.mn.us/pdf/accessibility_standard.pdf

Nonvisual Access Standards

Nonvisual access standards require:

- a) The effective interactive control and use of the technology, including the operating system, applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;
- b) That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;
- c) That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- d) That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Statement of Work does not obligate the state to award a work order or complete the assignment, and the state reserves the right to cancel the solicitation if it is considered to be in its best interest. The Agency reserves the right to reject any and all responses.

Required Form:

**STATE OF MINNESOTA
AFFIDAVIT OF NONCOLLUSION**

I certify under penalty of perjury:

1. That I am the Responder (if the Responder is an individual), a partner in the company (if the Responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Responder is a corporation);
2. That the proposal submitted in response to the State of Minnesota Statement of Work has been arrived at by the Responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Responder of materials, supplies, equipment or services described in the Statement of Work, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any such persons prior to the official opening of the proposals;
4. That neither I, nor any member or agent of this company or corporation, have or will contact other companies regarding participation in any future reverse auction conducted under this program; and
5. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Responder's Firm Name: _____

Authorized Signature: _____

Date: _____

Subscribed and sworn to me this _____ day of _____

Notary Public

My commission expires: _____

Required Form:

STATE OF MINNESOTA

LOCATION OF SERVICE DISCLOSURE AND CERTIFICATION

Check all that apply:

- The services to be performed under the anticipated contract as specified in our proposal will be performed ENTIRELY within the State of Minnesota.
- The services to be performed under the anticipated contract as specified in our proposal entail work ENTIRELY within another state within the United States.
- The services to be performed under the anticipated contract as specified in our proposal will be performed in part within Minnesota and in part within another state within the United States.
- The services to be performed under the anticipated contract as specified in our proposal DO involve work outside the United States. Below (or attached) is a description of
 - (1) the identity of the company (identify if subcontractor) performing services outside the United States;
 - (2) the location where services under the contract will be performed; and
 - (3) the percentage of work (in dollars) as compared to the whole that will be conducted in each identified foreign location.

CERTIFICATION

By signing this statement, I certify that the information provided above is accurate and that the location where services have been indicated to be performed will not change during the course of the contract without prior, written approval from the State of Minnesota.

Name of Company: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____ Telephone Number: _____

Required Form:

State of Minnesota — Immigration Status Certification

By order of the Governor's Executive Order 08-01, vendors and subcontractors **MUST** certify compliance with the Immigration Reform and Control Act of 1986 (8 U.S.C. 1101 et seq.) and certify use of the *E-Verify* system established by the Department of Homeland Security.

E-Verify program information can be found at <http://www.dhs.gov/ximgtn/programs>.

If any response to a solicitation is or could be in excess of \$50,000, vendors and subcontractors must certify compliance with items 1 and 2 below. In addition, prior to the delivery of the product or initiation of services, vendors **MUST** obtain this certification from all subcontractors who will participate in the performance of the contract. All subcontractor certifications must be kept on file with the contract vendor and made available to the state upon request.

1. The company shown below is in compliance with the Immigration Reform and Control Act of 1986 in relation to all employees performing work in the United States and does not knowingly employ persons in violation of the United States immigration laws. The company shown below will obtain this certification from all subcontractors who will participate in the performance of this contract and maintain subcontractor certifications for inspection by the state if such inspection is requested; and
2. By the date of the delivery of the product and/or performance of services, the company shown below will have implemented or will be in the process of implementing the *E-Verify* program for all newly hired employees in the United States who will perform work on behalf of the State of Minnesota.

I certify that the company shown below is in compliance with items 1 and 2 above and that I am authorized to sign on its behalf.

Name of Company: _____ Date: _____

Authorized Signature: _____ Telephone Number: _____

Printed Name: _____ Title: _____

If the contract vendor and/or the subcontractors are not in compliance with the Immigration Reform and Control Act, or knowingly employ persons in violation of the United States immigration laws, or have not begun or implemented the *E-Verify* program for all newly hired employees in support of the contract, the state reserves the right to determine what action it may take. This action could include, but would not be limited to cancellation of the contract, and/or suspending or debarring the contract vendor from state purchasing.

For assistance with the *E-Verify* Program

Contact the National Customer Service Center (NCSC) at **1-800-375-5283** (TTY 1-800-767-1833).

