

REQUEST FOR PROPOSALS (RFP)

Minnesota Department of Commerce

Project Overview

The Department of Commerce (“Department”) requests proposals to develop methodological options to build a quality rating system and an enrollee satisfaction survey system for insurers and qualified health plans (QHPs).

Background

Under the Federal Patient Protection and Affordable Care Act (ACA) enacted in March of 2010 (Public Law 111- 148 and 111-152), new mechanisms for comparing and obtaining health care coverage are created called Health Benefit Exchanges (“Exchange”). Exchanges must be operational in each State by January 1, 2014. By January 1, 2013, a State must have taken the necessary steps to have an Exchange operational by January 1, 2014 or the U.S. Department of Health and Human Services (HHS) will establish one on a State’s behalf. An Exchange is an organized competitive marketplace to facilitate the comparison, choice, and purchase of health care coverage for individuals and employees of small businesses. Through an Exchange, individuals and employees will have access to comparable information on costs, benefits, health care providers, quality, and customer satisfaction for an array of coverage options, and they can use this information to choose and enroll in the health benefit plan that best fits their personal and family needs. Exchanges will also assist eligible individuals and small businesses to receive premium tax credits and cost-sharing reductions or help individuals enroll in Federal or State health care programs. By engaging consumers in a one-stop shopping experience with transparent information, Exchanges will make purchasing health insurance easier and more understandable, put more control and choice in the hands of individuals and employees of small businesses, and incent greater market competition.

Consistent with the requirements of the Federal Patient Protection and Affordable Care Act (ACA) enacted in March 2010, Exchanges are required to implement a quality rating system¹ and an enrollee satisfaction survey system² for insurers and QHPs. The quality rating system must take into account both quality and cost. This quality rating system is meant to be a key mechanism for promoting transparency, value, and competition among insurers offering QHPs in an Exchange. Insurers offering QHPs will be required to submit data to be used as part of an Exchange’s quality rating system and Exchanges are required to publish quality rating system results on the Exchange website. Minnesota intends to make this information prominently available as part of a consumer’s Exchange comparison and shopping experience.

Potential vendors should note the following:

- Insurer and QHP-level information: The ACA requires quality rating systems to be developed for QHPs. Some measures are evaluated, however, across an entire insurance company rather than for the specific products that company may sell. Other measures may be calculated at either an insurer or QHP level, depending on whether specific QHPs have sufficient enrollment to facilitate QHP level data. Methodological development will need to account for those measures that may only be calculated at an insurer level and under what circumstances measures may be calculated for specific QHPs. HHS has not yet promulgated rules related to the quality rating system or enrollee satisfaction survey system. HHS has indicated that states will be permitted to build on a yet-to-be developed federal set of minimum standards and apply for federal approval of a state methodology.

¹ Section 1311(c)(3) ACA

² Section 1311(c)(4) ACA

A final methodology developed under this contract will need to be consistent with final HHS regulations to the extent such regulations are published by the end of the contract.

- Evolving strategies for measuring and reporting on insurer quality: The Exchange has an interest in drawing on existing measures and data sources where possible, while also recognizing there may be gaps in existing measures related to high priority areas of interest. Because insurers will be offering QHPs for the first time in the October 2013 open enrollment period, it will not be possible for the Exchange to publish quality ratings or enrollee satisfaction information for the specific QHPs being offered on the Exchange as no consumers will have had experience with those QHPs to measure. Similarly, it will take some time for QHP-specific metrics to be reported as consumers will need to have some experience with the QHPs before it is possible to measure quality or enrollee satisfaction associated with those QHPs. The Exchange, however, has a strong interest in incorporating relevant insurer quality information to help inform consumers as they compare and choose plans in the initial years of the Exchange. It will therefore be necessary to develop a transitional strategy for measuring and reporting on quality by 1) determining what information about insurers based on comparable, pre-Exchange products may be reported during the 2013 open enrollment period; 2) determining what, if any QHP-level quality ratings may be reported during the 2014 or 2015 open enrollment periods based on early experience with QHPs offered on the Exchange; and 3) what strategies may be utilized during the 2016 open enrollment period and beyond to more comprehensively measure and report on QHP quality and enrollee satisfaction.
- Quality rating systems for QHPs and Medicaid plans: A Minnesota Exchange will also be the portal through which Medicaid eligibility is determined for the modified adjusted gross income (MAGI)-eligible populations and the mechanism by which MAGI-eligible populations will choose and enroll in a Medicaid plan. In the interests of promoting value and competition among plans serving Medicaid consumers, a quality rating system will also be developed for Medicaid plans.
- The Department has convened a Measurement and Reporting Work Group that will serve as the primary source of stakeholder input into the development of the health plan quality rating and enrollee satisfaction survey systems. Information about this work group can be found on the Department's website: <http://mn.gov/commerce/insurance/topics/medical/exchange/Technical-Work-Groups/measurement-reporting-grp>.

