

REQUEST FOR PROPOSALS

Minnesota Board of Firefighter Training and Education

Project Overview

The Board of Firefighter Training and Education (Board) requests proposals for an Executive Director who will provide professional and administrative services to the Minnesota Board of Fire Training and Education to assist the Board with the execution of their statutory responsibilities in Minn. Stat. 299N.02, subd 3.

Goal

The Board seeks an energetic and self-motivated individual to serve as the Executive Director and provide administrative support for the 15-member Board appointed by the Governor. The Board has a legislative mandate to review fire service training needs and make recommendations on training to Minnesota fire service organizations, establish educational program standards for the fire service, develop procedures for continuing oversight of the programs and establish qualifications for fire service training instructors in these programs.

The Board will provide leased office space and provide telecommunications connections and equipment in addition to office equipment and furnishings for the Executive Director's office. The contractor will secure its own clerical support position and should include a full benefit package for that position. The location for the office will be mutually agreed upon by the contractor and the Board, but should be located centrally in the state and within 40 miles of the intersection of Highway 23 & 15 in St. Cloud, Minnesota.

A minimum of 10 years experience in an executive-level management position with an emergency services agency, educational institute, or governmental agency is preferred.

Sample Tasks

- Develop implementation recommendation to the Board for fire training and education that includes the fire training task force findings, conclusions and recommendations in the Report on Firefighter Training To the 1998 Legislature in addition to evaluating existing fire service educational programs and propose new programs to the Board. Report is available at:
<http://www.dps.state.mn.us/fmarshal/FFTrainingBoard/1998FFTrngReportMNLegislature.pdf>
- Develop a work plan to identify tasks, goals and timelines.
- Plan, organize and manage the human resources of the Board including the development and implementation of policies; supervision and evaluation of staff; and hire and oversee the Board employees.
- Manage and oversee human resource and fiscal operations of the Board; develop and manage the budget; oversee day-to-day financial affairs of the Board, and secure additional grants approved by the Board.
- Provide input, analyze issues and make policy recommendations to the Board.
- Monitor the development of legislative initiatives, provide input to the Board for policy direction and manage Board legislative direction.
- Convey the Board's standards and requirements to the fire service clearly and consistently.
- Develop and maintain the Board's website.

The contract is anticipated to begin on April 1, 2008 or upon full execution of the contract, whichever is later, and the contract will be completed by June 30, 2009.

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

This request for proposal does not obligate the state to award a contract or complete the project, and the state reserves the right to cancel the solicitation if it is considered to be in its best interest.

Prospective responders who have any questions regarding this request for proposal should submit their questions in writing directly by e-mail or fax to the contact person listed below. Questions concerning this RFP should be received no later than 2:30 PM Central Standard Time on Tuesday, January 22, 2008. Questions received after this time may not receive responses. All answers to questions will be in writing and sent out by the end of the business on Thursday, January 24, 2008 to all respondents requesting a complete RFP.

Terrah Biegert
Willmar Fire Department
515 SW 2nd Street
Willmar, MN 56201

tbiegert@ci.willmar.mn.us

Telephone: 320-235-1354
FAX: 320-235-1607

Other personnel are **NOT** authorized to discuss this request for proposal with responders, before the proposal submission deadline. Contact regarding this RFP with any personnel not listed above could result in disqualification.

Proposal Content

The following will be considered minimum contents of the proposal:

1. A statement of the objectives, goals, and tasks to show or demonstrate the responder's view and understanding of the nature of the contract.
2. A description of the deliverables to be provided by the responder along with a detailed work plan that identifies the major tasks and goals to be accomplished and be used as a scheduling and managing tool, as well as the basis for invoicing.
3. An outline of the responder's background and experience with examples of similar work done by the responder and a list of personnel who will conduct the project, detailing their training and work experience. Responders' personal information should be withheld in this part of the proposal and provided in the sealed cost detail portion of the Proposal.
4. Cost detail. (See instructions below for submission of pricing information.). This information should be in a sealed envelope labeled "Cost Detail".

The Board will supply office space and provide telecommunications connections and equipment in addition to office equipment and furnishings as mutually agreed to.

5. Submit the Location of Service Disclosure Form, Affirmative Action Certification Form and Affidavit of Noncollusion Form.

All proposals must be in writing and sent to:

Terrah Biegert
Willmar Fire Department
515 SW 2nd Street
Willmar, MN 56201

All proposals must be received not later than 2:30 PM Central Standard Time on Friday, February 1, 2008 at the address shown above as indicated by a notation made by the Receptionist, 515 SW 2nd Street, Willmar, MN. Fax and e-mail responses will not be considered.

Late proposals will not be considered.

All costs incurred in responding to this RFP will be borne by the responder. Fax and e-mail responses will not be considered.

