



## Minnesota Department of Human Services **Behavioral Health Division**

# Request for Proposal for a Qualified Contractor to develop and administer a comprehensive utilization management program for the Minnesota Health Care Programs' Substance Use Disorder Reform demonstration project

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**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.mmd.admin.state.mn.us/mn02001.htm](http://www.mmd.admin.state.mn.us/mn02001.htm).

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## **RFP Summary**

Important Dates:

RFP Published: September 28, 2020

Responder's Conference N/A

Questions Due: October 13, 2020

Proposals Due: SWIFT EVENT END October 27, 2020

Anticipated Selection of Successful Responder(s) December 18, 2020

Anticipated Start of Contract: January 1, 2021

Anticipated End of Contract: December 31, 2022

Anticipated Extensions: One

Number of paper courtesy copies: One

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## I. Introduction

### A. Purpose of Request

The Minnesota Department of Human Services, through its **Behavioral Health Division** (State), is seeking Proposals from qualified Responders to develop and administer a comprehensive Utilization Management (UM) program for the Minnesota Health Care Programs' (MHCP) §1115 Substance Abuse Disorder (SUD) System Reform Federal Demonstration Project.

### B. Objective of this RFP

The objective of this RFP is to contract with a qualified Responder(s) to perform the tasks and services set forth in this RFP. The term of any resulting contract is anticipated to be for two years, from January 1, 2021 until December 31, 2022, with the option for one, one year extension.

The department has estimated that the cost of this contract should not exceed \$1,750,000. Price will be a factor in the evaluation of the Proposals. **The official response to this RFP must be submitted and received in SWIFT no later than the Event End Date and time as set forth in the SWIFT Event Details applicable to this RFP.** This RFP 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. All costs incurred in responding to this RFP will be borne by the Responder.

This RFP provides background information and describes the services desired by the State. It delineates the requirements for this procurement and specifies the contractual conditions required by the State. Although this RFP establishes the basis for Responder Proposals, the detailed obligations and additional measures of performance will be defined in the final negotiated contract.

### C. Background

The Medicaid program, enacted in 1965 under Title XIX of the Social Security Act, is a grant-in-aid to states, financed through joint federal and state funding and administered by each state according to an approved state plan and approved waivers. Under Medicaid, a state reimburses providers of medical care to individuals found eligible under Title XIX. At the federal level, the Department of Health and Human Services (HHS) is responsible for the implementation of the Act. The Centers for Medicare & Medicaid Services (CMS) oversees individual state participation in the program.

The Minnesota Department of Human Services (DHS or the Department) is responsible for administering federal- and state-funded health care programs for low-income and special needs populations. The Department serves over 1.2 million people through various health care programs. These programs include Medical Assistance (MA), which is Minnesota's name for the Medicaid program, MinnesotaCare, and other public healthcare programs. These programs together are referred to as the Minnesota Healthcare Programs (MHCP). Approximately 900,000 members are enrolled in managed care plans and approximately 300,000 receive their care through the fee for service program. This RFP pertains only to those members receiving SUD treatment services through the fee-for-service (FFS) program, primarily Medical Assistance.

In November 2017, the U.S. Department of Health and Human Services and the Center for Medicare & Medicaid Services (CMS) issued a letter to announce how CMS would like to work with states to improve access for Medicaid beneficiaries to high quality, clinically appropriate treatment for opioid use disorder (OUD) and other SUDs. Following this directive, and under the authority of section 1115(a) of the Social Security Act, Minnesota has been approved to implement a §1115 Substance Use Disorder (SUD) System Reform federal demonstration.

In 2019, Minnesota enacted legislation that directed DHS to reform the state's SUD treatment system to ensure that a full continuum of care is available for individuals with SUD. Part of the reform effort includes direct access to publically funded SUD treatment services. In the direct access model, providers conduct a comprehensive assessment to determine the intensity and duration for client placement in SUD treatment services. Minnesota will be operating a dual pathway to treatment through the use of the Rule 25 Assessment tool currently utilized by placing authorities and the direct access to treatment model with the use of a comprehensive assessment defined in Minnesota Statutes, section 245G.05 through June, 2022.

Direct access through comprehensive assessments will eventually eliminate the use of the Rule 25 Assessment tool currently used by placing authorities. Minnesota Statute 254A.03 subd. 3, requires the implementation of a utilization review process for publicly funded treatment placements to monitor and review the clinical appropriateness and timeliness of placements in treatment. Minnesota's seeks to expand the utilization management program to meet the requirements of its 1115 SUD System Reform demonstration by ensuring that the client's level of treatment meets medical necessity standards, including whether the service is appropriate for the member's condition taking into consideration such factors as client choice and willingness to change, the service intensity is supported by clinical data or rationale, and that the treatment duration is appropriate. All placement determinations made by providers participating in the demonstration will be conducted through the use of the comprehensive assessment and a modified assessment and placement table developed for the purposes of the demonstration and aligned with ASAM's six dimensions and the ASAM levels of care being implemented in the demonstration.

## **II. Scope of Work**

### **A. Overview**

The Minnesota Department of Human Services (DHS) is seeking to contract with a Quality Improvement Organization (QIO) or QIO-like entity as defined by Section 1152 of the Social Security Act. The Responder must be capable of designing and implementing a Substance Use Disorder (SUD) Utilization Management (UM) review as required by the Centers for Medicare & Medicaid (CMS) for Minnesota's 1115 Substance Use Disorder System Reform federal demonstration. UM reviews will help ensure that SUD treatment services for members are appropriate and reflect evidence-based clinical treatment guidelines. The UM review will help the state monitor a member's placement to necessary levels of care and appropriate treatment services at each level of care. The independent entity will also conduct initial investigations that align with Minnesota's fraud, waste and abuse rule as needed, however this is not the primary focus of the UM program.

The medical reviews will be for publicly funded SUD treatment services provided under the fee-for-service Medical Assistance (MA) program. The UM review will include residential, outpatient, and withdrawal management treatment services. RFP Respondents will be expected to deliver a utilization management review design that meets the requirements of Minnesota's demonstration project which ends June 30, 2024. The UM practices must also meet the utilization review requirements of Minnesota Statute 254A.03 subd. 3(b).

Minnesota is pursuing multiple approaches across its agencies, including the Minnesota's SUD System Reform Demonstration, to ensure people who need treatment get high quality, effective treatment as quickly as possible across the state. Minnesota's publically funded treatment system provides reimbursement for the following services:

- Hospital based inpatient treatment
- Residential treatment
- Residential Withdrawal Management
- Group and individual outpatient services
- Comprehensive Assessment
- Treatment Coordination
- Peer recovery supports
- Medication Assisted Therapy (MAT)

MHCP fee-for-service members were assessed for SUD services by county social service agencies or by the governing bodies of federally recognized tribes. The assessment was used to authorize the units of service, the payment rate, and the treatment setting.

The state intends to test a new way to strengthen its behavioral health care system by implementing the 1115 SUD System Reform demonstration for its SUD delivery system. The demonstration will test the impact of evidence-based patient referral arrangements and practices to improve health outcomes for members with substance use disorders. This demonstration is an important component of the state's larger reform effort to address the opioid crisis, transform the health care delivery system for Medicaid enrollees who need SUD treatment and services, and will help evaluate whether the state should invest in these evidence-based referral arrangements and incorporate the model requirements into state law. This demonstration will also build on reform efforts for a more integrated SUD delivery system that, over time, will lead to better health outcomes for individuals with substance use disorders, including those in need of the most intensive residential service settings.

Beginning in October 2020, people enrolled under fee-for-service MA seeking SUD services may receive an assessment from any qualified SUD provider and access appropriate treatment from any enrolled SUD treatment provider.

Under this demonstration, the state intends to evaluate if patient referral arrangements that are designed to provide Medicaid beneficiaries access to step-up and step-down levels of care, will improve health outcomes. The state's evaluation will help determine if increased integration with behavioral and primary health services also will improve health outcomes.