Goal

It is the goal of this project that Minnesota will develop and publish results from a health plan quality rating system and enrollee satisfaction survey system that provides meaningful information to consumers as they compare options and choose a QHP or Medicaid plan. This methodological development will take place in collaboration with key stakeholders represented on the Exchange's Measurement and Reporting Work Group, including insurers, state agencies, providers, consumers, employers, and market experts.

Tasks

Task One: Propose a draft set of criteria for Measurement and Reporting Work Group's consideration to use in prioritizing dimensions of quality and related measures for use in a quality rating system.

- A. Review Measurement and Reporting Work Group's existing set of broader principles, goals, and strategies. Use this document to inform proposed criteria.
- B. Review the proposed criteria with the Measurement and Reporting Work Group and modify based on the Work Group's input.

- C. Create a final document outlining criteria for prioritizing dimensions of quality and related measures to use in a health plan quality rating system.

Task Two: Establish an inventory of existing insurer quality measures and future required data reporting by carriers, including measures used by public and private purchasers and those developed by national organizations focused on insurer and health plan quality. The inventory must be accompanied by a narrative explanation of broad categories of similar types of measures or dimensions of quality. The Contractor must propose a draft outline for both the inventory and the narrative summary to the Department for approval.

- A. This inventory must include traditional quality measures, such as the Healthcare Effectiveness Data and Information Set (HEDIS) measures, state-based measures used by regulatory entities, measures used by national accreditation organizations, and include dimensions of cost that are useful for consumer evaluation and decision-making.
- B. This inventory should also consider new data reporting required under the ACA (such as transparency measures) as potential sources of data for a quality rating system.
- C. This inventory should note measures that are reported on both a voluntary and mandatory basis as well as the specific product types to which they apply.
- D. The narrative summary should provide an overview of the various dimensions of insurer and health plan quality that are measured, organized by categories of similar measures.
- E. Either the inventory or the narrative summary should include information on the extent to which measures have already been evaluated for consumer interest and understanding.

Task Three: Using agreed upon criteria developed under Task One and drawing on the inventory produced under Task Two, work with stakeholders to develop a proposed set of dimensions of quality and related measures to be used as part of a quality rating system as well as how they should be used in combination as part of a quality rating system. This methodological development should be informed by practical and policy-related considerations about how the information may be displayed on the Exchange website to help drive meaningful consumer-oriented information. The Contractor hired under this contract must consult with the contractor building the Exchange information technology infrastructure and Department staff to understand the context for public reporting of quality rating information and assist members of the Measurement and Reporting Work Group to do the same.

