

REQUEST FOR PROPOSAL FOR Prescription Drug Repository Program

Minnesota's Commitment to Diversity and Inclusion

The State of Minnesota is committed to diversity and inclusion in its public procurement process. The goal is to ensure that those providing goods and services to the State are representative of our Minnesota communities and include businesses owned by minorities, women, veterans, and those with substantial physical disabilities. Creating broader opportunities for historically under-represented groups provides for additional options and greater competition in the marketplace, creates stronger relationships and engagement within our communities, and fosters economic development and equality.

To further this commitment, the Department of Administration operates a program for Minnesota-based small businesses owned by minorities, women, veterans, and those with substantial physical disabilities. For additional information on this program, or to determine eligibility, please call 651-296-2600 or go to www.mn.gov/admin/oep.

Minnesota Board of Pharmacy

Project Overview

During the 2019 Session, the Legislature passed legislation that was signed into law by Governor Tim Walz. The legislation established a new section of Minnesota Statutes (151.555) that directs the Board of Pharmacy (Board) to establish a Prescription Drug Repository Program by January 1, 2020. The Board will not directly administer the repository program but will instead contract with an entity willing to establish a central repository (CR).

The CR will accept donations of unused drugs and medical supplies from qualified donors and may also dispense them to individuals who meet certain eligibility criteria. It is expected that the CR will establish a network of local repositories around the state that will also accept donations and dispense useable drugs and supplies to eligible recipients. The CR will be under contract to the Board and will be expected to follow the requirements of Minn. Stats. §151.555 and all other applicable federal, state, and local statutes, rules, and ordinances. At a minimum, the CR must be licensed by the Board as a drug wholesaler and may have to also be licensed as a pharmacy. (The Board will waive licensing fees for the CR, unless the selected facility is already licensed by the Board).

The CR and local repositories will not receive any reimbursement from the State of Minnesota for work performed. However, the CR and local repositories will be able to charge a handling fee of up to 250% of the Medical Assistance program dispensing fee for each drug or medical supply dispensed or administered by that repository. Pending federal approval, the dispensing fee will be \$10.48 for prescriptions filled with legend drugs meeting the definition of "covered outpatient drugs" according to United States Code, title 42, section 1396r-8(k)(2) and for over-the-counter drugs dispensed in quantities equal to or greater than the number of units contained in the manufacturer's original package. The pharmacy dispensing fee for prescribed over-the-counter drugs not meeting the definition of covered outpatient drugs shall be \$3.65. Consequently, the maximum handling fee that can be charged by the central and local repositories can't exceed \$26.20.

Respondents are encouraged to review the [Session Law](#) that created this program.

Goal

The primary goal of the program is to make useable drugs and medical supplies, that would otherwise be destroyed, available to individuals who cannot afford them. A secondary goal is to reduce the environmental impact of pharmaceutical waste. Both goals promote the health of Minnesotans.

Sample Tasks

Sample tasks include but are not limited to:

- Creating a business plan for the overall operation of the CR and local repositories
- Prepare and maintain a space that is suitable for the purposes of storing, safe-guarding, and dispensing drugs and medical supplies. Ensure that the space meets the requirements of Minnesota statutes and rules for either a drug wholesaler or a pharmacy.
- Prepare policies and procedures for the following and ensure that the activities addressed in the policies and procedures are carried out correctly:

- Acceptance and inspection of donated drugs and medical supplies to ensure products meet applicable eligibility standards;
- Storage and safe-keeping of donated drugs and medical supplies;
- Record keeping and retention of donated drugs and medical supplies;
- Distribution of drugs and medical supplies between the central and local repositories;
- Dispensing of drugs and medical supplies to eligible individuals, ensuring compliance with applicable rules in Minnesota Rules Chapter 6800 or with the conditions of any variance granted to those rules;
- Establishing a handling fee structure for administering or dispensing prescription drugs and medical supplies;
- Delivery of drugs to eligible individuals, if a delivery service is established;
- Handling of recall notifications for drugs and medical supplies;
- Inventory and record-keeping for drugs and medical supplies;
- Proper disposal of expired or otherwise unusable drugs and medical supplies, in accordance with applicable federal, state and local statutes, rules, and ordinances;
- Selection and oversight of local repositories;
- Selection of staff with appropriate training and experience;
- Training of staff to ensure compliance with internal policies and procedures and all applicable federal, state and local statutes, rules, and ordinances;
- Verification of the eligibility of individuals who are requesting that drugs be dispensed to them;
- Issuance of an identification card to individuals who are found to be eligible;
- Any other policies that are required by Minn. Stats. §151.55 or the Board rules for a facility licensed in the same manner as the central or local repositories.
- Prepare an ADA accessible Web site for the repository program designed to inform potential donors and eligible recipients about the program, including but not limited to:
 - A description of the program and of the services offered by the central and local repositories;
 - A Frequently Asked Questions document that will assist the public in understanding the program
 - An application form for both donors and recipients
 - The location, hours, and contact information for the central and local repositories;
 - Links to relevant documents on the Board's Web site;
 - A link to the Board's Web page that lists resources and programs to assist patients with the cost of prescription drugs; and
 - A link to Minn. Stats. §151.55 as published by the Office of the Legislative Revisor
 - A link to contact the appropriate individual(s) at the repository for questions and support from the public
- Develop a marketing plan to inform health care practitioners and consumers throughout the state that the program exists to ensure an adequate supply of donated supplies and individuals seeking products, including but not limited to:
 - Notification to potential donation centers, such as skilled nursing facility or long-term care facilities
 - Notification to agencies that may identify patients in need of affordable medication
- Submit data and reports related to the operation of the central and local repositories, as required by the contract or upon request of the board.

Contract Information

The contract will begin on the date stated in the contract or upon full execution of the contract, whichever is later, and the central repository will be established no later than March 1, 2020.

1. The term of this contract is anticipated to run for two years from the date on which it is fully executed, with the option to extend an additional 3 years in increments determined by the State.
2. Responders are encouraged to propose additional tasks or activities if they will substantially improve the results of the project. These items must not be inconsistent with the provisions of Minn. Stats. §151.555 or other applicable federal, state, and local statutes, rules, and ordinances.
3. This request for proposal does not obligate the state to award a contract or complete the project, and the State reserves the right to cancel the solicitation if it is considered to be in its best interest.
4. Prospective responders who have any questions regarding this request for proposal shall submit them in writing, no later than 4:30PM on Wednesday, September 25, 2019, to:

Cody Wiberg, Pharm.D., M.S., R.Ph.
Executive Director
Minnesota Board of Pharmacy
2829 University Avenue SE, Suite 530
Minneapolis, MN 55414

cody.wiberg@state.mn.us

Answers will be provided to all persons who have requested a proposal. The answers will also be posted on the Board's Web site by Monday, September 30, 2019 at 4:30PM.

Other personnel are **NOT** authorized to discuss this request for proposal with responders, before the proposal submission deadline. Contact regarding this RFP with any personnel not listed above could result in disqualification. Answers to all questions will be provided in writing to all entities that have requested a copy of this RFP.

Proposal Content

Responders must submit the following information:

1. A statement of the objectives, goals, and tasks to show or demonstrate the responder's view and understanding of the requirements of the program.
2. A description of the deliverables to be provided by the responder along with a detailed work plan that identifies the major tasks to be accomplished and be used as a scheduling and managing tool. At a minimum, include information on: the location(s) of the proposed central and local repositories; the types of facilities to be used; the proposed staffing of the facilities; a timeline for the establishment of central and local repositories; the level of handling fees that the respondent intends to collect from eligible repository users; and other information that respondent thinks would be useful in the evaluation of the proposal.
3. An outline of the responder's background and experience with examples of similar work done by the responder and a list of personnel who will conduct the project, detailing their training, and work experience. Resumes or other information about project personnel should not, if possible, contain personal telephone numbers, home addresses or home email addresses. If it is necessary to include personal contact information, please clearly indicate in the proposal that personal contact information is being provided.