Consistent with guidance from the CMS regarding 1115 demonstrations, the levels of care will be aligned with the levels of care recommended by the American Society of Addiction Medicine (ASAM), also known as 'ASAM Criteria'<sup>1</sup> for treating addictive, substance-related, and co-occurring conditions. Participating SUD treatment providers will be required to assess and record a patient's treatment needs based on evidence-based assessment guidelines that are in alignment with ASAM's Six Dimensions of Multidimensional Assessment<sup>1</sup>. The Department will work with participating SUD providers to ensure that the assessment guidelines drafted by the state are implemented by providers appropriately. Current placement criteria used by Minnesota can be found in [Minnesota Administrative Rules 9530.6622](#) and the requirements for the comprehensive assessment and assessment summary can be found in Minnesota Statutes section 245G.05. To the extent possible, these existing rules and statutes were incorporated into the guidelines established for determining placements according the ASAM Criteria as required for Minnesota's 1115 SUD System Reform demonstration and can be found on Minnesota's 1115 SUD System Reform website [here](#).

Implementation of evidence-based, SUD-specific patient placement criteria is identified as a critical milestone that states are to address as part of the 1115 demonstration. To meet this milestone, states must ensure that the following criteria are met:

- Providers assess treatment needs based on the ASAM criteria<sup>1</sup> through the use of a SUD-specific multi-dimensional assessment tool that reflects evidence-based clinical treatment guidelines; and
- Utilization management approaches are implemented to ensure that (a) beneficiaries have access to SUD services at the appropriate level of care, (b) interventions are appropriate for the diagnosis and level of care, and (c) there is an independent process for reviewing placement in residential treatment settings.

All services under this contract shall be performed within the borders of the United States, except as may be otherwise required by the World Trade Organization Government Procurement Agreement of 1996<sup>2</sup>. This includes all storage and processing or information and work performed by subcontractors at all tiers.

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<sup>1</sup> Mee-Lee D, Shulman GD, Fishman MJ, Gastfriend DR, Miller, eds. The ASAM Criteria: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions. 3rd ed. Carson City, NV: The Change Companies; 2013. Copyright 2013 by the American Society of Addiction Medicine.

<sup>2</sup> The World Trade Organization Government Procurement Agreement of 1996 (WTO-GPA), signed by the United States and 27 other countries, is designed to open up as much business as possible to international competition. To that end, the member nations have agreed that they and their sub-central governments (states, provinces, prefectures, departments) will not discriminate against foreign products or suppliers of services when those products or services exceed an agreed upon threshold amount, which is currently \$558,000. In the case of this RFP, a contract would have to exceed the threshold amount (\$558,000) in order to be subject to the WTO-GPA requirement.



## B. Tasks/Deliverables

The selected Responder will monitor, review, and report on provider performance, in compliance with State and Federal standards, which include alignment with the American Society of Addiction Medicine (ASAM) standards, as established by CMS requirements under the federal waiver authority of Minnesota Statutes, 256B.0759. Proposals must describe how the responder will satisfy the requirements of Minnesota's §1115 Federal Demonstration Waiver project.

The Responders shall:

1. Develop and submit for State approval a work plan that is a comprehensive description of all activities to be performed under the Contract.
2. Develop and maintain an operational policies and procedures manual for the UM program, which must be approved by the State prior to implementation.
3. Employ an array of qualified professionals who will perform all concurrent and retrospective review functions, including medical necessity of treatment services determination, diagnosis validation, payment justification, and documentation of indicated service provision
  - Note: staff performing documentation reviews must be currently licensed to provide services as an Alcohol and Drug Counselor or other appropriate discipline, as identified by the service being reviewed. Medical personnel must be currently licensed to practice as a registered nurse or physician, and a mental health professional must be appropriately licensed to perform a mental health service review, as required by Minnesota Statutes.
4. Monitor client demographics, service codes, units of treatment, and duration of treatment services provided
5. Review provider staffing, records and provider interviews on-site, as necessary
6. Identify, validate, and monitor admissions to clinically-indicated levels of care
7. Identify appropriate diagnosis and referral to level of care indicated by treatment providers' comprehensive assessments and treatment plan reviews
8. Identify whether all ASAM-medically necessary services were provided at each level of care
9. Perform independent process for reviewing placement in residential levels of care
10. Perform review of residential providers' provision of onsite, or facilitation of access to off-site medication-assisted treatment services
11. Perform clinical propriety and timeliness of all services to publicly assisted individuals served under this project
12. Operate optimal type and frequency of utilization management reviews
13. Monitor utilization reviews according to federal parity requirements
14. Work with the State and all participating managed care organizations to align all payment sources' utilization management processes.
15. On a frequency to be mutually agreed upon between the parties, submit reports of reviewed claims and related findings to the State for oversight. The report will detail data as specified by the State, which may include, though is not limited to, the following:
  - The health care provider's name;
  - Provider NPI and/or any other numerical identifier when appropriate;
  - MHCP members names;
  - The MHCP numbers for the members;
  - The specific claim(s) reviewed (TCN Line Number);

- Dates of service;
  - The MHCP procedure codes or revenue codes (including respective modifiers);
  - The code definitions;
  - Amount submitted to MHCP;
  - Amount paid by MHCP;
  - Overpayment or underpayment amount determined through the review;
  - The reason for the overpayment or underpayment with supporting documentation, including citations to appropriate statutes, rules, or policy violations;
  - The warrant date of the claim; and
  - Provider appeals or requests for reconsideration.
16. If the Contractor identifies an overpayment, the Contractor will notify the State within ten (10) business days of identification of the overpayment. The Contractor shall include in its notification a list of claims it alleges to be overpaid, using the format identified above in item 15. If instructed by the Department, the Contractor shall prepare a Notice of Agency Action (NOAA), using current State letters as a format, in accordance with Minnesota Statute 256B.064 and Minnesota Rule 9505.2230 to seek recoupment of any identified overpayments from providers. The contractor will electronically submit a draft of the NOAA to the State Manager and/or his/her State authorized representative for review and approval.
  17. Immediately inform the State of any requests by providers for reconsideration or informal appeal of the NOAA findings that it receives from providers. The Contractor will be responsible for scheduling and attending any telephone conferences or meetings including peer-to-peer conferences, upon request by the provider or State, to discuss review findings. The Contractor will provide appropriate staff to defend the review findings.
  18. If a provider files a formal appeal of an NOAA, and the matter is scheduled for contested case hearing under Minnesota Statute 256B.064, subd. 2(e) or if a matter reviewed by the Contractor results in criminal charges against a provider, the Contractor will provide the necessary evidence and appropriate staff for testimony including, but not limited to, attendance at depositions and administrative, civil and criminal proceedings.
  19. Support the State throughout any investigation by the Office of Inspector General, the Office of Attorney General, the Office of the Legislative Auditor, or law enforcement.
  20. Support the State in any provider appeals including, but not limited to, provision of necessary evidence, appropriate staff for testimony, and attendance at depositions and administrative, civil, and criminal proceedings.
  21. Report on clinical outcomes aligned with CMS' goals and objectives for 1115 demonstrations to the State on a monthly and annual basis in a format approved by the State.
  22. All documentation will be preserved for at least 12 months following the date that the final report is submitted to the State, unless it results in an appeal or action by the STATE or the Medicaid Fraud Control Unit (MFCU) of the Office of Minnesota Attorney General. In such cases documentation must be maintained for 6 years from the conclusion of the action.
  23. Upon written request by the State, the Contractor will perform ad hoc post-payment medical necessity determinations.

### III. Proposal Format

Proposals must conform to all instructions, conditions, and requirements included in the RFP. Responders are expected to examine all documentation and other requirements. Failure to observe the terms and conditions in completion of the Proposal are at the Responder's risk and may, at the discretion of the State, result in disqualification of the Proposal for non-responsiveness. Acceptable Proposals must offer all services identified in Section II - *Scope of Work* and agree to the contract conditions specified throughout the RFP.