Consider and consult with stakeholders on a range of core methodological issues by preparing separate options memos describing each methodological issue noted below, options for addressing those issues, and advantages and disadvantages of the various options. The Contractor will also be required to present content of memos to the Department, its interagency partners, and the Measurement and Reporting Work Group. The Contractor must track and summarize work group input on methodological issues. The Contractor must also work with Department staff to finalize decisions about how to address the issues described below. (Vendors should propose additional methodological issues to be considered if they view such issues as essential or helpful in the development of a quality rating system.) This process should result in a written proposed quality rating system methodology (and various iterations of it over time), including the specific metrics to be used and specifically how they are incorporated into a methodology. Issues to be considered include but are not limited to the following:

- A. Identify dimensions of quality that should be included in a quality rating system. Identify existing measures related to desired dimensions of quality from the inventory produced under Task Two. Identify gaps in available measures to assess desired dimensions of quality as well as proposed strategies for addressing these gaps.
 - One specific high priority area to include is the extent to which carriers measure and effectively address and reduce racial, ethnic, and/or socioeconomic health disparities in their covered population. The Department has a strong interest in understanding whether there are existing

measures that assess disparities in treatment processes and outcomes and other dimensions of insurer quality among different racial, ethnic, and socioeconomic groups.

- B. Consistency in current availability of data across insurers and QHPs across the measures chosen and strategies for achieving greater consistency for data availability where necessary, as well as what it would entail to collect data for a measure if it is not currently available.
- C. Considerations about minimum numbers of enrollees needed for a measure to be included and reported as part of the quality rating system, including strategies for addressing small numbers issues.
- D. Considerations related to measures for which there may be small degrees of variation in performance between insurers or qualified health plans.
- E. Potential methodologies to construct a composite quality measure that summarizes data across a number of individual quality measures. As part of this subtask, consider any methodological issues related to the potential for consumers to reweight components of a composite quality measure to derive a composite quality rating based on their own preferences.
- F. Options for addressing evolution of QHPs over time and the challenges this poses for measuring and reporting on quality.
- G. Potential options for gathering and reporting on pre-Exchange insurer and product-level information during the 2013 open enrollment period.
- H. Strategies and a proposed timeline for moving to a more specific QHP-level quality rating system over time, with specific options for the 2014, 2015, and 2016 and beyond open enrollment periods.

Task Four: Test proposed measures and quality rating system with a consumer audience to assess consumer understanding of and interest in information for comparing products and insurers. Consumers recruited to participate in these testing sessions must include a diverse racial, ethnic, and socioeconomic population and be representative of all likely Exchange users, including Medicaid enrollees.

- A. Submit a draft testing plan to the Department outlining how the Contractor will conduct consumer testing, including the number of consumers to participate, recruitment methods for consumer participation, format and dates of sessions, and an interview guide, as well as other related materials.
- B. The Contractor must reserve and pay for the cost of facility space appropriate to conduct consumer testing. The facility must allow for external viewers to observe the sessions.
- C. The Contractor must recruit participants for the consumer testing process.
- D. The Contractor must conduct the consumer testing process based on structured formats and agreed upon interview guides.
- E. The Contractor must summarize consumer feedback in writing and submit those summaries and any related recommendations for methodological modifications to the Department. The Contractor must also present these written summaries to the Measurement and Reporting Work Group and potentially to the Exchange Advisory Task Force.

Task Five: Finalize the methodology for the quality rating system and its various iterations for four discrete open enrollment periods (2013, 2014, 2015, and 2016 and future open enrollment periods).

- A. Taking into account feedback from consumer testing under Task Four and input obtained from the Measurement and Reporting Work Group under Task Three, make modifications to the proposed quality rating system. Prepare a written document explaining the methodologies and its various iterations over time.
- B. Present the proposed methodology to the Measurement and Reporting Work Group and to the Exchange Advisory Task Force.
- C. Participate in ad hoc conference calls with HHS as needed to keep HHS informed about methodological development activities.

- D. To the extent that HHS proceeds with its rule-making activities during the term of this contract, review the rules and assess any aspect of the quality rating system methodology and its various iterations that may need to be modified to conform with federal requirements.
- E. Prepare draft documents that may be needed as part of the application to HHS for approval of a state-based quality rating system methodology.

Task Six: Using the finalized version of the QHP quality rating system as a base, create a variation of the rating system tailored to Medicaid plans. The Medicaid quality rating system should be aligned with the QHP quality rating system where possible, while also focusing on measures relevant to the Medicaid population and relevant considerations listed under Task Three.