For assistance with this form, contact:

Mail: 112 Administration Bldg, 50 Sherburne Ave. St. Paul, MN 55155

E-mail: MMDHelp.Line@state.mn.us

Telephone: 651.296.2600

Persons with a hearing or speech disability may contact us by dialing 711 or 1.800.627.3529

Required Form:

CERTIFICATION REGARDING LOBBYING

For State of Minnesota Contracts and Grants over \$100,000

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, A Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Organization Name

Name and Title of Official Signing for Organization

By: _____
Signature of Official

Date

Required Form:

State Of Minnesota – Affirmative Action Certification

If your response to this solicitation is or could be in excess of \$100,000, complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes 363A.36) certification requirement, and to provide documentation of compliance if necessary. **It is your sole responsibility to provide this information and—if required—to apply for Human Rights certification prior to the due date and time of the bid or proposal and to obtain Human Rights certification prior to the execution of the contract. The State of Minnesota is under no obligation to delay proceeding with a contract until a company receives Human Rights certification**

BOX A – For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months. All other companies proceed to BOX B.

Your response will be rejected unless your business:

- has a current Certificate of Compliance issued by the Minnesota Department of Human Rights (MDHR)
- or–
- has submitted an affirmative action plan to the MDHR, which the Department received prior to the date and time the responses are due.

Check one of the following statements if you have employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- We have a current Certificate of Compliance issued by the MDHR. **Proceed to BOX C. Include a copy of your certificate with your response.**
- We do not have a current Certificate of Compliance. However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on _____ (date). [If the date is the same as the response due date, indicate the time your plan was received: _____ (time). **Proceed to BOX C.**
- We do not have a Certificate of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. **We acknowledge that our response will be rejected. Proceed to BOX C. Contact the Minnesota Department of Human Rights for assistance.** (See below for contact information.)

Please note: Certificates of Compliance must be issued by the Minnesota Department of Human Rights. Affirmative Action Plans approved by the Federal government, a county, or a municipality must still be received, reviewed, and approved by the Minnesota Department of Human Rights before a certificate can be issued.

BOX B – For those companies not described in BOX A

Check below.

- We have not employed more than 40 full-time employees on any single working day in Minnesota within the previous 12 months. **Proceed to BOX C.**

BOX C – For all companies

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of the responder. You also certify that you are in compliance with federal affirmative action requirements that may apply to your company. (These requirements are generally triggered only by participating as a prime or subcontractor on federal projects or contracts. Contractors are alerted to these requirements by the federal government.)

Name of Company: _____ Date _____

Authorized Signature: _____ Telephone number: _____

Printed Name: _____ Title: _____

For assistance with this form, contact:

Minnesota Department of Human Rights, Compliance Services Section

Mail: 190 East 5th St., Suite 700 St. Paul, MN 55101 TC Metro: (651) 296-5663 Toll Free: 800-657-3704
Web: www.humanrights.state.mn.us Fax: (651) 296-9042 TTY: (651) 296-1283
Email: employerinfo@therightsplace.net

**STATE OF MINNESOTA
VETERAN-OWNED PREFERENCE FORM**

In accordance with Minnesota Statute §16C.16, subd. 6a, veteran-owned businesses with their principal place of business in Minnesota and verified as eligible by the United States Department of Veterans Affairs' Center for Veteran Enterprises (CVE Verified) will receive up to a 6 percent preference in the evaluation of its proposal.

If responding to a Request for Bid (RFB), the preference is applied only to the first \$500,000 of the response. If responding to a Request for Proposal (RFP), the preference is applied as detailed in the RFP.

Eligible veteran-owned small businesses must be CVE Verified (in accordance with Public Law 109-471 and Code of Federal Regulations, Title 38, Part 74) at the solicitation opening date and time to receive the preference.

Information regarding CVE Verification may be found at <http://www.vetbiz.gov>.

Eligible veteran-owned small businesses should complete and **sign** this form. Only eligible, CVE Verified, veteran-owned small businesses that provide this completed and signed form will be given the preference.

I hereby certify that the company listed below:

1. Is an eligible veteran-owned small business, as defined in Minnesota Statute §16C.16, subd. 6a; and
2. Has its principal place of business in the State of Minnesota; and
3. Is Center for Veteran Enterprises verified (CVE Verified) by United State Department of Veterans Affairs.

