



Materials Management Division
112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
Fax: 651.297.3996

***STATE OF MINNESOTA
REQUEST FOR BID (RFB)
FOR A PRICE CONTRACT***

TITLE: EXCAVATORS

DUE DATE: JANUARY 29, 2010

TIME: 2:00 P.M., CENTRAL TIME

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
MATERIALS MANAGEMENT DIVISION
ROOM 112 ADMINISTRATION BUILDING
50 SHERBURNE AVENUE, ST. PAUL, MN 55155

REQUEST FOR BID (RFB) FOR A PRICE CONTRACT
*This RFB is issued for the purpose of establishing a contract
to supply the State with the commodity or service stated herein.*

Contact Person: Renee Allram, Acquisition Management Specialist (AMS)

Date: January 12, 2010

Phone: 651.201.2441

Fax: 651.297.3996

Due Date: **January 29, 2010, at 2:00 p.m. Central Time, USA.**

Sealed responses must be received in the Materials Management Division, at the address shown above, and date- and time-stamped in not later than the date and time stated above. All responses will be publicly opened and portions thereof read aloud at the above date and time, in accordance with Minn. Stat. § 13.591, Subd. 3 (2001). **LATE RESPONSES WILL NOT BE CONSIDERED.**

Entities that may utilize the Contract: **All State Agencies and Cooperative Purchasing Venture (CPV) Members**

Contract Period: The Contract term will begin on the date of Contract execution to January 31, 2011, or 12 months from the date of Contract award, whichever is later. There will be no extensions options available.

Commodity or Service: **Excavators**

All attached General RFB Terms and Conditions, Specifications, and Special Terms and Conditions are part of this RFB and will be incorporated into any Contract(s) entered into as a result of this RFB.

All responses to this RFB must be prepared as stated herein and properly signed. Address all correspondence and inquiries regarding this RFB to the Acquisition Management Specialist named above. This is a request for responses to an RFB and is not a purchase order.

DELIVERY AND PAYMENT TERMS: Delivery offered: _____ days After Receipt of Order.

Payment Terms (check one): ☐ Net 30; ☐ % 30; ☐ % 15; ☐ % 10 ☐ Other (specify): _____

Should its response be accepted by the State within 90 days from the due date, the undersigned responder agrees to furnish and deliver any or all items ordered by the entities in accordance with its response and the terms and conditions of this RFB. The responder agrees that the terms of its response will remain open until it is accepted or rejected by the State. If the response is accepted, it will become part of a legal and binding Contract between the responder and the State of Minnesota. The Contract will be in force upon full execution by the responder and the State.

Name of Vendor: _____ **Vendor E-Mail:** _____

Address: _____

Phone: _____ **Fax:** _____ **Date:** _____

Authorized Signature: _____

Typed name of signer: _____ **Title:** _____

Signer must be authorized to contractually obligate the vendor.

Type or print clearly the name of the person who prepared the response: _____

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

GENERAL TERMS AND CONDITIONS

1. **ESTIMATED AMOUNT.** If there is an estimated total dollar value of the Contract listed in the Special Terms and Conditions, this shall not be construed as either the minimum or maximum amount. It shall also be understood and accepted by the responder that any quantities shown in this RFB are estimated quantities only and impose no obligation upon the State either minimum or maximum.
2. **TIME OF SUBMISSION.** All sealed responses must be received by the Materials Management Division (MMD) by the due date and time. All responses will be time-stamped showing the date and time received. LATE RESPONSES WILL NOT BE CONSIDERED.
3. **ALTERATIONS OR ERASURES.** An alteration or erasure of any price contained in the response may be rejected unless the price figure is crossed out and the correction is initialed by the person signing the response. THIS INCLUDES, BUT IS NOT LIMITED TO, CORRECTION FLUID AND TYPEWRITER CORRECTION TAPE.
4. **AUTHORIZED SIGNATURE.** The response must be fully and properly executed by an officer or other authorized representative of the responder. If the responder is a corporation, a secretarial certificate or the corporate minutes showing that the signing officer has authority to contractually obligate the corporation should be furnished. Where the corporation has designated an attorney-in-fact, the power of attorney form should be furnished. If the responder is a partnership, a letter of authorization should be furnished signed by one of the general partners. A sole proprietor must sign the response. Proof of authority of the person signing the response must be furnished upon request.
5. **FACSIMILE OR E-MAIL RESPONSES.** Neither facsimile nor e-mail responses will be considered unless specifically authorized by the State in the RFB document.
6. **ACCEPTANCE OR REJECTION OF RESPONSES.** The State reserves the right to accept or reject any or all responses, or parts of responses, and waive any informalities.
7. **ADDENDA TO THE RFB.** Changes to the RFB will be made by written addendum. Any addenda issued will become part of the RFB. Each responder must follow the directions on the addendum. All requests for clarification must be directed to the contact person listed in the RFB.
8. **RESPONDER ERRORS.** Prior to the opening of sealed responses any responder may withdraw its response by notifying the MMD director in writing of the desire to withdraw, by appearing in person at MMD and withdrawing the response, or by telegraphic writing or facsimile received by the director, requesting withdrawal of the response.