4. Accessibility. A completed response to the attached Voluntary Product/Service Accessibility Template(s). The response must contain adequate information to evaluate the responsiveness to the accessibility standards (i.e. a completed VPAT or equivalent).
5. Submit the following forms:
 - A. Affidavit of Non-Collusion
 - B. Certificate Regarding Lobbying
 - C. Workforce Certification
 - D. Equal Pay Certificate Form
 - E. Veterans Preference Form
 - F. Resident Vendor Form

Proposal Instructions

All proposals must be sent to:

Cody Wiberg, Pharm.D., M.S., R.Ph.
Executive Director
Minnesota Board of Pharmacy
2829 University Avenue SE, Suite 530
Minneapolis, MN 55414

All proposals must be received not later than 3:00 p.m., Central Time, October 11, 2019, as indicated by a time stamp made by the Receptionist, Suite 530, 2829 University Avenue SE, Minneapolis, MN.

Late proposals will not be considered.

All costs incurred in responding to this RFP will be borne by the responder. Fax and email responses will not be accepted or considered.

Submit three copies of the proposal. Proposals are to be sealed in mailing envelopes or packages with the responder's name and address written on the outside. Each copy of the proposal must be signed in ink by an authorized member of the entity submitting the proposal.

Proposal Evaluation

All responses received by the deadline will be evaluated by representatives of the Minnesota Board of Pharmacy. Proposals will first be reviewed for responsiveness to determine if the mandatory requirements have been met. Proposals that fail to meet mandatory requirements will not advance to the next phase of the evaluation. The State reserves the right, based on the scores of the proposals, to create a short-listing of vendors who have received the highest scores to interview, or conduct demonstrations/presentations. The state reserves the right to seek best and final proposals from one or more responders. A 100-point scale will be used to create the final evaluation recommendation.

Mandatory Requirements (Scored as Pass/Fail)

The following will be considered on a pass/fail basis:

1. Proposals must be received on or before the due date and time specified in this solicitation.
2. Respondent has at least three years' experience operating a licensed drug wholesaling facility or a licensed pharmacy.

Evaluation Factors (Scored based on percentage or points as indicated)

The factors and weighting on which proposals will be judged are:

- | | |
|---|-----|
| 1. Expressed understanding of project objectives | 25% |
| 2. Deliverables and work plan | 50% |
| 3. Qualifications/experience of personnel working on the project | 20% |
| 4. Compliance with "Applicable" IT Accessibility Standards as identified in the attached Voluntary Product/Service Accessibility Templates (VPATs). | 5% |

It is anticipated that the evaluation and selection will be completed by **October 31, 2019**

General Requirements

Affidavit of Non-collusion

Each responder must complete the attached Affidavit of Noncollusion and include it with the response.

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.

Proposal Contents

By submission of a proposal, Responder warrants that the information provided is true, correct and reliable for purposes of evaluation for potential contract award. 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.

Disposition of Responses

All materials submitted in response to this RFP 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 RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minnesota Statute § 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 RFP, 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.

Notwithstanding the above, if the State contracting party is part of the judicial branch, the release of data shall be in accordance with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time.

Contingency Fees Prohibited

Pursuant to Minnesota Statutes Section 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

Sample Contract

You should be aware of the State's standard contract terms and conditions in preparing your response. A sample State of Minnesota Professional/Technical Services Contract is attached for your reference. Much of the language reflected in the contract is required by statute. If you take exception to any of the terms, conditions or language in the contract, you must indicate those exceptions in your response to the RFP; certain exceptions may result in your proposal being disqualified from further review and evaluation. Only those exceptions indicated in your response to the RFP will be available for discussion or negotiation.