Name of Company: _____ Date: _____

Authorized Signature: _____ Telephone: _____

Printed Name: _____ Title: _____

THIS FORM MUST BE SIGNED AND RETURNED WITH YOUR RESPONSE TO THE SOLICITATION.

**Sample Work Order Contract:
STATE OF MINNESOTA
IT Professional Services Master Contract Work Order**

This work order is between the State of Minnesota, acting through its _____ ("State") and _____ ("Contractor"). This work order is issued under the authority of Master Contract T-Number _____TS, CFMS Number _____, and is subject to all provisions of the master contract which is incorporated by reference.

Work Order

1 Term of Work Order

1.1 Effective date: _____, or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later.

The Contractor must not begin work under this work order until it is fully executed and the Contractor has been notified by the State's Authorized Representative to begin the work.

1.2 Expiration date: _____, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

2 Contractor's Duties

The Contractor, who is not a state employee, will: _____/**Thorough Description of Tasks/Duties/**

3 Consideration and Payment

3.1 Consideration. The State will pay for all services performed by the Contractor under this work order as follows:

A. *Compensation.* The Contractor will be paid as follows:

[For projects, list out each deliverable and amount to be paid for each deliverable. Only if a specific deliverable cannot be defined, insert an hourly rate.]

B. *Travel Expenses.* Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of this work order will not exceed \$_____.

C. *Total Obligation.* The total obligation of the State for all compensation and reimbursements to the Contractor under this work order will not exceed \$_____.

3.2 Invoices. The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the following schedule:_____

4 Indemnification

In the performance of this contract by CONTRACTOR, or CONTRACTOR'S agents or employees, the CONTRACTOR must indemnify, save, and hold harmless the STATE, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the STATE, to the extent caused by CONTRACTOR'S:

- 1) Intentional, willful, or negligent acts or omissions; or
- 2) Actions that give rise to strict liability; or
- 3) Breach of contract or warranty.

The indemnification obligations of this clause do not apply in the event the claim or cause of action is the result of the STATE'S sole negligence. This clause will not be construed to bar any legal remedies the CONTRACTOR may have for the STATE'S failure to fulfill its obligation under this contract.

5 Foreign Outsourcing

Contractor agrees that the disclosures and certifications made in its Location of Service Disclosure and Certification Form submitted with its proposal are true, accurate and incorporated into this work order contract by reference.

6 Authorized Representatives

The State's Authorized Representative is _____. The State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Contractor's Authorized Representative is _____. If the Contractor's Authorized Representative changes at any time during this work order, the Authorized Representative must immediately notify the State.

7 Key Personnel

The Contractor's Key Personnel is [Name & Title]. Contractor will not add, replace, remove, or substitute the named key personnel without the prior written approval of the State's Authorized Representative.

8. Employee Status. By order of the Governor's Executive Order 08-01, if this contract, including any extension options, is or could be in excess of \$50,000, CONTRACTOR certifies that it and its subcontractors:

1. Comply with the Immigration Reform and Control Act of 1986 (U.S.C. 1101 et. seq.) in relation to all employees performing work in the United States and do not knowingly employ persons in violation of the United States' immigrations laws; and
2. By the date of the performance of services under this contract, CONTRACTOR and all its subcontractors have implemented or are in the process of implementing the *E-Verify* program for all newly hired employees in the United States who will perform work on behalf of the State of Minnesota.

CONTRACTOR shall obtain certifications of compliance with this section from all subcontractors who will participate in the performance of this contract. Subcontractor certifications shall be maintained by CONTRACTOR and made available to the STATE upon request. If CONTRACTOR or its subcontractors are not in compliance with 1 or 2 above or have not begun or implemented the *E-Verify* program for all newly hired employees performing work under the contract, the STATE reserves the right to determine what action it may take including but not limited to, cancelling the contract and/or suspending or debaring the CONTRACTOR from state purchasing.

9 Affirmative Action Requirements for Contracts in Excess of \$100,000 and where the Contractor has More than 40 Full-time Employees in Minnesota or its Principal Place of Business.

The State intends to carry out its responsibility for requiring affirmative action by its Contractors.