Subsequent to the opening of sealed responses, a responder may withdraw a response only upon showing that an obvious error exists in the response. The showing and request for withdrawal must be made in writing to the director within a reasonable time after the opening of the response and prior to the State's detrimental reliance on the response.
9. **IDENTIFICATION OF OFFER.** Responses shall indicate brand name, trademark, catalog number, model, etc., as applicable, on the response form for the products offered. If products offered are other than specified, the response should include descriptive literature with illustrations.
10. **SPECIFICATIONS.** Responses will be held to strict compliance with the specifications. If a response deviates from the specifications, the deviation must be clearly noted and the State reserves the right to reject the response. All specifications are for new items unless otherwise noted in the RFB document. Alternate responses offering lower quality will not be considered. The State reserves the right to reject any or all responses that are not an approved equal.
11. **MATERIAL DEVIATION.** The responder shall be presumed to be in agreement with these terms and conditions unless it takes specific exception to one or more of the conditions. Submission by the responder of its proposed language shall not be viewed as an exception unless the responder specifically states in the response that its proposed changes are intended to supersede the State's terms and conditions.

RESPONDERS ARE CAUTIONED THAT BY TAKING ANY EXCEPTION THEY MAY BE MATERIALLY DEVIATING FROM THE REQUEST FOR BID. IF A RESPONDER MATERIALLY DEVIATES FROM THE GENERAL TERMS AND CONDITIONS, SPECIAL TERMS, CONDITIONS AND SPECIFICATIONS, ITS RESPONSE MAY BE REJECTED.

A material deviation is an exception to the RFB General or Special Terms and Conditions, and specifications that:

- a. Gives the responder taking the exception a competitive advantage over other responders, or
- b. Gives the State something significantly different from that which the State requested.

12. **SAMPLES.** Not applicable.

13. **DELIVERY.** The responder is to state the delivery time offered in the space provided on Page 1 of the RFB. When delivery time is an important factor, it will be stated in the Special Terms and Conditions, and may be a factor in the award. The State reserves the right to reject a lower-priced response that offers delayed or protracted delivery in favor of a higher-priced response offering a more timely delivery. Such responders are obligated to deliver within the quoted lead times. If delivery is not made within that time frame, the State reserves the right to purchase necessary quantities from alternate sources and charge any price premium to the Contract Vendor.

14. **PRICES.** Prices shall remain firm for the initial term of the Contract unless otherwise stated in the Special Terms and Conditions. A unit price and a total for the quantity must be stated for each item quoted. In case of an error in the total price, the unit price will prevail. Prices must be quoted in United States currency.

- a. **TRANSPORTATION.** All prices shall be FOB Destination, prepaid and allowed (with freight included in the price), to the ordering agency's receiving dock or warehouse unless otherwise stated in the Special Terms and Conditions. Price reductions must be passed on immediately to the State whenever they become effective. In those situations in which the "deliver-to" address has no receiving dock or agents, the Contract Vendor must be able to deliver to the person specified on the PO.
- b. **PRICE DECREASES.** During the life of the Contract, any or all temporary price reductions, promotional price offers, introductory pricing, or any other offers or promotions that provide prices lower than or discounts higher than those stated in the Contract, must be given immediately to the entities eligible to purchase from the Contract. Invoices for goods ordered or shipped or services performed during the decrease, or promotion, must immediately reflect such pricing.
- c. **PRICE INCREASES.** After the initial term of the Contract, a price increase may be allowed based upon a demonstrable industrywide or regional increase in the Contract Vendor's costs. Documentary evidence must be submitted prior to a proposed price increase. The amount of any increase is not to exceed 10 percent for any commodity/service over the life of the Contract. The exact amount of increase, if any, will be governed by the validity of the documentary evidence submitted. No price increase will be effective until approved by the Acquisition Management Specialist and set forth in a fully executed amendment to the Contract.

15. **TRADE DISCOUNTS.** Unless otherwise provided for by the RFB, trade discounts must be quoted as a single discount percentage.

16. **PAYMENT.** Minn. Stat. § 16A.124 requires payment within 30 days following receipt of an undisputed invoice, merchandise or service whichever is later. Terms requesting payment in less than 30 days will be changed to read "Net 30 days." The ordering entity is not required to pay the Contract Vendor for any goods and/or services provided without a written purchase order or other approved ordering document from the appropriate purchasing entity. In addition, all goods and/or services provided must meet all terms, conditions and specifications of the Contract and the ordering document and be accepted as satisfactory by the ordering entity before payment will be issued.