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

The following is a list of documents that must be submitted with your proposal:

1. Location of Service Disclosure Form
2. Affirmative Action Certification Form
3. Affidavit of Noncollusion

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

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

The Board has estimated that the cost of this contract should not exceed \$287,500 for the original fifteen months (April 1, 2008 through June 30, 2009) contract term and an additional \$225,000 for each of the next 2, one-year extension options. Price will be a factor in the evaluation of proposals.

Proposal Evaluation

All responses received by the deadline will be evaluated by representatives of the Minnesota Fire Training and Education Board. A 100-point scale will be used to create the final evaluation recommendation. The factors and weighting on which proposals will be judged are:

- | | |
|--|----|
| 1. Expressed understanding of and ability to meet project objectives | 20 |
| 2. Deliverables and work plan | 20 |
| 3. Qualifications/experience of personnel working on the project | 30 |
| 4. Project cost detail | 30 |

It is anticipated that the evaluations and interviews, if necessary, will be completed by Tuesday, February 19, 2008 and results will be sent immediately by mail to all respondents.

General Requirements

Affidavit of Noncollusion

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

Conflicts of Interest

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

Proposal Contents

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

Disposition of Responses

All materials submitted in response to this RFP will become property of the State and will become public record in accordance with Minnesota Statutes, section 13.591, after the evaluation process is completed. Pursuant to the statute, completion of the evaluation process occurs when the government entity has completed negotiating the contract with the selected vendor. If the Responder submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minn. Stat. § 13.37, the Responder must:

- clearly mark all trade secret materials in its response at the time the response is submitted,
- include a statement with its response justifying the trade secret designation for each item, and
- defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments or damages awarded against the State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the State's award of a contract. In submitting a response to this RFP, the Responder agrees that this indemnification survives as long as the trade secret materials are in possession of the State.

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

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

Contingency Fees Prohibited

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

Sample Contract

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

Reimbursements

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

Organizational Conflicts of Interest

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

contractor, and the terms “contract,” “contractor,” and “contracting officer” modified appropriately to preserve the State’s rights.

Preference to Targeted Group and Economically Disadvantaged Business and Individuals

In accordance with Minnesota Rules, part 1230.1810, subpart B and Minnesota Rules, part 1230.1830, certified Targeted Group Businesses and individuals submitting proposals as prime contractors shall receive the equivalent of a six percent preference in the evaluation of their proposal, and certified Economically Disadvantaged Businesses and individuals submitting proposals as prime contractors shall receive the equivalent of a six percent preference in the evaluation of their proposal. For information regarding certification, contact the Materials Management Helpline at 651.296.2600, or you may reach the Helpline by e-mail at mmd.help.line@state.mn.us. For TTY/TDD communications, contact the Helpline through the Minnesota Relay Services at 1.800.627.3529.

Foreign Outsourcing of Work Prohibited

All services under this contract shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision also applies to work performed by subcontractors at all tiers.

Human Rights Requirements

For all contracts estimated to be in excess of \$100,000, responders are required to complete the attached Affirmative Action Data page and return it with the response. As required by Minn. R. 5000.3600, “It is hereby agreed between the parties that Minn. Stat. § 363A.36 and Minn. R.5000.3400 - 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. A copy of Minn. Stat. § 363A.36 and Minn. R.5000.3400 - 5000.3600 are available upon request from the contracting agency.”

Insurance Requirements

- A. Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract..
- B. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

- 1. **Workers’ Compensation Insurance:** Except as provided below, Contractor must provide Workers’ Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers’ Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer’s Liability. Insurance **minimum** amounts 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 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.

- 2. **Commercial General Liability:** 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** amounts are as follows:

- \$1,000,000 – per occurrence
- \$2,000,000 – annual aggregate
- \$2,000,000 – annual aggregate – Products/Completed Operations

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage
Personal and Advertising Injury
Blanket Contractual Liability
Products and Completed Operations Liability
Other; please list _____
State of Minnesota named as an Additional Insured

3. **Commercial Automobile Liability:** Contractor is required to maintain insurance protecting the contractor 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 provide Commercial Automobile Liability. Insurance **minimum** amounts are as follows:

\$1,000,000 – 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
State of Minnesota named as an Additional Insured

C. Additional Insurance Conditions:

- Contractor’s policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of this contract;
- Contractor’s policy(ies) will provide the State of Minnesota with thirty (30) days advance notice of cancellation, nonrenewal, or reduction in limits of coverage or other material change;
- 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;
- Include legal defense fees in addition to its liability policy limits; and
- Obtain insurance policies from an insurance company having an “AM BEST” rating of A- (minus); Financial Size Category (FSC) VII or better and must be authorized to do business in the State of Minnesota.

D. The State reserves the right to immediately terminate the contract if the contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State’s authorized representative upon written request.