9.1 **Covered Contracts and Contractors.** If the Contract exceeds \$100,000 and the contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

9.2 **Minn. Stat. § 363A.36.** Minn. Stat. § 363A.36 requires the Contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

9.3 **Minn. R. Parts 5000.3400-5000.3600.**

(A) **General.** Minn. R. Parts 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. Parts 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.

(B) **Disabled Workers.** The Contractor must comply with the following affirmative action requirements for disabled workers.

- (1) The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- (2) The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (3) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (4) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
 - (5) The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minnesota Statutes Section 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- (C) *Consequences.* The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the State.
- (D) *Certification.* The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

10. Information Privacy and Security.

For purposes of executing its responsibilities and to the extent set forth in this contract, the CONTRACTOR will be considered part of the "welfare system," as defined in Minnesota Statutes, section 13.46, subdivision 1.

10.1 **Information Covered by this Provision.** In carrying out its duties, CONTRACTOR will be handling one or more types of private information, collectively referred to as "protected information," concerning individual STATE clients. "Protected information," for purposes of this agreement, includes any or all of the following:

- (a) Private data (as defined in Minn. Stat. §13.02, subd. 12), confidential data (as defined in Minn. Stat. §13.02, subd. 3), welfare data (as governed by Minn. Stat. §13.46), medical data (as governed by Minn. Stat. §13.384), and other non-public data governed elsewhere in the Minnesota Government Data Practices Act (MGDPA), Minn. Stats. Chapter 13;
- (b) Health records (as governed by the Minnesota Health Records Act [Minn. Stat. §§144.291-144.298]);
- (c) Chemical health records (as governed by 42 U.S.C. § 290dd-2 and 42 CFR § 2.1 to § 2.67);
- (d) Protected health information ("PHI") (as defined in and governed by the Health Insurance Portability Accountability Act ["HIPAA"], 45 CFR § 164.501); and
- (e) Electronic Health Records (as governed by Health Information Technology for Economic and Clinical Health Act (HITECH), 42 USC 201 note, 42 USC 17931); and
- (f) Other data subject to applicable state and federal statutes, rules, and regulations affecting the collection, storage, use, or dissemination of private or confidential information.

10.2 Duties Relating to Protection of Information.

- (a) Duty to ensure proper handling of information. CONTRACTOR shall be responsible for ensuring proper handling and safeguarding by its employees, subcontractors, and authorized agents of protected information collected, created, used, maintained, or disclosed on behalf of STATE. This responsibility includes ensuring that employees and agents comply with and are properly trained regarding, as applicable, the laws listed above in paragraph 7.1.
- (b) Minimum necessary access to information. CONTRACTOR shall comply with the "minimum necessary" access and disclosure rule set forth in the HIPAA and the MGDPA. The collection, creation, use, maintenance, and disclosure by CONTRACTOR shall be limited to "that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or

mandated by the federal government.” See, respectively, 45 CFR §§ 164.502(b) and 164.514(d), and Minn. Stat. § 13.05 subd. 3.

- (c) Information Requests. Unless provided for otherwise in this Agreement, if CONTRACTOR receives a request to release the information referred to in this Clause, CONTRACTOR must immediately notify STATE. STATE will give CONTRACTOR instructions concerning the release of the data to the requesting party before the data is released.

10.3 Contractor’s Use of Information. CONTRACTOR shall:

- (a) Not use or further disclose protected information created, collected, received, stored, used, maintained or disseminated in the course or performance of this Agreement other than as permitted or required by this Agreement or as required by law, either during the period of this agreement or hereafter.
- (b) Use appropriate safeguards to prevent use or disclosure of the protected information by its employees, subcontractors and agents other than as provided for by this Agreement. This includes, but is not limited to, having implemented administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic protected health information that it creates, receives, maintains, or transmits on behalf of STATE.
- (c) Report to STATE any privacy or security incident regarding the information of which it becomes aware. For purposes of this Agreement, “Security incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. “Privacy incident” means violation of the Minnesota Government Data Practices Act (MGDPA) and/or the HIPAA Privacy Rule (45 C.F.R. Part 164, Subpart E), including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached. This report must be in writing and sent to STATE not more than 7 days after learning of such non-permitted use or disclosure. Such a report will at least: (1) Identify the nature of the non-permitted use or disclosure; (2) Identify the PHI used or disclosed; (3) Identify who made the non-permitted use or disclosure and who received the non-permitted or violating disclosure; (4) Identify what corrective action was taken or will be taken to prevent further non-permitted uses or disclosures; (5) Identify what was done or will be done to mitigate any deleterious effect of the non-permitted use or disclosure; and (6) Provide such other information, including any written documentation, as STATE may reasonably request.
- (d) Consistent with this Agreement, ensure that any agents (including Contractors and subcontractors), analysts, and others to whom it provides protected information, agree in writing to be bound by the same restrictions and conditions that apply to it with respect to such information.
- (e) Document such disclosures of PHI and information related to such disclosures as would be required for STATE to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (f) Mitigate, to the extent practicable, any harmful effects known to it of a use, disclosure, or breach of security with respect to protected information by it in violation of this Agreement.