Reimbursements

Reimbursement for travel and subsistence expenses actually and necessarily incurred by the contractor as a result of the contract will be in no greater amount than provided in the current "Commissioner's Plan" promulgated by the commissioner of Employee Relations. Reimbursements will not be made for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

Organizational Conflicts of Interest

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 Office of Equity in Procurement ("OSP") 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 organization 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 OSP, 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 (TG) businesses and individuals submitting proposals as prime contractors will receive a six percent preference in the evaluation of their proposal, and certified Economically Disadvantaged (ED) businesses and individuals submitting proposals as prime contractors will receive a six percent preference in the evaluation of their proposal. Eligible TG businesses and ED businesses must be currently certified by the Office of Equity in Procurement (OEP) prior to the solicitation opening date and time. For information regarding certification, contact OEP at 651-201-2402 or procurement.equity@state.mn.us. For TTY/TDD communications, contact the Helpline through the Minnesota Relay Services at 1.800.627.3529.

Veteran-Owned Small Business Preference

Unless a greater preference is applicable and allowed by law, in accordance with Minn. Stat. § 16C.16, subd. 6a, the Commissioner of Administration will award a 6% preference in the amount bid on state procurement to certified small businesses that are majority owned and operated by veterans.

A small business qualifies for the veteran-owned preference when it meets one of the following requirements. 1) The business has been certified by the Office of Equity in Procurement as being a veteran-owned or service-disabled veteran-owned small business. 2) The principal place of business is in Minnesota AND the United States Department of Veterans Affairs verifies the business as being a veteran-owned or service-disabled veteran-owned small business under Public Law 109-461 and Code of Federal Regulations, title 38, part 74 (Supported by Documentation). *See* Minn. Stat. § 16C.19(d).

Submit the appropriate documentation with the solicitation response to claim the veteran-owned preference. Statutory requirements and documentation must be met by the solicitation response due date and time to be awarded the preference.

Workforce Certification

For all contracts estimated to be in excess of \$100,000, responders are required to complete the attached Workforce Certificate Information form and return it with the response. As required by Minnesota Rule 5000.3600, "It is hereby agreed between the parties that Minnesota Statute § 363A.36 and Minnesota Rule 5000.3400 - 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. A copy of Minnesota Statute § 363A.36 and Minnesota Rule 5000.3400 - 5000.3600 are available upon request from the contracting agency."

Equal Pay Certification

If the Response to this solicitation could be in excess of \$500,000, the Responder must obtain an Equal Pay Certificate from the Minnesota Department of Human Rights (MDHR) or claim an exemption prior to contract execution. A responder is exempt if it has not employed more than 40 full-time employees on any single working day in one state during the previous 12 months. Please contact MDHR with questions at: 651-539-1095 (metro), 1-800-657-3704 (toll free), 711 or 1-800-627-3529 (MN Relay) or at compliance.MDHR@state.mn.us.

Certification Regarding Lobbying

Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore the Proposer must complete the attached **Certification Regarding Lobbying** and submit it as part of its proposal.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.

Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore the Proposer must certify the following, as required by the regulations implementing Executive Order 12549.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. 9, subpart 9.4, suspended, debarred, ineligible, or

voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Insurance Requirements

- A. Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.
- B. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:
 1. **Workers' Compensation Insurance:** Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance **minimum** limits are as follows:

\$100,000 – Bodily Injury by Disease per employee
\$500,000 – Bodily Injury by Disease aggregate
\$100,000 – Bodily Injury by Accident

If Minnesota Statute 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements.

If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the State of Minnesota with a certificate of insurance.

2. **Commercial General Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the contract. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence
\$2,000,000 – annual aggregate
\$2,000,000 – annual aggregate – Products/Completed Operations

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage

Personal and Advertising Injury

Blanket Contractual Liability

Products and Completed Operations Liability

Other; if applicable, please list _____

State of Minnesota named as an Additional Insured, to the extent permitted by law

3. **Commercial Automobile Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this contract, and in case any work is subcontracted the contractor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile

4. **Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance**

This policy will provide coverage for all claims the contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor's professional services required under the contract.

Contractor is required to carry the following **minimum** limits:

\$2,000,000 – per claim or event

\$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of the Contractor and may not exceed \$50,000 without the written approval of the State. If the Contractor desires authority from the State to have a deductible in a higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Contractor to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

C. Additional Insurance Conditions:

- Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contractor's performance under this contract;

- If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota;
 - Contractor is responsible for payment of Contract related insurance premiums and deductibles;
 - If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
 - Contractor's policy(ies) shall include legal defense fees in addition to its liability policy limits, with the exception of B.4 above;
 - Contractor shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
 - An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.
- D. The State reserves the right to immediately terminate the contract if the contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.
- E. The successful responder is required to submit Certificates of Insurance acceptable to the State of MN as evidence of insurance coverage requirements prior to commencing work under the contract.