17. **CASH DISCOUNT TERMS.** Discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date of receipt of the invoice, receipt of shipment or date of acceptance, whichever is later. If testing is performed, however, then the date shall be the date of acceptance of the goods or services.

18. **CONDITION AND PACKING.** Packaging and packing, if not specifically stated in the RFB document or specifications, must conform to the best commercial practices and ensure delivery in good condition. Goods must be marked and packing slips included to permit checking shipments against purchase orders and invoices.

19. **PUBLICITY.** Any publicity given to the program, publications or services provided resulting from a State contract for goods or services, including but not limited to notices, informational pamphlets, press releases, research, reports, signs and similar public notices prepared by or for the Contract Vendor, or its employees individually or jointly with others, or any subcontractors, shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Contract prior to its approval by the Materials Management Division Acquisition Management Specialist and the Department of Administration Communications Office.

The Contract Vendor shall make no representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Contract without the prior written consent of the Department of Administration. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

20. **TAXES. DO NOT INCLUDE** sales tax in pricing. The State of Minnesota holds Direct Payment Permit 1114 and pays tax directly to the Department of Revenue unless otherwise stated in the Special Terms and Conditions.
21. **ACTING IN CASES OF DOUBTFUL RESPONSIBILITY.** If the Manager of Acquisitions, on the basis of available evidence, concludes that a particular vendor appears to be insufficiently responsible to ensure adequate performance, the response may be rejected.
22. **NONRESPONSIVE OFFERS.** Responses that do not comply with the RFB will be considered nonresponsive and will be rejected.
23. **COPYRIGHT.** The responder shall save and hold harmless the State of Minnesota, its officers, agents, servants and employees, from liability of any kind or nature, arising from the use of any copyrighted or noncopyrighted composition, secret process, patented or nonpatented invention, article or appliance furnished or used in the performance of the Contract.
24. **AWARD.** Unless otherwise provided for in the RFB, the award will be made to the lowest responsible vendor meeting the specifications and all terms and conditions. Unless otherwise stated in the Special Terms and Conditions, the State reserves the right to award items separately, by grouping items, by total lot or by issuing multiple awards to more than one responder. The State reserves the right to accept all or part of an offer, to reject all offers, to cancel the solicitation, or to re-issue the solicitation, whichever is in the best interest of the State.
- a. **LOW-TIED RESPONSES.** Low-tied responses will be referred to the director of MMD. The director or delegate may enter into negotiation with the low-tied responders when the director deems such action to be in the best interest of the State.
- b. **TG/ED PREFERENCE.** In accordance with Minn. Stat. § 16C.16, Subds. 6 and 7, eligible certified targeted group (TG) businesses will receive a 6 percent preference and certified economically disadvantaged (ED) businesses will receive a 6 percent preference, except for construction which will receive a 4 percent preference, on the basis of award for this RFB. The preference is applied only to the first \$500,000 of the response. Eligible TG businesses must be currently certified by the Materials Management Division prior to the solicitation opening date and time. To verify TG eligibility and certification or ED certification, refer to the MMD web site at www.mmd.admin.state.mn.us under "Vendor Information," or call the division's Helpline at 651.296.2600.
- c. **VETERAN-OWNED/SERVICE DISABLED VETERAN-OWNED PREFERENCE.** In accordance with Laws of Minnesota, 2009, Chapter 101, Article 2, Section 56, eligible certified veteran-owned and eligible certified service-disabled veteran-owned small businesses will receive a 6 percent preference on the basis of award for this RFB. The preference is applied only to the first \$500,000 of the response.

Eligible veteran-owned and eligible service-disabled veteran-owned small businesses should complete the Veteran-Owned/Service Disabled Veteran-Owned Preference Form in this solicitation, and include the required documentation. Only eligible, certified, veteran-owned/service disabled small businesses that provide the required documentation, per the form, will be given the preference.

Eligible veteran-owned and eligible service-disabled veteran-owned small businesses must be **currently** certified by the U.S. Department of Veterans Affairs prior to the solicitation opening date and time to receive the preference.