10.4 State’s Duties. STATE shall:

- (a) Only release information which it is authorized by law or regulation to share with CONTRACTOR.
- (b) Obtain any required consents, authorizations or other permissions that may be necessary for it to share information with CONTRACTOR.
- (c) Notify CONTRACTOR of limitation(s), restrictions, changes, or revocation of permission by an individual to use or disclose protected information, to the extent that such limitation(s), restrictions, changes or revocation may affect CONTRACTOR’s use or disclosure of protected information.
- (d) Not request CONTRACTOR to use or disclose protected information in any manner that would not be permitted under law if done by STATE.

10.5 Disposition of Data upon Completion, Expiration, or Agreement Termination. Upon completion, expiration, or termination of this Agreement, CONTRACTOR will return to STATE or destroy all protected information received or created on behalf of STATE for purposes associated with this Agreement. A written certification of destruction or return to Authorized Representative listed in 6.1 is required. CONTRACTOR will retain no copies of such protected information, provided that if both parties agree that such return or destruction is not feasible, or if CONTRACTOR is required by the applicable

regulation, rule or statutory retention schedule to retain beyond the life of this Agreement, CONTRACTOR will extend the protections of this Agreement to the protected information and refrain from further use or disclosure of such information, except for those purposes that make return or destruction infeasible, for as long as CONTRACTOR maintains the information. Additional information for destruction and handling is available in the DHS Information Security Policy, Policy numbers 3.7, and 2.19, found at <http://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-4683-ENG>.

10.6 **Sanctions.** In addition to acknowledging and accepting the terms set forth in Section 10 of this Agreement relating to indemnification, the parties acknowledge that violation of the laws and protections described above could result in limitations being placed on future access to protected information, in investigation and imposition of sanctions by the U.S. Department of Health and Human Services, Office for Civil Rights, and/or in civil and criminal penalties.

11. Criminal Background Check Required. CONTRACTOR and employees of CONTRACTOR working on site at STATE's Central Office and accessing STATE's protected information (as defined in 10. Information Privacy and Security of this contract.) must submit to or provide evidence of a computerized criminal history system background check (hereinafter "CCH background check") performed within the last 12 months before work can begin under this contract. "CCH background check" is defined as a background check including search of the computerized criminal history system of the Minnesota Department of Public Safety's Bureau of Criminal Apprehension.

12. Contingency Planning. Within 90 days of the execution of this contract, CONTRACTOR and any subcontractor will have a contingency plan. The contingency plan shall:

- a) ensure fulfillment of Priority 1 or Priority 2 obligations under this contract;
- b) outline procedures for the activation of the contingency plan upon the occurrence of a governor or commissioner of the Minnesota Department of Health declared health emergency;
- c) identify an individual as its Emergency Preparedness Response Coordinator (EPRC), the EPRC shall serve as the contact for the STATE with regard to emergency preparedness and response issues, the EPRC shall provide updates to the STATE as the health emergency unfolds;
- d) outline roles, command structure, decision making processes, and emergency action procedures that will be implemented upon the occurrence of a health emergency;
- e) provide alternative operating plans for Priority 1 or Priority 2 functions;
- f) include a procedure for returning to normal operations; and
- g) be available for inspection upon request.

13. Nonvisual Access Standards

Nonvisual access standards require:

- a) The effective interactive control and use of the technology, including the operating system, applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;
- b) That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;
- c) That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- d) That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.