E-Verify Certification (In accordance with Minn. Stat. §16C.075)

By submission of a proposal for services in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State. In the event of contract award, Contractor shall be responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EVERIFYSubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053)

The following term applies to any contract for which the value, including all extensions, is \$50,000 or more: Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

Subcontractor Reporting

The State of Minnesota is committed to diversity and inclusion in public procurement. If the total value of your contract may exceed \$500,000, including all extension options, you must track and report, on a quarterly basis, the amount you spend with diverse small businesses. When this applies, you will be provided free access to a portal for this purpose, and the requirement will continue as long as the contract is in effect.

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

STATE OF MINNESOTA – WORKFORCE CERTIFICATE INFORMATION

Required by state law for ALL bids or proposals that could exceed \$100,000

Complete this form and return it with your bid or proposal. The State of Minnesota is under no obligation to delay proceeding with a contract until a company becomes compliant with the Workforce Certification requirements in Minn. Stat. §363A.36.

BOX A – COMPANIES that have employed more than 40 full-time employees WITHIN MINNESOTA on any single working day during the previous 12 months, check one option below:

- Attached is our current Workforce Certificate issued by the Minnesota Department of Human Rights (MDHR).
- Attached is confirmation that MDHR received our application for a Minnesota Workforce Certificate on _____ (date).

BOX B – NON-MINNESOTA COMPANIES that have employed more than 40 full-time employees on a single working day during the previous 12 months in the state where it has its primary place of business, check one option below:

- Attached is our current Workforce Certificate issued by MDHR.
- We certify we are in compliance with federal affirmative action requirements.

BOX C – EXEMPT COMPANIES that have not employed more than 40 full-time employees on a single working day in any state during the previous 12 months, check option below if applicable:

- We attest we are exempt. If our company is awarded a contract, upon request, we will submit to MDHR within 5 business days after the contract is fully signed, the names of our employees during the previous 12 months, the date of separation, if applicable, and the state in which the persons were employed. Send to compliance.MDHR@state.mn.us.

By signing this statement, I certify that the information provided is accurate and that I am authorized to sign on behalf of the company.

Name of Company: _____ Date _____
Authorized Signature: _____ Telephone number: _____
Printed Name and Title: _____ Email: _____

For assistance with this form, contact:

Minnesota Department of Human Rights, Compliance Services

Web: <http://mn.gov/mdhr/>

TC Metro: 651-539-1095

Toll Free: 800-657-3704

Email: compliance.mdhr@state.mn.us

TTY: 651-296-1283

State of Minnesota – Equal Pay Certificate

If your response could be in excess of \$500,000, please complete and submit this form with your submission. **It is your sole responsibility to provide the information requested and when necessary to obtain an Equal Pay Certificate (Equal Pay Certificate) from the Minnesota Department of Human Rights (MDHR) prior to contract execution. You must supply this document with your submission.** Please contact MDHR with questions at: 651-539-1095 (metro), 1-800-657-3704 (toll free), 711 or 1-800-627-3529 (MN Relay) or at compliance.MDHR@state.mn.us.

Option A – If you have employed 40 or more full-time employees on any single working day during the previous 12 months in Minnesota or the state where you have your primary place of business, please check the applicable box below:

- Attached is our current MDHR Equal Pay Certificate.
- Attached is MDHR’s confirmation of our Equal Pay Certificate application.

Option B – If you have not employed 40 or more full-time employees on any single working day during the previous 12 months in Minnesota or the state where you have your primary place of business, please check the box below.

- We are exempt. We agree that if we are selected we will submit to MDHR within five (5) business days of final contract execution, the names of our employees during the previous 12 months, date of separation if applicable, and the state in which the persons were employed. Documentation should be sent to compliance.MDHR@state.mn.us.