25. **COMPETITION IN RESPONDING.** The State desires and encourages free and open competition among responders. Whenever and wherever possible, the State's specifications and the General Terms and Conditions will be designed to accomplish this objective, consistent with the necessity to satisfy the State's needs and while obtaining best value. Any evidence of collusion among responders in any form designed to defeat competitive responses will be reported to the Minnesota Attorney General for investigation and appropriate action. Suggestions from responders regarding the requirements of the RFB procedures are welcome and will be given careful consideration.
26. **GOVERNING LAW.** The RFB and the Contract will be construed in accordance with and performance governed by the laws of the State of Minnesota. Except to the extent that the provisions of the Contract are clearly inconsistent therewith, the Contract will be governed by the Uniform Commercial Code (UCC) as adopted by the State of Minnesota. To the extent the Contract entails delivery or performance of services, the services will be deemed "goods" within the meaning of the UCC, except when to deem such services as "goods" is unreasonable.
27. **LAWS AND REGULATIONS.** Any and all services, articles or equipment offered and furnished must comply fully with all local, State, and federal laws and regulations, including Minn. Stat. § 181.59 prohibiting discrimination.
28. **JURISDICTION AND VENUE.** The RFB and the Contract, amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of the Contract or breach thereof shall be in the State or federal court with competent jurisdiction in Ramsey County, Minnesota.
29. **SEVERABILITY.** If any provision of the Contract, including items incorporated by reference, is declared or found to be illegal, unenforceable, or void, then both the State and Contract Vendor will be relieved of all obligations arising under the provision; if the remainder of the Contract is capable of performance, it will not be affected by the declaration or finding and will be fully performed.
30. **SURVIVABILITY.** The following rights and duties of the State and responder will survive the expiration or cancellation of the resulting Contract(s). These rights and duties include, but are not limited to the paragraphs on Indemnification and Hold Harmless, State Audits, Government Data Practices, Governing Law, Jurisdiction and Venue, Intellectual Property Indemnification, and Publicity.
31. **ASSIGNMENT.** The Contract Vendor shall not sell, transfer, assign, or otherwise dispose of the Contract or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. Such consent shall not be unreasonably withheld. The Contract Vendor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of the Contract. Failure to do so may result in the Contract Vendor being held in default. This consent requirement includes reassignment of the Contract due to a change in ownership, merger, or acquisition of the Contract Vendor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contract Vendor's right to assign the Contract to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contract Vendor shall remain solely liable for all performance required and provided under the terms and conditions of the Contract.
32. **CONFLICT OF TERMS.** In the event of any conflict between the General Terms and Conditions, and any Special Terms and Conditions, the Special Terms and Conditions govern.
33. **PURCHASE ORDERS.** The State requires that there will be no minimum order requirements or charges to process an individual purchase order unless otherwise stated in the special terms. The PO number must appear on all documents (e.g., invoices, packing slips, etc.).
34. **USAGE REPORT.** As per the requirements of the RFB, Contract Vendors are required to furnish usage data to the Acquisition Management Specialist. Unless otherwise specified in the Special Terms and Conditions, a report on Contract usage must consist of the total dollars expended by the State and other entities.

35. **CANCELLATION OF THE CONTRACT.** The Contract may be cancelled by the State or the commissioner of Administration at any time, with or without cause, upon 30 days' written notice to the Contract Vendor. In the event the Contract Vendor is in default, the Contract is subject to immediate cancellation to the extent allowable by applicable law. In the event of cancellation, the Contract Vendor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.
36. **FORCE MAJEURE.** Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.
37. **COPYRIGHTED MATERIAL WAIVER.** The State reserves the right to use, reproduce, and publish responses in any manner necessary for State agencies and local units of government to access the responses, including but not limited to photocopying, State Intranet/Internet postings, broadcast faxing, and direct mailing. In the event that a response contains copyrighted or trademarked materials, it is the responder's responsibility to obtain permission for the State to reproduce and publish the information, regardless of whether the responder is the manufacturer or reseller of the products listed in the materials. By signing its response, the responder certifies that it has obtained all necessary approvals for the reproduction and/or distribution of the contents of its response and agrees to indemnify, protect, save and hold the State, its representatives and employees harmless from any and all claims arising from the violation of this section and agrees to pay all legal fees incurred by the State in the defense of any such action.
38. **INSURANCE.** Certificates of insurance, if called for in the Special Terms and Conditions, must be submitted upon request. Failure to do so may result in rejection of the response.
39. **STATE AUDITS** (Minn. Stat. § 16C.05, Subd. 5). The books, records, documents, and accounting procedures and practices of the Contract Vendor and its employees, agents, or subcontractors relevant to the Contract must be made available to and subject to examination by the Legislative Auditor and/or the State Auditor for a minimum of six years after the end of the Contract.
40. **DISPUTE RESOLUTION PROCEDURES.** Any issue a responder has with the RFB document, which includes, but is not limited to, the terms, conditions, and specifications, must be submitted in writing to the AMS prior to the solicitation opening due date and time. Any issue a responder has with the Contract award must be submitted in writing to the AMS within five working days from the time the Contract award is made public. The State will respond to any protest received that follows the above procedure.
41. **NOTICE TO RESPONDERS.** Pursuant to Minn. Stat. § 270C.65, Subd. 3, Contract Vendors are required to provide their Federal Employer Identification Number or Social Security Number. This information may be used in the enforcement of federal and State tax laws. Supplying these numbers could result in action to require a Contract Vendor to file tax returns and pay delinquent tax liabilities. These numbers will be available to federal and State tax authorities and State personnel involved in the payment of State obligations.
42. **HAZARDOUS SUBSTANCES.** To the extent that the goods to be supplied to the State by the Contract Vendor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contract Vendor must provide the State with Material Safety Data Sheets regarding those substances. A copy must be included with each delivery.
43. **RISK OF LOSS OR DAMAGE.** The State is relieved of all risks of loss or damage to the equipment during periods of transportation, installation, and during the time the equipment is in possession of the State, unless and until such time as unencumbered title for the goods is vested in the State and the goods are in exclusive possession of the State.
44. **INDEMNIFICATION, HOLD HARMLESS, AND LIMITATION OF LIABILITY.** The Contract Vendor shall indemnify, protect, save and hold harmless the State, its representatives and employees, from any and all claims or causes of action, including all legal fees incurred by the State arising from the performance of the Contract by the Contract Vendor or its agents, employees, or subcontractors. This clause shall not be construed to bar any legal remedies the Contract Vendor may have with the State's failure to fulfill its obligations pursuant to the Contract.