#### A. Required Proposal Contents

Responses to this RFP must consist of all of the following components (See following sections for more detail on each component). **The Trade Secret/Confidential Data Notification and Cost Proposal must be submitted in SWIFT as separately attached documents. If paper courtesy copies are provided, the cost proposal must be provided as a separate sealed document and any materials constituting TRADE SECRET must be clearly marked as such.**

- A. Table of Contents
- B. Technical Proposal Requirements
  - 1. Statement of Understanding
  - 2. Proposed Work Plan
  - 3. Relevant Responder Experience/Resumes of Lead Responder Staff
  - 4. Financial Stability and Professional Responsibility of Responder
  - 5. Accessibility and Voluntary Product/Service Accessibility Templates (VPAT) (if applicable)
- C. Innovative Concepts (*If Applicable*)
- D. Required Statements
  - 1. Responder Information and Declarations
  - 2. Exceptions to Terms and Conditions
  - 3. Affidavit of Noncollusion
  - 4. QIO/QIO-like Entity certification
- E. Potentially Applicable Forms
  - 1. Minnesota Workforce Certificate (Affirmative Action) (if proposal is over \$100,000)
  - 2. Equal Pay Certificate Form (if proposal is over \$500,000)
  - 3. Certification and Restriction on Lobbying (if proposal is over \$100,000)
  - 4. Veteran-Owned Preference Form
  - 5. Resident Vendor Form
  - 6. Preference to Targeted Group and Economically Disadvantaged Business and Individuals
- F. Cost Proposal

- G. *Appendix (If Applicable)*. Any additional information thought to be relevant, but not applicable to the prescribed format, may be included in the Appendix of your Proposal.

## B. Technical Proposal Requirements

The following will be considered minimum requirements of the Technical part of the Proposal. Emphasis should be on completeness and clarity of content.

1. **Statement of Understanding.** This component of the Proposal should demonstrate the Responder's understanding of the services requested in this RFP, the nature of the contract, and any problems anticipated in accomplishing the work. Specifically, the Proposal should demonstrate the Responder's familiarity with the project elements, a summary of its solution(s) to the problems presented and knowledge of the requested services and/or deliverables.
2. **Proposed Work Plan.** The Responder should provide a description of the deliverables to be provided along with a detailed work plan that identifies how the major tasks are to be accomplished. The work plan should provide sufficient information to be used as a scheduling and managing tool. The work plan should show the Responder's overall design of the project in response to achieving the deliverables as defined in this RFP. Responder should include proposed staffing for the project. Responder should include its risk assessment/management plan.

The proposal shall be aligned with ASAM criteria and level of care placements and include a description of the organization's current capacity and approach to:

1. Performing concurrent and retrospective medical review including determination of medical necessity, diagnosis validation, the appropriateness of payment, and determination of whether all medically necessary services were rendered;
2. Identifying whether beneficiaries have access to SUD treatment services at the appropriate level of care;
3. Identifying whether interventions are appropriate for the diagnosis and level of care indicated by an assessment;
4. Outlining an independent process for reviewing placements in residential treatment settings;
5. Monitoring and review the clinical appropriateness and timeliness of all publicly funded SUD treatment placements;
6. Outlining the type and frequency of utilization reviews that will be conducted;
7. Ensure that the amount of documentation requested and timeframes to provide the documentation do not negatively affect the provider's ability to serve members;
8. Ensuring the utilization management process will meet federal parity requirements;
9. Working with the state and all participating Managed Care Organizations to align utilization management practices across payer sources; and
10. Supporting the state in any provider appeals.

**3. Relevant Responder Experience, Resumes of Lead Responder Staff.**

To the extent possible, responses to the above criteria should incorporate previous experience with, or specific examples of, utilization management processes specific to SUD treatment services including Medication Assisted Treatment (MAT) services.

The Responder should demonstrate the length, depth, and applicability of prior experience in providing the requested services. This component of the Proposal must include previous experiences that will demonstrate the Responder's ability to deliver the services requested in this RFP. Responder may identify entities for which it has supplied similar services to those requested in the RFP, if any. If such organizations are identified, Responder should include each identified organization's name and address, and the name, title and telephone number of a contact of each organization. Responder should also provide a narrative description of the actual services provided to the organization(s). Describe what role, if any, staff proposed for this project had in the referenced service. Letters of reference may be included.

The Responder should also demonstrate the skill and experience of proposed lead staff. At a minimum, resumes must be provided for employees who would be assigned lead responsibilities on this Project. Resumes should describe the education, professional affiliations, and other relevant background of the lead staff to be assigned to this project. No change in the Successful Responder's personnel assigned to this project will be permitted without the prior approval of the State Program Manager.

**4. Financial Stability and Professional Responsibility of the Responder.** It is crucial that the State locate reliable vendors to serve our clients. The Successful Responder must be both fiscally and professionally responsible. Therefore, Responders must include in their Proposals both sufficient financial documentation to establish their financial stability and satisfactory information regarding their professional responsibility.

Financial information may include a current Financial Statement, a copy of an independent audit conducted within the last year, documentations of cash reserves to carry you through shortages or delays in receipt of revenue, and/or other documents sufficient to substantiate responsible fiscal management. In the event a Responder is either substantially or wholly owned by another corporate entity, the Proposal must also include the most recent detailed financial report of the parent organization, and a written guarantee by the parent organization that it will unconditionally guarantee performance by the Responder in each and every term, covenant, and condition of such contract as may be executed by the parties. Please also include information about any pending major accusations that could affect your financial stability.

Professional responsibility information includes providing information concerning any complaints filed with or by professional and/or state or federal licensing/regulatory organizations within the past six years against your organization or its employees relating to the provision of services. If such complaints exist, please include the date of the complaint(s), the nature of the complaint(s), and the resolution/status of the complaint(s), including any disciplinary actions taken.

All Proposals must also include information about pending litigation and/or litigation resolved within the past two years that relates to the provision of services by your organization and/or its employees. If such litigation exists, please include the date of the lawsuit, nature of the lawsuit, and the dollar amount being requested as damages, and if resolved, what the resolution was (e.g. settled, dismissed, withdrawn by plaintiff, verdict for plaintiff with \$x damages awarded, verdict for Responder, etc.).

Responder should also submit information which demonstrates recognition of their professional responsibility. This may include awards, certifications, and/or professional memberships.

The information collected from these inquiries will be used in the State's determination of the award of the contract. It may be shared with other persons within DHS who may be involved in the decision-making process, and/or with other persons as authorized by law. You are not required to provide any of the above information. However, if you choose not to provide the requested information, your organization's Proposal may be found nonresponsive and given no further consideration. The State reserves the right to request any additional information to assure itself of a Responder's financial and professional status.

- 5. Accessibility and Voluntary Product/Service Accessibility Templates (VPAT).** The Responder should complete, in an accessible format, the Section 508 and WCAG 2.0 A and AA sections in a VPAT® 2.0 (or newer) for all software, hardware, and websites (the Responder's secure web-based Retro DUR platform) as proposed in response to the solicitation.

Vendors can use the VPAT form from the [ITIC VPAT site](#). (Under "Resources," select the "508" option, as it contains both 508 and WCAG 2.0 forms.) For systems with multiple interfaces (such as an admin and user interface), complete a VPAT for each interface. These documents may be scored according to the solicitation evaluation. Responders are encouraged to reference the "Vendor VPAT Guidance" in the "Products" tab on the Accessible IT Procurement page (<http://mn.gov/mnit/programs/accessibility/it-procurement.jsp>) for information and instructions on completing the VPATs. Respondents should also review the related guidance documents on the same site for solicitation reviewers to understand expectations. The responder is strongly encouraged to provide remarks and explanation that both support compliance and detail any deficiencies, as even if you claim "supports" unless there are remarks and explanations, you may score low.

## C. Required Statements

The following are required statements that must be included with your Proposal. Complete the correlating forms found in the RFP Appendix and submit them as the "Required Statements" section of your Proposal.

- 1. Responder Information and Declarations (Appendix A).** Complete and submit the attached "*Responder Information and Declarations*" form. If you are required to submit additional information as a result of the declarations, include the additional information as part of this form. The Responder may fail the Required Statements Review in the event that the Responder does not affirmatively warrant to any of the warranties in the Responder

Information and Declarations. Additionally, the State reserves the right to fail a Responder in the event the Responder does not make a necessary disclosure in the Responder Information and Declarations, or makes a disclosure which evidences a conflict of interest.

2. **Exceptions to RFP and Sample Contract Terms (Appendix B).** The contents of this RFP and the Proposal(s) of the Successful Responder(s) may become part of the final contract if a contract is awarded. Each Responder's Proposal must include a statement of acceptance of all terms and conditions stated within this RFP or provide a detailed statement of exception for each item excepted by the Responder. Responders who object to any condition of this RFP must note the objection on the attached "Exceptions to RFP Terms" form. If a Responder has no objections to any terms or conditions, the Responder should write "None" on the form.