- A. Develop familiarity with how Minnesota's Medicaid agency, the Department of Human Services (DHS), currently assesses quality of Medicaid plans.
- B. Prepare a written assessment of the extent to which the measures used in the QHP quality rating system are relevant and applicable to the Medicaid population.
- C. Propose written modifications to the QHP quality rating system that would facilitate the establishment of a meaningful Medicaid quality rating system.
- D. Work with staff from the Exchange and DHS to assess any issues in the proposed methodology.
- E. Present the proposed methodology to the Measurement and Reporting Work Group and to the Exchange Advisory Task Force and obtain member input.
- F. Prepare a written document summarizing the final Medicaid quality rating system and its various iterations for 2013, 2014, 2015 and 2016 and future open enrollment periods.

Task Seven: Provide guidance on how to operationalize the final quality rating system methodology.

- A. Explain the process by which data can be gathered for each measure included in the quality rating system.
- B. Explain the detailed steps needed to produce the quality rating system metrics to be reported on the Exchange website. This should also include components such as estimated timelines and other operational considerations.
- C. Estimate Exchange or contractor staffing, time commitment and costs associated with tasks required to produce the quality rating system methodology and its various iterations over time.

Task Eight: Identify options for assessing enrollee satisfaction and present options to Measurement and Reporting Work Group. To the extent that HHS identifies a specific tool to use for purposes of assessing enrollee satisfaction as part of its rule-making process and that rule-making process occurs in a timely way relative to the term of this contract, the scope of this task will be narrowed to the tool HHS requires states to use.

- A. Identify existing validated tools available for assessing enrollee satisfaction.
- B. Describe the extent to which the validated tools are used in the marketplace today and by whom.
- C. Describe the process by which the survey tools are administered.
- D. Describe the frequency with which survey tools are administered.
- E. Explain the costs of administering the various tools.
- F. Describe how data are consolidated, analyzed, and reported, including whether and how data are risk adjusted to reflect patient demographic and health status characteristics. This should include a description of any race, ethnicity, and language data elements that are included in the analysis and reporting of this data.

- G. Describe the extent to which the tool measures enrollee satisfaction at the insurer, product type, or specific plan levels and what considerations must be taken into account for reporting at any of these three levels.
- H. Track and summarize work group input.
- I. Include testing of survey tool output as part of consumer testing process required under Task Four.
- J. Work with Department staff to finalize decisions about the enrollee satisfaction survey system methodology.
- G. Produce a written document that summarizes key components of final enrollee satisfaction survey system, including what tool will be used, the process by which the tool is administered, the frequency with which the tool is administered, and how data will be consolidated and analyzed.
- H. Estimate potential Exchange or contractor staffing, time commitment, and costs associated with tasks required to implement the enrollee satisfaction survey system.

Task Nine: Provide project management.

- A. Contractor must proactively manage contract and make the Department aware of risks related to timely and successful completion of deliverables. Contractor must use a standard project management template reporting tool provided by the State.
- B. Contractor must participate in a regularly scheduled weekly call, produce meeting minutes from those weekly calls, and respond to inquiries and calls from the State promptly.
- C. Contractor will follow project management methodologies, establishing and meeting milestones.
- D. Contractor will identify in the proposal a Project Manager as a lead contract person to oversee the project; serve as a liaison with other contractor staff; and serve as a point of contact for the State's Contract Representative.
- E. Contractor will provide ad hoc progress reports, data, or information in writing as requested by the State.

Task Ten: General contract responsibilities.

- A. Key contractor staff must be readily accessible by telephone and email to consult with State staff as needed.
- B. Before conclusion of the contract and in the event that the contract is terminated and/or the contract is awarded to another contractor, Contractor must develop a transition plan for continued operations that shall assist the State in accomplishing the tasks described in this RFP.
- C. At the conclusion of the contract, Contractor must turn over to the State all materials, studies, reports and technical documentation developed for the project. All materials, studies, reports and technical documentation developed for this project are the property of the State.