The State agrees that Contractor, its principals, members and employees shall not be liable to the State for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to the goods provided or services performed hereunder for an aggregate amount in excess of \$10,000,000 or the contract amount, whichever is greater. This limitation of liability does not apply to damages for personal injury or death, or to Contractor's obligation to indemnify, defend and hold the State harmless against intellectual property infringement claims under paragraphs 23 and 64 of this Agreement. This indemnification does not include liabilities caused by the State's gross negligence or intentional wrong doing of the State.

45. **DEFAULT.** A State purchase order constitutes a binding Contract. All commodities furnished will be subject to inspection and acceptance by the ordering entity after delivery. No substitutions or cancellations are permitted without written approval of the State contracting agency. Back orders, failure to meet delivery requirements, or failures to meet specifications in the purchase order and/or the Contract authorizes the ordering entity to cancel the Contract or purchase order, or any portion of it, purchase elsewhere, and charge the full increase in cost and administrative handling to the defaulting Contract Vendor. In the event of default, the State reserves the right to pursue any other remedy available by law. A Contract Vendor may be removed from the vendors list, suspended or debarred from receiving a Contract for failure to comply with terms and conditions of the Contract, or for failure to pay the State for the cost incurred on the defaulted Contract.
46. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION.**
- a. 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 [responder] 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 [response] 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 section 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 [subcontract equal to or exceeding \$25,000] 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 CFR part 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.

b. **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.

47. **NONCOLLUSION CERTIFICATIONS.** The responder shall complete and submit the Affidavit of Noncollusion.

48. **DISPOSITION OF RESPONSES.** All materials submitted in response to this RFB will become property of the State and will become public record after the evaluation process is completed and an award decision made. If the responder submits information in response to this RFB that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minn. Stat. § 13.37, the responder must:

- a. clearly mark all trade secret materials in its response at the time of the response is submitted,
- b. include a statement with its response justifying the trade secret designation for each item, and
- c. 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 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 the RFB, the responder agrees that this indemnification survives as long as the trade secret materials are in possession of the State. The State is required to keep all the basic documents related to its contracts, including responses to RFBs, for a minimum of seven years.

The State will not consider the prices submitted by the responder to be trade secret materials.

49. **GOVERNMENT DATA PRACTICES.** The Contract Vendor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (and where applicable, if the State contracting party is part of the judicial branch, with the Rule of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State to the Contract Vendor and all data provided to the State by the Contract Vendor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contract Vendor in accordance with this Contract that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).

In the event the Contract Vendor receives a request to release the data referred to in this article, the Contract Vendor must immediately notify the State. The State will give the Contract Vendor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data by either the Contract Vendor or the State.

The Contract Vendor agrees to indemnify, save, and hold the State of Minnesota, its agent and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act (and where applicable, the Rules of Public Access to Records of the Judicial Branch), including legal fees and disbursements paid or incurred to enforce this provision of the Contract. In the event that the Contract Vendor subcontracts any or all of the work to be performed under the Contract, the Contract Vendor shall retain responsibility under the terms of this paragraph for such work.