Responder should be aware of the State's standard contract terms and conditions in preparing its response. A sample State of Minnesota, Department of Human 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. Only those exceptions indicated in your response to the RFP will be available for discussion or negotiation.

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

3. **Affidavit of Noncollusion (Appendix C).** Each Responder must complete and submit the attached "Affidavit of Noncollusion" form. A proposal will fail this component if an Affidavit of Noncollusion is not submitted.
4. **QIO/QIO-like Entity Certification.**
  1. Responders currently certified as a QIO should submit a copy of the CMS certification letter.
  2. Responders currently certified as a "QIO-like Entity" should submit a copy of the most recent Statement of Work.
  3. Responders not currently certified as a QIO or a "QIO-like Entity" but anticipating certification by October 1, 2020 should submit documentation of the status of their application for certification.

## **D. Potentially Applicable Forms**

1. **Minnesota Workforce Certificate (Affirmative Action) (Appendix D).** 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."

2. **Equal Pay Certificate (Appendix E).** 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](mailto:compliance.MDHR@state.mn.us).
3. **Certification Regarding Lobbying (Appendix F).** Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore the Responder must complete and submit the attached "Certification Regarding Lobbying" form.
4. **Veteran-Owned Preference (Appendix G).** 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 Department of Administration/Materials Management Division 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.

5. **Resident Vendor Form (Appendix H).** In accordance with Laws of Minnesota 2013, Chapter 142, Article 3, Section 16, amending Minn. Stat. § 16C.02, subd. 13, eligible responders may claim resident vendor status. To do so, eligible resident vendors should complete and sign the Resident Vendor Status form in this solicitation. Only qualifying businesses that provide the required documentation, per the form, will be given the status. Resident vendor status may be considered for purposes of resolving tied low bids or the application of a reciprocal preference.
6. **Preference to Targeted Group and Economically Disadvantaged Business and Individuals.** In accordance with Minnesota Rules, part 1230.1810, subpart B and Minnesota Rules, part 1230.1830, certified Targeted Group Businesses and individuals submitting proposals as



prime contractors will receive a six percent preference in the evaluation of their proposal, and certified Economically Disadvantaged Businesses and individuals submitting proposals as prime contractors will receive a six percent preference in the evaluation of their proposal. Eligible TG businesses must be currently certified by the Materials Management Division prior to the solicitation opening date and time. In order to qualify for these preference points, a responder should submit a statement certifying its current MMD-certification as a TGED business. For information regarding certification, contact the Materials Management Helpline at 651.296.2600, or you may reach the Helpline by email [atmmdhelp.line@state.mn.us](mailto:atmmdhelp.line@state.mn.us). For TTY/TDD communications, contact the Helpline through the Minnesota Relay Services at 1.800.627.3529.

## E. Cost Proposal (Appendix I)

Responders must use the attached “Cost Proposal Sheet” form to submit their Cost Proposal. The Cost Proposal must be loaded and submitted in SWIFT as a **separate** document(s) from your technical response. If paper courtesy copies are provided, the cost proposal must be provided as a separate sealed document. Cost proposals will not reviewed by the evaluation team prior to the qualification scores being finalized. **Do not include any cost information in the Technical Requirements part of the Proposal.** The Technical and Cost Proposals must be open for acceptance until a contract is approved, the RFP is cancelled, or 180 days after the submission deadline for the RFP, whichever comes first.

The rate(s) identified in the Cost Proposal must reflect all costs, including but not limited to: mass mailings, fees, commissions, compensation, equipment and other charges by the Responder for the service and/or deliverable. For purposes of completing the Cost Proposal, Responder should know that the State does not make regular payments based solely upon the passage of time; it only pays for services performed or work delivered after it is accomplished. **The Cost Proposal must state the total rate requested for each year of the contract.** The contract will contain no cost-of-living adjustment provision.

## IV. RFP Process

### A. Responders’ Questions

Responders’ questions regarding this RFP must be submitted in **writing via e-mail prior to 4:00 p.m. Central Time on October 13, 2020.** All questions must be addressed to: [susan.spanhake@state.mn.us](mailto:susan.spanhake@state.mn.us)

Other personnel are **NOT** authorized to discuss this RFP with Responders before the proposal submission deadline. **Contact regarding this RFP with any State personnel not listed above could result in disqualification.** The State will not be held responsible for oral responses to Responders.

Questions will be addressed in writing and distributed to all identified prospective Responders. Every attempt will be made to provide answers timely, with the intent that they are sent no later than October 13, 2020 via an addendum to the RFP in SWIFT.

## C. Proposal Submission

### 1. Official Responses

All responses to this RFP (termed an “Event” within SWIFT) must be submitted through SWIFT using the Supplier portal (<http://supplier.swift.state.mn.us/>). Training and documentation on how to submit your response is available through the Supplier portal link above.

All responses to this RFP must be submitted and received in SWIFT no later than the Event End Date and time as set forth in the SWIFT Event Details applicable to this RFP.

Interested responders may begin preparing and entering their response into SWIFT as soon as they have downloaded the RFP. Electronic submissions to the State will be accepted beginning on the SWIFT Start Date for this RFP. Cost information must be loaded into the system as a separate document(s) from your technical response.

All proposals will be automatically time and date stamped internal to the SWIFT system when they are received. Proposals received after End Date above will not be considered. The State shall not be responsible for any errors or delays caused by technology-related issues, even if they are caused by the State.

**NOTE:** If you are reviewing this RFP in the SWIFT system or downloaded the RFP from the SWIFT system, you are likely already a registered vendor with the State. If you are reviewing this RFP in paper form, you may need to register as a vendor by going to <http://www.mmb.state.mn.us/vendorresources>. For new vendors, please note that approval of your registration may take 3 – 4 business days. If you need assistance obtaining a vendor ID or completing the registration process, please call 651-201-8100, Option 1.

**Late proposals will not be considered.**

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

### 2. Paper Courtesy Copies

**Your official response must be submitted and received in SWIFT.**

To aid the State in reviewing and evaluating your proposal, we request that you submit the number of courtesy copies specified in the RFP Summary on page 3 to the following address via the US Postal Service as the buildings are not open:

Attention: Susan Spanhake  
Behavioral Health Division  
Department of Human Services  
444 Lafayette Rd. N.  
St. Paul, MN 55155  
Phone (651) 431-3495

Provided courtesy copies must be content identical to the official response but may include binders, tabbed dividers or other indexing or organizational aids helpful in the review of the proposal. The Cost Proposal must be sealed and in a separate envelope or container within the Proposal package or container. Please make sure that no cost information is included with the Technical Proposal.

Faxed and e-mailed proposals will not be accepted or considered. Paper courtesy copies of proposals will not be considered as an official response to this RFP.

## **V. Proposal Evaluation and Selection**

### **A. Overview of Evaluation Methodology**

1. All responsive Proposals received by the deadline will be evaluated by the State. Proposals will be evaluated on “best value” as specified below, using a 1000 point scale (700 possible technical points and 300 possible cost points). The evaluation will be conducted in four phases:
  - a. Phase I Required Statements Review
  - b. Phase II Evaluation of Technical Proposal
  - c. Phase III Evaluation of Cost Proposals
  - d. Phase IV Selection of the Successful Responder
2. During the evaluation process, all information concerning the Proposals submitted, except identity of Responders, will remain non-public.
3. Nonselection of any Proposals will mean that either another Proposal(s) was determined to be more advantageous to the State or that the State exercised its right to reject any or all Proposals. At its discretion, the State may perform an appropriate cost and pricing analysis of a Responder's Proposal, including an audit of the reasonableness of any Proposal.

### **B. Evaluation Team**

1. An evaluation team will be selected to evaluate Responder Proposals.
2. State and professional staff, other than the evaluation team, may also assist in the evaluation process. This assistance could include, but is not limited to, the initial mandatory requirements review, contacting of references, or answering technical questions from evaluators.