The contractor will work closely with external stakeholders and staff from various state agencies. It is possible that the contractor will prepare outlines or rough drafts of certain products, which will be reviewed by external stakeholders and staff from various state agencies.

The contract will begin on the date stated in the contract or upon full execution of the contract, whichever is later, and will be completed by June 1, 2013.

The term of this contract is anticipated to run from September 4, 2012 to June 1, 2013.

Responders are encouraged to propose additional tasks or activities if they will substantially improve the results of the project. These items should be separated from the required items on the cost proposal.

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.

Prospective responders who have any questions regarding this request for proposal may contact:

Katie Burns, Exchange Plan Management and Quality Director
Minnesota Department of Commerce
85 7th Place East, Suite 120
St. Paul, MN 55101-2198

Katie.burns@state.mn.us

Telephone: 651.296.6588

Respondents should submit any questions in writing by July 17, 2012 at 4:00 pm Central Time. A conference call for interested parties is scheduled for July 18, 2012 at 2:00 pm Central Time. To participate in the conference, please call: 1-888-742-5095. To access the session, use conference code: 7015160512. 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.

Eligible Responders

Pursuant to section 1311 of the ACA, a health carrier or an entity that is treated under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 as a member of the same controlled group of corporations (or under common control with) as a health carrier is not eligible to carry out responsibilities or perform functions required of an Exchange.

Similarly, an entity with a significant proportion of its budget funded by carriers or governed by a board of directors with majority of members representing carriers is not eligible to respond to this request for proposals due to concerns about perceived and/or actual conflicts of interest.

Proposal Content

Responders must submit the following information in the following order:

[NOTE: Respondents have a 20-page limit across items 1-4 below. A page will be counted per side (10 double-sided pages equal 20 pages).]

1. Project Overview: A statement of the objectives, goals, and tasks to show or demonstrate the responder's view and understanding of the nature of the contract.
2. Project Description and Work Plan: A description of the deliverables to be provided by the responder along with a detailed work plan and timeline that identifies the major tasks to be accomplished and be used as a scheduling and managing tool, as well as the basis for invoicing. Each major Task (Tasks One through Ten) should be treated as a specific deliverable (though responders may also break each Task down into more specific deliverables for invoicing purposes).
3. Company Overview, Qualifications, and Experience: 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, work experience, and the proportion of their time to be dedicated to this project. This must include a description of how the respondent meets the criteria for an eligible respondent. References must be provided for three related projects.

4. Detailed Cost Estimate: [NOTE: See instructions below for submission of pricing information.] Identify the level of the Department's participation in the contract, as well as any other services to be provided by the department, and details of cost allowances for this participation. Costs should be broken out by major Tasks (Tasks One through Ten).
5. Required Forms: Submit the following forms:
 - A. Affidavit of Non Collusion
 - B. Certificate Regarding Lobbying (if proposal exceeds \$100,000, including extension options)
 - C. Affirmative Action Certification (if proposal exceeds \$100,000, including extension options)
 - D. Veterans Preference Form (if applicable)

Proposal Submission

All proposals must be sent to:

Minnesota Department of Commerce
Katie Burns, Exchange Plan Management and Quality Director
85 7th Place East, Suite 120
St. Paul, MN 55101-2198

All proposals must be received not later than Monday, August 6 at 4:00 p.m., Central Time, as indicated by a notation made by the Exchange Office Manager, Golden Rule Building, 85 7th Place East, Suite 120, St. Paul, MN.

Late proposals will not be considered. Fax and email responses will not be considered.

All costs incurred in responding to this RFP will be borne by the responder.

Submit ten copies of the proposal and one set of work samples. 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 firm.

Provide one copy of the cost proposal in a separately sealed envelope clearly marked on the outside "Cost Proposal" along with the firm's name. For purposes of completing the cost proposal, the state does not make regular payments based upon the passage of time, it only pays for services performed or work delivered after it is accomplished.

Proposals will be evaluated on "best value" as specified below. The cost proposal will not be opened by the review committee until after the qualifications points are awarded.