The State of Minnesota reserves the right to request additional information from you. **If you are unable to check any of the preceding boxes, please contact MDHR to avoid a determination that a contract with your organization cannot be executed.**

Your signature certifies that you are authorized to make the representations, the information provided is accurate, the State of Minnesota can rely upon the information provided, and the State of Minnesota may take action to suspend or revoke any agreement with you for any false information provided.

Authorized Signature	Printed Name	Title
Organization	MN/FED Tax ID#	Date
Issuing Entity	Project # or Lease Address	

AFFIDAVIT OF NONCOLLUSION

I swear (or affirm) under the 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 attached proposal submitted in response to the _____ Request for Proposals 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 Request for Proposal, 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; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Responder's Firm Name: _____

Authorized Representative (Please Print) _____

Authorized Signature: _____

Date: _____

Subscribed and sworn to me this _____ day of _____

Notary Public Signature: _____

My commission expires: _____

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

Unless a greater preference is applicable and allowed by law, in accordance with Minn. Stat. §16C.16, subd. 6a, the state will award a 6% preference on state procurement to certified small businesses that are majority owned and operated by veterans.

Veteran-Owned Preference Requirements - See Minn. Stat. § 16C.19(d):

- 1) The business has been certified by the Office of Equity in Procurement as being a veteran-owned or service-disabled veteran-owned small business.

or

- 2) The principal place of business is in Minnesota AND the United States Department of Veterans Affairs verifies the business as being a veteran-owned or service-disabled veteran-owned small business under Public Law 109-461 and Code of Federal Regulations, title 38, part 74 (Supported by Documentation).

Statutory requirements and appropriate documentation must be met **by the solicitation response due date and time** to be awarded the veteran-owned preference.

Claim the Preference

By signing below, I confirm that:

My company is claiming the veteran-owned preference afforded by Minn. Stat. § 16C.16, subd. 6a. By making this claim, I verify that:

- The business has been certified by the Office of Equity in Procurement as being a veteran-owned or service-disabled veteran-owned small business.

or

- My company's principal place of business is in Minnesota **and** the United States Department of Veteran's Affairs verifies my company as being a veteran-owned or service-disabled veteran-owned small business (Supported by Attached Documentation)

Name of Company: _____ Date: _____

Authorized Signature: _____ Telephone: _____

Printed Name: _____ Title: _____

Attach documentation, sign, and return this form with your solicitation response to claim the veteran-owned preference.

STATE OF MINNESOTA RESIDENT VENDOR FORM

In accordance with Laws of Minnesota 2013, Chapter 142, Article 3, Section 16, amending Minn. Stat. § 16C.02, subd. 13, a "Resident Vendor" means a person, firm, or corporation that:

- (1) is authorized to conduct business in the state of Minnesota on the date a solicitation for a contract is first advertised or announced. It includes a foreign corporation duly authorized to engage in business in Minnesota;
 - (2) has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid or proposal for which any preference is sought;
 - (3) has a business address in the state; and
 - (4) has affirmatively claimed that status in the bid or proposal submission.
-

To receive recognition as a Minnesota Resident Vendor ("Resident Vendor"), your company must meet each element of the statutory definition above by the solicitation opening date and time. If you wish to affirmatively claim Resident Vendor status, you should do so by submitting this form with your bid or proposal.

Resident Vendor status may be considered for purposes of resolving tied low bids or the application of a reciprocal preference.

I HEREBY CERTIFY THAT THE COMPANY LISTED BELOW:

1. Is authorized to conduct business in the State of Minnesota on the date a solicitation for a contract is first advertised or announced. *(This includes a foreign corporation duly authorized to engage in business in Minnesota.)*
 Yes No (must check yes or no)
2. Has paid unemployment taxes or income taxes in the State of Minnesota during the 12 calendar months immediately preceding submission of the bid or proposal for which any preference is sought.
 Yes No (must check yes or no)
3. Has a business address in the State of Minnesota.
 Yes No (must check yes or no)
4. Agrees to submit documentation, if requested, as part of the bid or proposal process, to verify compliance with the above statutory requirements.
 Yes No (must check yes or no)

BY SIGNING BELOW, you are certifying your compliance with the requirements set forth herein and claiming Resident Vendor status in your bid or proposal submission.