### **C. Evaluation Phases**

At any time during the evaluation phases, the State may, at the State’s discretion, contact Responders to: (1) provide further or missing information or clarification of their Proposal, (2) provide an oral presentation of their Proposal, or (3) obtain the opportunity to interview the proposed key personnel. Reference checks may also be made at this time. However, there is no guarantee that the State will look for information or clarification outside of the submitted written

Proposal. Therefore, it is important that the Responder ensure that all sections of the Proposal have been completed to avoid the possibility of failing an evaluation phase or having their score reduced for lack of information.

**1. Phase I – Required Statements Review**

The Required Statements will be evaluated on a pass or fail basis. Responders must "pass" each of the requirements identified in these sections to move to Phase II. The Required Statements will also be reviewed for submission by the Responder of the optional Preference to Targeted Group and Economically Disadvantaged Business and Individuals or the Veteran-Owned Preference Form. If proper proof of these certifications are submitted, the eligible preference points will be awarded to the Responder at this time.

**2. Phase II - Evaluation of Technical Proposals**

- a. Points have been assigned to the non-cost component areas. The total possible points for the non-cost component areas are as follows:

<b>Technical Proposal Component</b>	<b>Possible Points</b>
1. Statement of Understanding	250
2. Proposed Workplan	250
3. Relevant Responder/Worker Experience	100
4. Financial Stability and Professional Responsibility	50
5. Accessibility and Voluntary Product/Service Accessibility Templates (VPAT)	50

- b. The evaluation team will review the components of each responsive Proposal submitted. Each component will be evaluated on the team’s evaluation of the Responder's understanding and the quality and completeness of the Responder's approach and solution to the problems or issues presented.
- c. After reviewing the Proposals, the members of the evaluation team will rate each Proposal component according to the following scale:

<b>Technical Proposal Component Rating</b>	<b>Point Factor</b>
Excellent	1.000
Very Good	0.875
Good	0.750
Satisfactory	0.625
Poor	0.500
Unacceptable	0.000

Upon determining which of the above Ratings best describes the component being rated, the total possible points available for the component from paragraph a will be multiplied by the corresponding point factor.

EXAMPLE: A “very good” rating (0.875) of a Proposed Work Plan worth a maximum of 40 points would receive a score of 35 ( $40 \times 0.875 = 35$ ).

All component scores will then be added together to create a proposal’s total technical score.

### **3. Phase III - Evaluation of Cost Proposals**

- a. Prior to evaluation in Phase III, no Cost Proposal will be reviewed and all will remain sealed.
- b. Only the Proposals found to be responsive under Phases I and II will be considered in Phase III.
- c. Cost Proposals will be examined to determine if they are complete and in compliance with the requirements of this RFP. Non-responsive cost proposals will be rejected.
- d. Cost will be of significant importance in selecting a Responder(s) deemed qualified to provide all the requested services, but will not be the sole determining factor.
- e. Points for Cost Proposals will be awarded as follows:

Lowest cost will be determined by the Cost Proposal rate submitted by the Responder. The Proposal with the lowest cost will receive 100% of the available points. The other Proposals will receive points using the following formula:

$$\frac{\text{Lowest Proposal Rate} \times \text{Maximum Points (300)}}{\text{Rate of Other Proposal}} = \text{Points Awarded}$$

EXAMPLE (Using 300 points as maximum): If Responder A submitted the lowest rate of \$11,500, and Responder B submitted a rate of \$12,000, Responder A would receive 300 points and Responder B would receive 23.95 points ( $11,500 \div 12,000 \times 300 = 287.5$ )

- f. The State may request Responders to submit a “Best and Final” offer on price or technical requirements, or both. A Responder’s total technical or cost proposal score may be revised based on its Best and Final offer.

### **4. Phase IV - Selection of the Successful Responder(s)**

- a. Only the Proposals found to be responsive under Phases I, II, and III will be considered in Phase IV.

- b. The evaluation team will review the Proposal scores in making its recommendations of the Successful Responder(s). A Responder's total score will be the sum of the scores received for the Technical Proposal and the Cost Proposal, along with any points awarded for being a Targeted Group and Economically Disadvantaged Business and Individuals, an eligible veteran-owned businesses.
- c. The evaluation team will make its recommendation based on the above-described evaluation process. The Successful Responder(s), if any, will be selected approximately **8 weeks** after the Proposal submission due date.
- d. The final award decision will be made by the Commissioner of the Minnesota Department of Human Services or his or her authorized designee ("Commissioner") in accordance with Minnesota Statutes chapter 16C and any other applicable law. The Commissioner may accept the recommendation of the evaluation team or reject all proposals.

#### **D. Contract Negotiations and Unsuccessful Responder Notice**

If a Responder(s) is selected, the State will notify the Successful Responder(s) in writing of their selection and the State's desire to enter into contract negotiations. Until the State successfully completes negotiations with the selected Responder(s), all submitted Proposals remain eligible for selection by the State.

In the event contract negotiations are unsuccessful with the selected Responder(s), the evaluation team may recommend another Responder(s). The final award decision will be made by the Commissioner. Commissioner may accept the recommendation of the evaluation team or reject all proposals

After the State and chosen Responder(s) have successfully negotiated a contract, the State will notify the unsuccessful Responders in writing that their Proposals have not been accepted. All public information within Proposals will then be available for Responders to review, upon request.

### **VI. Required Terms and Conditions**

- A. Requirements.** All Responders must be willing to comply with all state and federal legal requirements regarding the performance of the Contract. The requirements are set forth throughout this RFP and are contained in the attached Draft Contract.
- B. Governing Law/Venue.** This RFP and any subsequent contract must be governed by the laws of the State of Minnesota. Any and all legal proceedings arising from this RFP or any resulting contract in which the State is made a party must be brought in the State of Minnesota, District Court of Ramsey County. The venue of any federal action or proceeding arising here in which the State is a party must be the United States District Court for the State of Minnesota.
- C. Travel.** 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 Minnesota Management and Budget. 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.

- D. Preparation Costs.** The State is not liable for any cost incurred by Responders in the preparation and production of a Proposal. Any work performed prior to the issuance of a fully executed contract will be done only to the extent the Responder voluntarily assumes risk of non-payment.
- E. Contingency Fees Prohibited.** Pursuant to Minn. Stat. §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.
- F. 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.

**G. Insurance Requirements.** 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. 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, section 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
- 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 (if applicable)**

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 Contractor discontinues such insurance, then extended reporting period coverage must be purchased to fulfill this requirement.

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.

**5. 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 Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance listed in VI.G.2.d. 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.
6. 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.
7. The successful responder is required to submit Certificates of Insurance acceptable to the State of Minnesota as evidence of insurance coverage requirements prior to commencing work under the contract.

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

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

7. be available for inspection upon request.

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

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

1. Provide evidence of a computerized criminal history systems background check (hereinafter CCH background check") performed by the contractor within the last 12 months for each of contractor's employee's working in State's Central Office. "CCH background check" is defined as a background check including a search of the computerized criminal history system of the Minnesota Department of Public Safety's Bureau of Criminal Apprehension.  
or
2. Fill out and submit an informed consent form for criminal background check provided by State for each of contractor's employee's working in State's Central Office. State will conduct a criminal background check using the computerized criminal history system of the Minnesota Department of Public Safety's Bureau of Criminal Apprehension.

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

- J. 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.

- K. 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.

- L. Nondisclosure of Confidential Information.**

1. Responders must not submit as part of their response trade secret material, as defined by Minn. Stat. § 13.37. In the event trade secret data are submitted, Responder must defend any action seeking release of data it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments awarded against the State in favor of the

party requesting the data, and any and all costs connected with that defense. The State reserves the right to request additional information as part of the evaluation process.