50. **EXCLUSIONS.** The Contract will not include items that are established under other general price contracts and special items not offered under the RFB, or emergency purchases or purchases involving trade-ins. Likewise, any requirements considered by the Manager of Acquisition Services to be beyond the normal operating requirements of the State, such as but not limited to equipment for new buildings, may be bid separately and purchased outside the Contract.
51. **NONVISUAL ACCESS STANDARDS.** Not applicable.
52. **AFFIRMATIVE ACTION.** The State requires affirmative action compliance by its Contract Vendors.
- a. Covered contracts and Contract Vendors. One-time acquisitions, or a contract for a predetermined amount of goods and/or services, where the amount of your response is in excess of \$100,000 requires completion of the Affirmative Action Certification page. If the solicitation is for a contract for an indeterminate amount of goods and/or services, and the state estimated total value of the contract exceeds \$100,000 whether it will be a multiple award contract or not, you must complete the Affirmative Action Certification page. If the contract dollar amount or the state estimated total contract amount exceeds \$100,000 and the Contract Vendor 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 Contract Vendor must comply with the requirements of Minn. Stat. § 363A.36, Subd. 1 and Minnesota Rules 5000.3400-5000.3600. A Contract Vendor covered by Minn. Stat. § 363A.36, Subd. 1 because it employed more than 40 full-time employees in another state and which does not have a certificate of compliance must certify that it is in compliance with federal affirmative action requirements.
 - b. Minn. Stat. § 363A.36, Subd. 1 requires the Contract Vendor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the 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.
 - c. Minn. Rules 5000.3400-5000.3600 implement Minn. Stat. § 363A.36, Subd. 1. 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 Contract Vendor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for noncompliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. Rules 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.
 - d. Disabled Workers. The Contract Vendor must comply with the following affirmative action requirements for disabled workers.

"AFFIRMATIVE ACTION FOR DISABLED WORKERS"

- (a) 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.
 - (b) 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.
 - (c) 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, Subd. 1, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (d) 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, and the rights of employees and applicants.
 - (e) 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, Subd. 1, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons."
- e. Consequences. The consequences of a Contract Vendor'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 the Contract by the commissioner or the State.
- f. Certification. The Contract Vendor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36, Subd. 1 and Minnesota Rules 5000.3400-5000.3600 and is aware of the consequences for noncompliance.
53. **REQUEST FOR CLARIFICATION.** If a responder discovers any significant ambiguity, error, conflict, discrepancy, omission or other deficiency in the RFB, it shall immediately notify the Acquisition Management Specialist in writing, as specified in the introduction, of such error and request modification or clarification of the document.
54. **ENTIRE AGREEMENT.** A written Contract (including the contents of the RFB and the Contract Vendor's response incorporated therein by reference) and any written addenda thereto constitute the entire agreement of the parties.
55. **STATE REQUIREMENTS.** The Contract Vendor is responsible to present information to State agency and Cooperative Purchasing Venture (CPV) customers regarding product compliance with State requirements. The Contract Vendor's catalog and other marketing materials utilized to offer products under the Contract shall affirmatively state when a product is in compliance with the Americans with Disabilities Act (ADA), the Nonvisual Access Standards (Minn. Stat. § 16C.145), and the Energy Star Standards. The Contract Vendor must also indicate in the catalog or other marketing materials if the product will not operate, is not intended to operate, or will not operate under full manufacturer's warranty, using paper with a post-consumer recycled content of 30 percent or greater. If any descriptive marketing materials are silent as to any or all of these requirements (e.g., ADA compliance, functions utilizing 30 percent recycled content paper), the Contract Vendor agrees that the customer can assume the product meets or exceeds the State requirements.

56. **STATE AGENCY CONTRACT USE.** The State intends to use the RFB and resulting Contract to meet its needs for goods and services purchased under the authority of the commissioner of Administration. An exception will be made when the commissioner of Administration or authorized delegate determines that the State will achieve its “best value” by utilizing alternative procurement methods as specified in Minn. Stat. Ch. 16C or other authorizing law.

The Contract must be used by State agencies unless a specific exception is granted by the Acquisition Management Specialist or authorized delegate unless otherwise provided for in the Special Terms and Conditions.

57. **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 Contract Vendor is unable or potentially unable to render impartial assistance or advice to the State;
- the Contract Vendor’s objectivity in performing the work is or might be otherwise impaired; or
- the Contract Vendor has an unfair competitive advantage.

The Contract Vendor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration’s Materials Management Division that shall include a description of the action the Contract Vendor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Contract. In the event the Contract Vendor was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the AMS, the State may terminate the Contract for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms “Contract,” “Contract Vendor,” and “AMS” modified appropriately to preserve the State’s rights.

58. **ENVIRONMENTAL PREFERENCE.** Not applicable.

59. **AMENDMENTS.** The State reserves the right to make changes to the Contract, when mutually agreed to by the State of Minnesota and the Contract Vendor, if the changes are within the general scope of the Contract. The changes to the Contract will be made by Contract amendment. An approved Contract amendment means one approved by the authorized signatories of the Contract Vendor and the State as required by law.