E. The successful responder is required to submit acceptable evidence of insurance coverage requirements prior to commencing work under the contract.

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

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

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

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

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

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

Organization Name

Name and Title of Official Signing for Organization

By: _____
Signature of Official

Date

State Of Minnesota – Affirmative Action Certification

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

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

Your response will be rejected unless your business:

has a current Certificate of Compliance issued by the Minnesota Department of Human Rights (MDHR)

–or–

has submitted an affirmative action plan to the MDHR, which the Department received prior to the date and time the responses are due.

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

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

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

BOX B – For those companies not described in BOX A

Check below.

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

BOX C – For all companies

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

Name of Company: _____ Date _____

Authorized Signature: _____ Telephone number: _____

Printed Name: _____ Title: _____

For assistance with this form, contact:

Minnesota Department of Human Rights, Compliance Services Section

Mail: 190 East 5th St., Suite 700 St. Paul, MN 55101

TC Metro: (651) 296-5663

Toll Free: 800-657-3704

Web: www.humanrights.state.mn.us

Fax: (651) 296-9042

TTY: (651) 296-1283

Email: employerinfo@therightsplace.net

**STATE OF MINNESOTA
AFFIDAVIT OF NONCOLLUSION**

I swear (or affirm) under the penalty of perjury:

1. That I am the Responder (if the Responder is an individual), a partner in the company (if the Responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Responder is a corporation);
2. That the attached proposal submitted in response to the _____ Request for Proposals has been arrived at by the Responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Responder of materials, supplies, equipment or services described in the Request for Proposal, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Responder's Firm Name: _____

Authorized Representative (Please Print) _____

Authorized Signature: _____

Date: _____

Subscribed and sworn to me this _____ day of _____

Notary Public

My commission expires: _____

**STATE OF MINNESOTA
LOCATION OF SERVICE DISCLOSURE AND CERTIFICATION**

LOCATION OF SERVICE DISCLOSURE

Check all that apply:

- The services to be performed under the anticipated contract as specified in our proposal will be performed ENTIRELY within the State of Minnesota.

- The services to be performed under the anticipated contract as specified in our proposal entail work ENTIRELY within another state within the United States.

- The services to be performed under the anticipated contract as specified in our proposal will be performed in part within Minnesota and in part within another state within the United States.

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

CERTIFICATION

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

Name of Company: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____ Telephone Number: _____

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

STATE OF MINNESOTA PROFESSIONAL AND TECHNICAL SERVICES CONTRACT

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

Recitals

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

Contract

1 Term of Contract

- 1.1 **Effective date:** _____, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.

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

- 1.2 **Expiration date:** _____, or until all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this contract: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; and 14. Data Disclosure.

2 Contractor's Duties

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

3 Time

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

4 Consideration and Payment

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

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

4.2. Payment

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

(B) **Retainage.** Under Minnesota Statutes Section 16C.08, subdivision 5(b), no more than 90% of the amount due under this contract may be paid until the final product of this contract has been reviewed by the State's agency head. The balance due will be paid when the State's agency head determines that the Contractor has satisfactorily fulfilled all the terms of this contract.

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

5 **Conditions of Payment**

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

6 **Authorized Representatives**

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

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

7 **Assignment, Amendments, Waiver, and Contract Complete**

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

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

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

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

8 **Liability**

The Contractor must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this contract by the Contractor or the Contractor's agents or employees. This clause will not be construed to bar any legal remedies the Contractor may have for the State's failure to fulfill its obligations under this contract.

9 **State Audits**

Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this contract are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this contract.

10 **Government Data Practices and Intellectual Property**

10.1. **Government Data Practices.** The Contractor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this Clause, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released.

10.2. ***Intellectual Property Rights.***

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

(B) *Obligations*

1. *Notification.* Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of this contract, the Contractor will immediately give the State’s Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon.

2. *Representation.* The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, the Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor’s expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor’s or the State’s opinion is likely to arise, the Contractor must, at the State’s discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

11 Workers’ Compensation and Other Insurance

Contractor certifies that it is in compliance with all insurance requirements specified in the solicitation document relevant to this contract.

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

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

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

13 **Governing Law, Jurisdiction, and Venue**

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

14 **Data Disclosure**

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

15 **Payment to Subcontractors**

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

16 **Minn. Stat. § 181.59**

The vendor will comply with the provisions of Minn. Stat. § 181.59 which requires: Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees: (1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color; (3) That a violation of this section is a misdemeanor; and (4) That this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

17 **Termination**

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

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

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

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

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

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

18.2 **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.

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

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

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

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

(2) The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(3) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(4) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

(5) The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minnesota Statutes Section 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

(C) **Consequences.** The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the State.

(D) **Certification.** The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

19 Foreign Outsourcing

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

[Signatures as required by the state.]