2. The State does not consider cost to be trade secret material, as defined by Minn. Stat. § 13.37.

## **VII. State's Authority**

1. The State may:
  - A. Reject any and all Proposals received in response to this RFP;
  - B. Disqualify any Responder whose conduct or Proposal fails to conform to the requirements of this RFP;
  - C. Have unlimited rights to duplicate all materials submitted for purposes of RFP evaluation, and duplicate all public information in response to data requests regarding the Proposal;
  - D. Select for contract or for negotiations a Proposal which best represents "best value" as defined in Minnesota Statutes, section 16C.02, subdivision 4 and in this RFP document;
  - E. At its sole discretion, reserve the right to waive any non-material deviations from the requirements and procedures of this RFP;
  - F. Extend the contract, in increments determined by the State, not to exceed a total contract term of five years; and
  - G. Cancel the Request for Proposal at any time and for any reason with no cost or penalty to the State.
  - H. Correct or amend the RFP at any time before proposals are due with no cost or penalty to the State.
  - I. The State will not be liable for any errors in the RFP or other responses related to the RFP.
  - J. Alter the composition of the evaluation team and their specific responsibilities in accordance with Minnesota Statutes chapter 16C and any applicable law.
2. if federal funds are used in funding a contract that results from this RFP, in accord with 45 C.F.R., sec. 92.34, for Works and Documents created and paid for under the contract, the U.S. Department of Health and Human Services will have a royalty free, non-exclusive, perpetual and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the Works or Documents created and paid for under a resulting contract for federal government purposes.

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APPENDICES TO FOLLOW

## **APPENDICES**

## Appendix A: Responder Information/Declarations Form

### Responder Information

Responder Name: \_\_\_\_\_

Website: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

### Contract Information

Contact Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Name(s) of individuals involved with the preparation of this proposal (to assist in determining potential conflict of interest): \_\_\_\_\_.

The above-named responder submits the attached proposal in response to the following Minnesota Department of Human Services Request for Proposals (state which RFP you are responding to):

\_\_\_\_\_

By submission of this proposal, responder warrants that:

1. The information provided is true, correct and reliable for purposes of evaluation for potential contract award. Responder understands that 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.
2. It is competent to provide all the services set forth in its Proposal.
3. Each person signing a section of this Proposal is authorized to make decisions as to the prices quoted and/or duties proposed and is legally authorized to bind the company to those decisions.
4. If it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals, Responder will provide, along with this form, a list containing the names of the entities, the relationship, and a discussion of the conflict.
5. 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. Responder agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing will be made to the Assistant Director of the Department of Administration's Materials Management Division ("MMD") which will include a description of the action which Responder 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.

6. No attempt has been made or will be made by Responder to induce any other person or firm to submit or not to submit a Proposal.
7. In connection with this procurement, the prices proposed have been arrived at independently, without consultation, communication, or agreement, for the purpose of restriction of competition, as to any other Responder or with any competitor; and that unless otherwise required by law, the prices quoted have not been knowingly disclosed by Responder prior to award, either directly or indirectly, to any other Responder or competitor.
8. The services and prices stated in this Proposal (both Technical and Cost Proposals) will remain open for acceptance by the State until a contract is awarded, the RFP is cancelled, or 180 days after the deadline for Proposal submission, whichever comes first.
9. Any proposed subcontractors will be identified in the RFP and the percentage of work under the contract to be performed by the prime contractor and each subcontractor will be indicated.
10. If there is a reasonable expectation that the Responder is or would be associated with any parent, affiliate, or subsidiary organization in order to supply any service, supplies or equipment to comply with the performance requirements under the resulting contract of the RFP, Responder must include with this form written authorization from the parent, affiliate, or subsidiary organization granting the right to examine directly, pertinent books, documents, papers, and records involving such transactions that are related to the resulting contract. This right will be given to the Minnesota Department of Human Services, U.S. Department of Health and Human Services, and Comptroller General of the United States.
11. If, at any time after a Proposal is submitted and a contract has been awarded, such an association arises as described in the paragraph above, Responder will obtain a similar certification and authorization from the parent, affiliate, or subsidiary organization within ten (10) working days after forming the relationship.

*By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of, and legally bind, the Responder.*

Authorized Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ Telephone Number: \_\_\_\_\_



## Appendix B: Exceptions to Terms and Conditions Form

A responder shall be presumed to be in agreement with the terms and conditions of the RFP unless the responder takes specific exception to one or more of the conditions on this form.

**RESPONDERS ARE CAUTIONED THAT BY TAKING ANY EXCEPTION THEY MAY BE MATERIALLY DEVIATING FROM THE RFP SPECIFICATIONS. IF A RESPONDER MATERIALLY DEVIATES FROM A RFP SPECIFICATION, ITS PROPOSAL MAY BE REJECTED.**

A material deviation is an exception to a specification which 1) affords the responder taking the exception a competitive advantage over other Responders, or 2) gives the State something significantly different than the State requested.

INSTRUCTIONS: Responders must explicitly list all exceptions to State terms and conditions (including those found in the attached sample contract in the Appendix, if any. Reference the actual number of the State's term and condition and page number for which an exception(s) is being taken. If no exceptions exist, state "NONE" specifically on the form below. Whether or not exceptions are taken, the responder must sign and date this form and submit it as part of their proposal. (Add additional pages if necessary.)

Responder Name: \_\_\_\_\_

Term and Condition Number/Provision	Explanation of Exception



## Appendix C: 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 Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

## Appendix D: STATE OF MINNESOTA – WORKFORCE CERTIFICATE INFORMATION

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

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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](mailto: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](mailto:compliance.mdhr@state.mn.us)

TTY: 651-296-1283

## Appendix E: 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](mailto: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](mailto: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.

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

## Appendix G: 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 Department of Administration/Materials Management Division 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).

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

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**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 Department of Administration/Materials Management Division 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.**



## Appendix H: 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.**

## Appendix I: Cost Proposal Sheet- Proposed Rate

This form must be completed and **submitted separately** as the sealed Cost Proposal for the entire Project. **Do not include this form in the appendix or elsewhere in the Technical Proposal.**

The Successful Responder will not receive any other compensation as a result of this RFP. Therefore, the Responder must consider **all** costs it will incur (including mass mailing costs, services, equipment, travel costs, fees, commissions, etc.) in determining the proposed rate(s). **The rate proposed by the Responder will be the full consideration paid for that specified period of time covered by the contract.** Any assumptions made regarding the impact of inflationary factors during the term of the agreement are the sole responsibility of the Responder. The contract will contain no cost-of-living adjustment provision.

This form must be signed by an individual authorized to legally bind the Responder. The title of the person signing and the date this form was signed must be entered. The cost Proposal must be open for acceptance until a contract is signed, the RFP is cancelled, or 180 days from the final submission date of the RFP, whichever is first.

**The Cost Proposal must state the total rate requested for each year of the contract.**

RFP responding to: \_\_\_\_\_

Company Name and Address: \_\_\_\_\_

Rate(s): \$ \_\_\_\_\_

**Attach a breakdown of costs that resulted in this rate.**

*By signing this Cost Proposal, I do hereby certify the Responder named above wishes to enter a price for the services requested by the Minnesota Department of Human Services in the correlating RFP. This cost or price data submitted with this Proposal is accurate, complete and current as of the following date. This cost or pricing data shall remain current and is open for acceptance by the State until a Contract is approved, the RFP is cancelled, or for a period of 180 days from the Proposal closing date, whichever comes first. If awarded a contract, the costs quoted above will remain in effect through the term of the contract, unless a change to the costs is mutually agreed to by the parties.*

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix J: Sample Professional Technical Services Contract

THIS CONTRACT, and amendments and supplements thereto, is between the State of Minnesota, acting through its Department of Human Services, Health Care Administration (the "STATE"), and \_\_\_\_\_, an independent contractor, not an employee of the State of Minnesota (the "CONTRACTOR").

Under Minnesota Statutes §§ 15.061 and 256.01, subd. 2, the STATE is empowered to enter into contracts to provide services and engage such assistance as deemed necessary to carry out its mission.

STATE is permitted to share information with CONTRACTOR in accordance with Minnesota Statutes, section 13.46.

The STATE is in need of the following services: \_\_\_\_\_.

The CONTRACTOR represents that it is duly qualified and agrees to perform all services described in this contract to the satisfaction of the STATE.

The parties therefore agree as follows:

### 1. Term of Contract.

- 1.1 **Effective date.** The effective date of this contract is (DATE), or the date that 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 CONTRACTOR has been notified by the STATE'S Authorized Representative to begin work.
- 1.2 **Expiration date.** The expiration date of this contract is (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, or termination of this contract: 7. Information Privacy and Security; 8. Intellectual Property Rights; 10. Indemnification; 12. Publicity and Endorsement; 14. Audit Requirements and Contractor Debarment Information; 15. Data Disclosure; and 19. Governing Law, Jurisdiction and Venue.