60. **ELECTRONIC FUNDS TRANSFER (EFT) PAYMENT METHOD AND STRUCTURE.** In accordance with Minn. Stat. § 16A.40 the responder receiving the award of this Solicitation will be required to provide their bank routing information to the Department of Finance to enable payments to be made through EFT.

61. **OWNERSHIP**

- a. **Ownership of Documents/Copyright.** Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contract Vendor in the performance of its obligations under the Contract and paid for by the State shall be the exclusive property of the State and all such material shall be remitted to the State by the Contract Vendor upon completion, termination or cancellation of the Contract. The Contract Vendor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contract Vendor’s obligations under this Contract without the prior written consent of the State.
- b. **Rights, Title and Interest.** All rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the said documents that the Contract Vendor conceives or originates, either individually or jointly with others, which arises out of the performance of the Contract, will be the property of the State and are, by the Contract, assigned to the State along with ownership of any and all copyrights in the copyrightable material. The Contract Vendor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials. Where applicable, works of authorship created by the Contract Vendor for the State in performance of the Contract shall be considered “works for hire” as defined in the U.S. Copyright Act.

62. **PUBLIC INFORMATION.** Once the information contained in the responses is deemed public information, interested parties may request to obtain the public information. You can call 651.201.2413 between the hours of 8:00 a.m. to 4:30 p.m. to arrange this.
63. **INTELLECTUAL PROPERTY INDEMNIFICATION.** The Contract Vendor warrants that any materials or products provided or produced by the Contract Vendor or utilized by the Contract Vendor in the performance of this Contract will not infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any such claim by any third party against the State, the State shall promptly notify the Contract Vendor. The Contract Vendor, at its own expense, shall indemnify; defend to the extent permitted by the Minnesota Attorney General's Office, and hold harmless the State against any loss, cost, expense, or liability (including legal fees) arising out of such a claim, whether or not such claim is successful against the State.
- If such a claim has occurred, or in the Contract Vendor's opinion is likely to occur, the Contract Vendor shall either procure for the State the right to continue using the materials or products or replacement or modified materials or products. If an option satisfactory to the State is not reasonably available, the State shall return the materials or products to the Contract Vendor, upon written request of the Contract Vendor and at the Contract Vendor's expense. This remedy is in addition to any other remedy provided by law.
64. **ANTITRUST.** The Contract Vendor hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with the Contract resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State.
65. **PRODUCTS CONTAINING CERTAIN TYPES OF POLYBROMINATED DIPHENYL ETHER BANNED.** By signing and submitting a response to this solicitation, Contractor/Responder certifies that they have read and will comply with Laws of Minnesota, 2007, Chapter 57 (to be codified at Minn. Stat. §§ 325E.385-325E.388) as provided below.

325E.385 PRODUCTS CONTAINING POLYBROMINATED DIPHENYL ETHER.

Subdivision 1. **Definitions.** For the purposes of sections 325E.386 to 325E.388, the terms in this section have the meanings given them.

Subd. 2. **Commercial decabromodiphenyl ether.** "Commercial decabromodiphenyl ether" means the chemical mixture of decabromodiphenyl ether, including associated polybrominated diphenyl ether impurities not intentionally added.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of Pollution Control Agency.

Subd. 4. **Manufacturer.** "Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a product containing polybrominated diphenyl ethers or an importer or domestic distributor of a noncombustible product containing polybrominated diphenyl ethers.

Subd. 5. **Polybrominated diphenyl ethers or PBDE's.** "Polybrominated diphenyl ethers" or "PBDE's" means chemical forms that consist of diphenyl ethers bound with bromine atoms. Polybrominated diphenyl ethers include, but are not limited to, the three primary forms of the commercial mixtures known as pentabromodiphenyl ether, octabromodiphenyl ether, and decabromodiphenyl ether.

Subd. 6. **Retailer.** "Retailer" means a person who offers a product for sale at retail through any means, including, but not limited to, remote offerings such as sales outlets, catalogs, or the Internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.

Subd 7. **Used product.** "Used product" means any product that has been previously owned, purchased, or sold in commerce. Used product does not include any product manufactured after January 1, 2008.

325E.386 PRODUCTS CONTAINING CERTAIN POLYBROMINATED DIPHENYL ETHERS BANNED; EXEMPTIONS.

Subdivision. 1. **Penta- and octabromodiphenyl ethers.** Except as provided in subdivision 3, beginning January 1, 2008, a person may not manufacture, process, or distribute in commerce a product or flame-retardant part of a product containing more than one-tenth of one percent of pentabromodiphenyl ether or octabromodiphenyl ether by mass.