Name of Company: _____ Date: _____
Authorized Signature: _____ Telephone: _____
Printed Name: _____ Title: _____

IF YOU ARE CLAIMING RESIDENT VENDOR STATUS, SIGN AND RETURN THIS FORM WITH YOUR BID OR PROPOSAL SUBMISSION.

If you take exception to any of the terms, conditions or language in the contract, you must indicate those exceptions in your response to the RFP; certain exceptions may result in your proposal being disqualified from further review and evaluation. Only those exceptions indicated in your response to the RFP will be available for discussion or negotiation.

Professional and Technical Services Contract

State of Minnesota

SWIFT Contract No.:

This Contract is between the State of Minnesota, acting through its _____ ("State")
and _____ ("Contractor").

Recitals

1. Under Minn. Stat. § 15.061 the State is empowered to engage such assistance as deemed necessary.
2. The State is in need of _____.
3. The Contractor represents that it is duly qualified and agrees to perform all services described in this Contract to the satisfaction of the State.

Contract

1. Term of Contract

- 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 Contract until this Contract 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.
- 1.3 **Survival of terms:** The following clauses survive the expiration or cancellation of this Contract: 8. Indemnification; 9. State audits; 10. Government data practices and intellectual property; 14. Publicity and endorsement; 15. Governing law, jurisdiction, and venue; and 16. Data disclosure.

2. Contractor's duties

The Contractor, who is not a State employee, will:

3. Time

The Contractor must comply with all the time requirements described in this Contract. In the performance of this Contract, time is of the essence.

4. Consideration and payment

4.1 **Consideration.** The State will pay for all services performed by the Contractor under this Contract as follows:

- (a) **Compensation.** The Contractor will be paid \$ _____.
- (b) **Travel expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of this Contract will not exceed \$ _____; provided that the Contractor will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Commissioner's Plan" established by the Commissioner of Minnesota Management and Budget which is incorporated in to this Contract by reference. The Contractor will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out-of-state travel. Minnesota will be considered the home state for determining whether travel is out of state.
- (c) **Total obligation.** The total obligation of the State for all compensation and reimbursements to the Contractor under this Contract will not exceed \$ _____.

4.2 Payment.

(a) *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:

(b) *Retainage.* Under Minn. Stat. § 16C.08, subd. 2(10), no more than 90 percent of the amount due under this Contract may be paid until the final product of this Contract has been reviewed by the State's agency head. The balance due will be paid when the State's agency head determines that the Contractor has satisfactorily fulfilled all the terms of this Contract.

(c) *Federal funds.* (Where applicable, if blank this section does not apply.) Payments under this Contract will be made from federal funds obtained by the State through _____. The Contractor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

5. Conditions of payment

All services provided by the Contractor under this Contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Secretary of State. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

6. Authorized Representative

The State's Authorized Representative is _____, or his/her successor, and has the responsibility to monitor the Contractor's performance and the authority to accept the services provided under this Contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Contractor's Authorized Representative is _____, or his/her successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the State.

7. Assignment, amendments, waiver, and contract complete

7.1 Assignment. The Contractor may neither assign nor transfer any rights or obligations under this Contract without the prior consent of the State and a fully executed assignment agreement, executed and approved by the same parties who executed and approved this Contract, or their successors in office.

7.2 Amendments. Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Contract, or their successors in office.

7.3 Waiver. If the State fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.

7.4 Contract complete. This Contract contains all negotiations and agreements between the State and the Contractor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

8. 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:

- a) Intentional, willful, or negligent acts or omissions; or
- b) Actions that give rise to strict liability; or
- c) Breach of contract or warranty.

The indemnification obligations of this section 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.

9. State audits

Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State and/or the State Auditor or Legislative

Auditor, as appropriate, for a minimum of six years from the end of this Contract.