2. **Contractor's Duties.** CONTRACTOR, who is not a state employee, will:

3. **Time.** CONTRACTOR will perform its duties within the time limits established in this contract unless prior approval is obtained from STATE. In 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 as follows: \_\_\_\_\_.

(b) **Reimbursement.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by CONTRACTOR in performance of this contract in an amount not to exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_.00); provided, that CONTRACTOR will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than is provided in the current "Commissioner's Plan", promulgated by the Commissioner of Minnesota Management and Budget, which is incorporated by reference. CONTRACTOR will not be reimbursed for travel and subsistence expense incurred outside the State of

Minnesota unless it has received STATE'S prior written approval for such 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 CONTRACTOR will not exceed \_\_\_\_\_ dollars (\$\_\_\_\_.00).
- (d) **Withholding (If applicable).** For compensation payable under this contract, which is subject to withholding under state or federal law, appropriate amounts will be deducted and withheld by STATE as required.

**4.2 Payment.**

- (a) **Invoices.** The STATE will promptly pay the CONTRACTOR after the CONTRACTOR presents itemized invoices for services performed and the STATE'S authorized representative accepts the invoiced services. Invoices will be submitted timely, in a form prescribed by the STATE and according to \_\_\_\_\_
- (b) **Retainage.** Under Minnesota Statutes, section 16C.08, subdivision 2(10), no more than ninety percent (90%) of the compensation due under this contract may be paid until the final product(s) of the contract has been reviewed by the STATE and it has been determined that the CONTRACTOR has satisfactorily fulfilled all the terms of the contract. Accordingly, the STATE will withhold ten percent (10%) of the total obligation amount in the manner checked below.

\_\_\_\_ten percent (10%) of the total amount of each invoice submitted by CONTRACTOR for payment. The retained balance due will be paid when the STATE determines that the CONTRACTOR has satisfactorily fulfilled all the terms of this contract.

\_\_\_\_withholding payment on invoices at the beginning of the contract until the withheld amount equals ten percent (10%) of the total obligation amount. Once the withheld payments equal ten percent (10%) of the total obligation amount, future invoices related to this contract will be paid in full after the STATE'S Authorized Representative approves the work associated with each invoice. The retained balance due will be paid when the STATE determines that the CONTRACTOR has satisfactorily fulfilled all the terms of this contract.

\_\_\_\_invoice amounts presented that equate to ninety percent (90%) of the total obligation amount will be paid in full. Invoice amounts presented that equate to the remaining ten percent (10%) will be withheld and paid when the STATE determines that the CONTRACTOR has satisfactorily fulfilled all the terms of this contract.

- (c) **Federal funds.** (Where applicable. If blank or "N/A", this section does not apply.) Payments under this contract will be made from federal funds obtained by the STATE through Title \_\_\_\_\_, Catalog of Federal Domestic Assistance (CFDA) Number \_\_\_\_\_, federal award name and number \_\_\_\_\_ - \_\_\_\_\_ of the \_\_\_\_\_ Act of (year)\_\_\_\_\_(Public law and amendments thereto). The CONTRACTOR is responsible for compliance with all applicable federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by CONTRACTOR'S failure to comply with federal requirements. If at any time such funds become unavailable, this contract will be terminated immediately upon written notice of such fact by the STATE to the CONTRACTOR. In the event of such termination, CONTRACTOR will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

- 4.3 Payments 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) or any undisputed amount not paid on time to the subcontractor(s).
- 5. Conditions of Payment.** All services provided by CONTRACTOR under this contract must be performed to the STATE'S satisfaction, as determined by 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. CONTRACTOR will not receive payment for work found by the STATE to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation.
- 6. Authorized Representatives and Responsible Authority.**
- 6.1 State.** The STATE'S authorized representative is [insert Name, division or title and either e-mail address or phone number] or his/her successor, who 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.
- 6.2 Contractor.** The CONTRACTOR'S Authorized Representative is [insert Name, title and either e-mail address or phone number] or his/her successor. If the CONTRACTOR'S Authorized Representative changes at any time during this contract, the CONTRACTOR must immediately notify STATE.
- 6.3 Information Privacy and Security.** (If applicable) CONTRACTOR'S responsible authority for the purposes of complying with data privacy and security for this agreement is [insert Name, title and either e-mail address or phone number] or his/her successor.
- 7. [OPTION 1] Information Privacy and Security.**
- A. It is expressly agreed that STATE will not be disclosing or providing information protected under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, (the "Data Practices Act") as "not public data" on individuals to CONTRACTOR under this Contract. "Not public data" means any data that is classified as confidential, private, nonpublic or protected nonpublic by statute, federal law, or temporary classification. Minn. Stat. § 13.02, subd. 8a.
- B. It is expressly agreed that CONTRACTOR will not create, receive, maintain, or transmit "protected health information", as defined in the Health Insurance Portability Accountability Act ("HIPAA"), 45 C.F.R. 160.103, on behalf of STATE for a function or activity regulated by 45 C.F.R. 160 or 164. Accordingly, CONTRACTOR is not a "business associate" of STATE, as defined in HIPAA, 45 C.F.R. §160.103 as a result of, or in connection with, this Contract. Therefore, CONTRACTOR is not required to comply with the privacy provisions of HIPAA as a result of, or for purposes of, performing under this Contract. If CONTRACTOR has responsibilities to comply with the Data Practices Act or HIPAA for reasons other than this Contract, CONTRACTOR will be responsible for its own compliance.
- C. Notwithstanding paragraph A and B, in its capacity as CONTRACTOR under this Contract, CONTRACTOR must comply with the provisions of the Data Practices Act as though it were a governmental entity as defined by the Data Practices Act. CONTRACTOR will be performing functions of a government entity under Minn. Stat. § 13.05, subd. 11, and thus any data created, collected, received, stored, used, maintained or disseminated by CONTRACTOR in performing its

duties under this contract is subject to the protections of the Data Practices Act. The civil remedies of Minnesota Statutes, section 13.08 apply to the release of the data governed by the Data Practices Act, Minnesota Statutes, ch. 13, by either the CONTRACTOR or the STATE.

- D. In its capacity as CONTRACTOR under this contract, CONTRACTOR is being made an agent of the “welfare system” as defined in Minn. Stat. § 13.46, subd. 1, and any data collected, created, received, stored, used, maintained or disseminated by CONTRACTOR in performing its duties under this Contract is explicitly subject to the protections of Minn. Stat. § 13.46.
  - E. If the CONTRACTOR receives a request to release data created, collected, received, stored, used, maintained or disseminated by CONTRACTOR in performing its duties under this Contract, CONTRACTOR must immediately notify and consult with the STATE’s Authorized Representative as to how the CONTRACTOR should respond to the request.
  - F. Under this Contract, CONTRACTOR will be performing the functions of a government entity including, but are not limited to, responding appropriately pursuant to Minn. Stat. §§ 13.03 and 13.04 to requests for data created, collected, received, stored, used, maintained, or disseminated by CONTRACTOR in performing its duties under this Contract.
  - G. CONTRACTOR’s obligations while performing the functions of a government entity include, but are not limited to, complying with Minn. Stat. § 13.05, subd. 5, to establish appropriate security safeguards for all records containing data on individuals.
  - H. CONTRACTOR must comply with Minn. Stat. § 13.055 to investigate and appropriately report or notify regarding any potential unauthorized acquisition of data created, collected, received, stored, used, maintained, or disseminated by CONTRACTOR in performing its duties under this Contract.
7. **[OPTION 2] Information Privacy and Security.** Information privacy and security shall be governed by the “Data Sharing Agreement Terms and Conditions”, which is attached and incorporated into this Contract as Attachment X, except that the parties further agree to comply with any agreed-upon amendments to the Data Sharing Agreement.
7. **[OPTION 3] Information Privacy and Security.** Information privacy and security shall be governed by the “Data Sharing Agreement and Business Associate Agreement Terms and Conditions” which is attached and incorporated into this Contract as Attachment X, except that the parties further agree to comply with any agreed-upon amendments to the Data Sharing Agreement and Business Associate Agreement.
8. **Intellectual Property Rights.**
- 8.1 **Definitions.** *Works* means all inventions, improvements, discoveries (whether or not patentable or copyrightable), 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.
  - 8.2 **Ownership.** The STATE owns all rights, title, and interest in all of the intellectual property, including copyrights, patents, trade secrets, trademarks, and service marks in the *Works* and *Documents* created and paid for under this contract. The *Works* and *Documents* will be the exclusive property

of the STATE and all such Works and 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.” If using STATE data, CONTRACTOR must cite the data, or make clear by referencing that STATE is the source.