The department has estimated that the cost of this contract should not exceed \$300,000. Price will be a significant factor in the evaluation of proposals. This is a fixed price contract for all of the work described in Tasks One-Ten. The Department welcomes proposals from single organizations equipped to carry out all tasks or from a lead contractor with subcontractors. If an organization proposes to carry out tasks associated with this RFP with the assistance of subcontractors, those subcontractors must be specifically identified in the proposal.

Proposal Evaluation

All responses received by the deadline will be evaluated by representatives of various state agencies, including but not limited to the Department of Commerce. Proposals will first be reviewed for responsiveness to determine if the minimum requirements have been met. Proposals that fail to meet minimum 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 offers 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. Material compliance with “Proposal Content” section requirements as detailed on pages 7-8.

Proposal Evaluation [NOTE: Scored based on percentage or points as indicated.]

All responses received by the deadline will be evaluated by representatives of the Minnesota Department of Commerce and potentially by representatives of other state agencies and/or independent contractors working on behalf of the Department of Commerce. In some instances, an interview may be part of the evaluation process. Proposal materials will become public information following possible respondent selection and contract execution.

A 100-point scale will be used to create the final evaluation recommendation. The factors and weighting on which proposals will be judged are as follows:

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|----------------------------------------------------------------------|-----|
| 1. Expressed understanding of project objectives and challenges | 10% |
| 2. Extent to which description of deliverables achieve objectives | 30% |
| 3. Detailed work plan and timeline | 15% |
| 4. Qualifications and experience of personnel working on the project | 15% |
| 5. Detailed cost estimate | 30% |

General Requirements

Affidavit of Noncollusion

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 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 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 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.

Human Rights Requirements

For all contracts estimated to be in excess of \$100,000, responders are required to complete the attached Affirmative Action Data page 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."

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

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 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 – 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 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 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). **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 & Community Relations

Mail: The Freeman Building 625 Robert Street North, Saint Paul, MN 55155 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: compliance.mdhr@state.mn.us

**STATE OF MINNESOTA
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

My commission expires: _____

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 CVE Verified by the United States Department of Veterans Affairs' Center for Veterans Enterprise.

Name of Company: _____ Date: _____

Authorized Signature: _____ Telephone: _____

Printed Name: _____ Title: _____

IF YOU ARE CLAIMING THE VETERAN-OWNED PREFERENCE, SIGN AND RETURN THIS FORM WITH YOUR RESPONSE TO THE SOLICITATION.

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.

**STATE OF MINNESOTA
PROFESSIONAL AND TECHNICAL SERVICES CONTRACT**

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

Recitals

1. Under Minnesota Statute § 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 Minnesota Statutes Section 16C.05, subdivision 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" promulgated by the commissioner of Employee Relations, 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 Minnesota Statutes Section 16C.08, subdivision 5(b), no more than 90% 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 Title _____ CFDA number _____ of the _____ Act of _____. 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 Representatives**

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:

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 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 Minnesota Statute § 16C.05, subdivision 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, Minnesota Statute 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 Minnesota Statute § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minnesota Statute 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 the State, and consult with the agency 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*. 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." 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 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 Minnesota Statute § 176.181, subdivision 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 principles 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 Minnesota Statute § 270C.65, Subdivision 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 Minnesota Statute § 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 Minnesota Statute § 181.59

The vendor will comply with the provisions of Minnesota Statute § 181.59 which requires:

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 principle place of business, then the Contractor must comply with the requirements of Minnesota Statute § 363A.36 and Minnesota Rule Parts 5000.3400-5000.3600. A contractor covered by Minnesota Statute § 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 **Minnesota Statute § 363A.36.** Minnesota Statute § 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.

20.3 **Minnesota Rule 5000.3400-5000.3600.**

- (A) *General.* Minnesota Rule 5000.3400-5000.3600 implement Minnesota Statute § 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 Minnesota Rule 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 Minnesota Statute § 363A.36 and Minnesota Rule 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.

[Signatures as required by the State.]