10. Government data practices and intellectual property

10.1 Government data practices. The Contractor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. ch. 13, (or, if the State contracting party is part of the Judicial Branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. ch. 13, by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this clause, the Contractor must immediately notify and consult with the State's Authorized Representative as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

10.2 Intellectual property rights.

(a) *Intellectual property rights.* The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the works and documents created and paid for under this Contract. The "works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this Contract. "Works" includes documents. The "documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, in the performance of this Contract. The documents will be the exclusive property of the State and all such documents must be immediately returned to the State by the Contractor upon completion or cancellation of this Contract. To the extent possible, those works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Contractor assigns all right, title, and interest it may have in the works and the documents to the State. The Contractor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the works and documents.

(b) *Obligations*

- (1) **Notification.** Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of this Contract, the Contractor will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the State's Authorized Representative with complete information and/or disclosure thereon.
- (2) **Representation.** The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the works and documents are the sole property of the State, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the works and documents. The Contractor represents and warrants that the works and documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, the Contractor will indemnify, defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the works or documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor's or the State's opinion is likely to arise, the Contractor must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

11. Workers' compensation and other insurance

Contractor certifies that it is in compliance with all insurance requirements specified in the solicitation document relevant to this Contract. Contractor shall not commence work under the Contract until they have obtained all the

insurance specified in the solicitation document. Contractor shall maintain such insurance in force and effect throughout the term of the Contract.

Further, the Contractor certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Contractor's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the State's obligation or responsibility.

12. Debarment by State, its departments, commissions, agencies, or political subdivisions

Contractor certifies that neither it nor its principals is presently debarred or suspended by the State, or any of its departments, commissions, agencies, or political subdivisions. Contractor's certification is a material representation upon which the Contract award was based. Contractor shall provide immediate written notice to the State's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

13. Certification regarding debarment, suspension, ineligibility, and voluntary exclusion

Federal money will be used or may potentially be used to pay for all or part of the work under the Contract, therefore Contractor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. Contractor's certification is a material representation upon which the Contract award was based.

14. Publicity and endorsement

14.1 Publicity. Any publicity regarding the subject matter of this Contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative.

For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

14.2 Endorsement. The Contractor must not claim that the State endorses its products or services.

15. Governing law, jurisdiction, and venue

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

16. Data disclosure

Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

17. Payment to subcontractors

(If applicable) As required by Minn. Stat. § 16A.1245, the prime Contractor must pay all subcontractors, less any retainage, within 10 calendar days of the prime Contractor's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

18. Termination

18.1 Termination by the State. The State or Commissioner of Administration may cancel this Contract at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

18.2 Termination for insufficient funding. The State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Contractor. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be

assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding within a reasonable time of the State's receiving that notice.

19. Non-discrimination (In accordance with Minn. Stat. § 181.59)

The Contractor will comply with the provisions of Minn. Stat. § 181.59 which require:

“Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees:

- (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;*
- (2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;*
- (3) that a violation of this section is a misdemeanor; and*
- (4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.”*

20. Affirmative action requirements for contracts in excess of \$100,000 and if 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.

20.1 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 principal place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 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.

20.2 Minn. R. 5000.3400-5000.3600.

- (a) General.* Minn. R. 5000.3400-5000.3600 implements 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. 5000.3400-5000.3600 including, but not limited to, Minn. R. 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 Minn. Stat. § 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. 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 Minn. Stat. § 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. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

21. E-Verify certification (In accordance with Minn. Stat. § 16C.075)

For services valued in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of the State. Contractor is responsible for collecting all subcontractor certifications and may do so utilizing the *E-Verify Subcontractor Certification Form* available at <http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

22. Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053)

The following term applies to any contract for which the value, including all extensions, is \$50,000 or more: Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

23. Subcontractor Reporting

If the total value of this contract may exceed \$500,000, including all extension options, Contractor must track and report, on a quarterly basis, the amount spent with diverse small businesses. When this applies, Contractor will be provided free access to a portal for this purpose, and the requirement will continue as long as the contract is in effect.

[Signatures as required by the State.]