### **8.3 Obligations.**

- (a) Notification.** Whenever any Works or Documents (whether or not patentable) are made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, and are created and paid for under 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. The CONTRACTOR will assign all right, title, and interest it may have in the Works and the Documents to the STATE.
- (b) Filing and recording of ownership interests.** 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 created and paid for under this contract. The CONTRACTOR must perform all acts, and take all steps necessary to ensure that all intellectual property rights in these 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 these Works and Documents.
- (c) Duty not to Infringe on intellectual property rights of others.** The Contractor represents and warrants that the Works and Documents created and paid for under this contract do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 10, 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 these 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.
- (d) License Reserved for U.S. Department of Health and Human Services.** Because federal funds are used in funding this contract, in accord with 45 C.F.R., sec. 92.34, for Works and Documents created and paid for under this contract, the U.S. Department of Health and Human Services will have a royalty free, non-exclusive, perpetual and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the Works or Documents created and paid for under this contract for federal government purposes.

## **9. Workers’ Compensation and Other Insurance.**

- 9.1 Workers’ Compensation.** The CONTRACTOR certifies that, if applicable, it is in compliance with Minn. Stat. §176.181, subd. 2, pertaining to workers’ compensation insurance coverage. If CONTRACTOR is required to comply with the above statute, CONTRACTOR must provide STATE with evidence of compliance. The CONTRACTOR’S employees and agents will not be considered

employees of STATE. 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.

**9.2 Other Insurance.** Contractor certifies that it is in compliance with any insurance requirements specified in the solicitation document relevant to this Contract.

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

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

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

**11. Affirmative Action and Non-Discrimination**

**11.1 Affirmative Action requirements for Contractors with more than 40 full-time employees and contract in excess of \$100,000.** (If this contract, including all amendments, does not exceed \$100,000, this provision does not apply). If the Contract exceeds \$100,000 and the CONTRACTOR employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the CONTRACTOR must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

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

**11.3 Minn. R. parts 5000.3400-5000.3600.**

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

**11.4 Common or Skilled Labor.** In accordance with Minn. Stat. § 181.59, if this contract is for materials, supplies, or construction, CONTRACTOR agrees:

- (a) 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;

- (b) 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 (a) 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;
- (c) That a violation of this section is a misdemeanor; and
- (d) That this contract may be canceled or terminated, 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.

**12. Publicity and Endorsement.**

**12.1 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 or its employees individually or jointly with others or any subcontractors, with respect to the program, publications, or services provided resulting from this contract.

**12.3 Endorsement.** The CONTRACTOR must not claim that the STATE endorses its products or services.

**13. Voter Registration Requirement.** CONTRACTOR certifies that if it is a not-for-profit business or governmental agency it will comply with Minn. Stat. § 201.162 by providing voter registration services for CONTRACTOR'S employees and for the public served by the CONTRACTOR.

**14. Audit Requirements and Contractor Debarment Information.**

**14.1 State Audits.** Under Minn. Stat. §16C.05, subd. 5, the books, records, documents, and accounting procedures and practices of the CONTRACTOR and its employees, agents, or subcontractors relevant to this contract will be made available and subject to examination by the STATE, including the contracting Agency/Division, Legislative Auditor, and State Auditor for a minimum of six years from the end of this contract.

**14.2 Compliance with Single Audit Act.** All sub-recipients receiving \$500,000 or more of federal assistance in a fiscal year will obtain a financial and compliance audit made in accordance with the Single Audit Act, and Code of Federal Regulations, title 2, subtitle A, chapter II, part 200. CONTRACTOR certifies it will comply with the Single Audit Act, and Code of Federal Regulations, title 2, subtitle A, chapter II, part 200, if applicable. Failure to comply with these requirements could result in forfeiture of federal funds.

**14.3 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.

**14.4 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.

15. **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, to the STATE, to federal and state agencies and state personnel involved in the approval and 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. This contract will not be approved unless these numbers are provided.
16. **Prohibition on Weapons.** CONTRACTOR agrees to comply with all terms of the Department of Human Services' policy prohibiting carrying or possessing weapons wherever and whenever the CONTRACTOR is performing services within the scope of this contract. This policy, which is located at the business location of the STATE and is available to CONTRACTOR upon request, is incorporated by reference into this contract. Any violations of this policy by CONTRACTOR or CONTRACTOR'S employees may be grounds for immediate suspension or termination of the contract.
17. **Severability.** If any provision of this Contract is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Contract shall remain in full force and effect.
18. **Cancellation or Termination.**
  - 18.1 **Cancellation.** This contract may be canceled by the STATE or the Minnesota Commissioner of Administration at any time, with or without cause, upon thirty (30) days written notice to the CONTRACTOR. In the event of such a cancellation, CONTRACTOR will be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed.
  - 18.2 **Insufficient Funding.** Notwithstanding clause 18.1, 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 will 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.
  - 18.3 **Breach.** Notwithstanding clause 18.1, upon STATE's knowledge of a curable material breach of this Agreement by CONTRACTOR, STATE shall provide CONTRACTOR written notice of the breach and ten (10) days to cure the breach. If CONTRACTOR does not cure the breach within the time allowed, CONTRACTOR will be in default of this agreement and STATE may cancel the contract immediately thereafter. If CONTRACTOR has breached a material term of this Agreement and cure is not possible, STATE may immediately terminate this Agreement.
19. **Governing Law, Jurisdiction and Venue.** Minnesota law, without regard to its choice of law provisions, governs this contract, and amendments and supplements thereto. Venue for all legal proceedings arising out of this contract, or breach thereof, will be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**20. Assignment, Amendments, Waiver, and Contract Complete.**

- 20.1 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, approved by the same parties who executed and approved this contract, or their successors in office.
- 20.2 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.
- 20.3 Waiver.** If the STATE fails to enforce any provision of this contract, that failure does not waive the provision or STATE'S right to enforce it.
- 20.4 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.

**21. Other Provisions.**

**21.1 Criminal Background Check Required.**

- A. CONTRACTOR and CONTRACTOR's employees, agents, independent contractors, or subcontractors performing services under this Contract shall execute and submit an informed consent form allowing State to conduct a criminal background check using a computerized criminal history system operated by the Minnesota Department of Public Safety's Bureau of Criminal Apprehension ("CCH Background Check") before work can begin under this Contract.
- B. STATE will review the results of the CCH Background Check and evaluate any discovered conduct against potential disqualifying conduct or criminal offenses specified under Minnesota Statutes, section 245C.15.
- C. STATE may, in its discretion, immediately terminate this Contract in accordance with Section 18 upon STATE'S determination that the results of the CCH Background Check constitutes a disqualifying crime or conduct under Minnesota Statutes, section 245C.14 and section 245C.15.

**21.2 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.

**21.3 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 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.

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(Signature Page Follows)**

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed intending to be bound thereby.

APPROVED:

1. STATE ENCUMBRANCE VERIFICATION *Individual certifies that funds have been encumbered as required by Minnesota Statutes, chapter 16A and section 16C.05.*

By: \_\_\_\_\_

Date: \_\_\_\_\_

Grant No: \_\_\_\_\_

2. CONTRACTOR

*Contractor certifies that the appropriate person(s) have executed the contract on behalf of the CONTRACTOR as required by applicable articles, by-laws resolutions or ordinances.*

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

3. STATE AGENCY

By (with delegated authority): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

4. STATE AGENCY (if over \$100,000)

By: \_\_\_\_\_

Title: Assistant Commissioner

Date: \_\_\_\_\_

4. DEPARTMENT OF ADMINISTRATION

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Distribution (One fully executed original contract each):**

Dept. of Administration  
Contracting, Procurement & Legal Compliance  
Division  
Agency  
Contractor