Subd. 2. **Exemptions.** The following products containing polybrominated diphenyl ethers are exempt from subdivision 1 and section 325E.387, subdivision 2:

(1) the sale or distribution of any used transportation vehicle with component parts containing polybrominated diphenyl ethers;

(2) the sale or distribution of any used transportation vehicle parts or new transportation vehicle parts manufactured before January 1, 2008, that contain polybrominated diphenyl ethers;

(3) the manufacture, sale, repair, distribution, maintenance, refurbishment, or modification of equipment containing polybrominated diphenyl ethers and used primarily for military or federally funded space program applications. This exemption does not cover consumer-based goods with broad applicability;

(4) the sale or distribution by a business, charity, public entity, or private party of any used product containing polybrominated diphenyl ethers;

(5) the manufacture, sale, or distribution of new carpet cushion made from recycled foam containing more than one-tenth of one percent polybrominated diphenyl ether;

(6) medical devices; or

(7) the manufacture, sale, repair, distribution, maintenance, refurbishment, or modification of telecommunications equipment containing polybrominated diphenyl ethers used by entities eligible to hold authorization in the Public Safety Pool under Code of Federal Regulations, title 47, part 90.

In-state retailers in possession of products on January 1, 2008, that are banned for sale under subdivision 1 may exhaust their stock through sales to the public. Nothing in this section restricts the ability of a manufacturer, importer, or distributor from transporting products containing polybrominated diphenyl ethers through the state, or storing such products in the state for later distribution outside the state.

325E.388 PENALTIES. A manufacturer who violates sections 325E.386 to 325E.388 is subject to a civil penalty not to exceed \$1,000 for each violation in the case of a first offense. A manufacturer is subject to a civil penalty not to exceed \$5,000 for each repeat offense. Penalties collected under this section must be deposited in an account in the special revenue fund and are appropriated in fiscal years 2008 and 2009 to the commissioner to implement and enforce this section.

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

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

1. Responders are in compliance with the Immigration Reform and Control Act of 1986 in relation to all employees performing work in the United States and that the responder and all its subcontractors do not knowingly employ persons in violation of the United States immigration laws. The Contract Vendor will obtain the State of Minnesota—Immigration Status Certification from all subcontractors who will participate in the performance of this contract and maintain subcontractor certifications for inspection by the state if such inspection is requested; and
2. The Contract Vendor and all its subcontractors will, by the date of the delivery of the product and/or performance of the services under this Contract, have implemented or are in the process of implementing the *E-Verify* program for all newly hired employees in the United States who will perform work on this Contract.

If the Contract Vendor and/or the subcontractors are not in compliance with the Immigration Reform and Control Act, or knowingly employ persons in violation of the US immigration laws, or haven't begun to implement the *E-Verify* program for all newly hired employees in support of this contract, the state reserves the right to determine what action it may take, including but not limited to cancelling the Contract, and/or suspending or debarring the Contract Vendor from state purchasing.

67. **STATE EMPLOYEE PARTICIPATION.** Not applicable.

68. **PREVAILING WAGE.** If this solicitation involves a project which includes erection, construction, remodeling, or repairing of a public building or other public work financed in whole or part by State funds, it is subject to prevailing wage laws in accordance with Minnesota Statutes §§ 177.30-.32, 177.41-.44, 16B, and 16C, and corresponding Rules 5200.1000 to 5200.1120.. The Contractor is solely responsible for payment of any and all required Prevailing Wage rates. In accordance with Minnesota Statutes §§ 177.30(4), 177.31, and 177.32 there are Contractor and subcontractor liabilities for failure to adhere to prevailing wage laws. For questions regarding the Prevailing Wage Laws, contact the Department of Labor and Industry at 651.284.5091.

REQUIRED FORMS

The following forms must be completed and returned with the response.

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 in the solicitation 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:

1. 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

Trade Secret Information Form

Under Minnesota's Data Practices Act, data submitted in a response becomes public upon completion of the evaluation process and negotiations are complete, or upon completion of the selection process for a solicitation. However, "trade secret information" as defined in Minn. Stat. § 13.37, Subd. 1(b), cannot be disclosed to the public. While the majority of data submitted in a response is not trade secret information, the following form is needed to assist the state in making appropriate determinations about the release of data provided in a response.

All responders must select one of the following boxes:

- ☐ My response **does not** contain "trade secret information." I understand that my entire response will become public record in accordance with Minn. Stat. § 13.591.
- ☐ My response **does** contain trade secret information because it contains data that:
 1. is a formula, pattern, compilation, program, device, method, technique or process; **AND**
 2. is the subject of efforts by myself or my organization that are reasonable under the circumstances to maintain its secrecy; **AND**
 3. derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

Complete only if trade secret status is asserted:

I am claiming that aspects of my response contain trade secret information. I have completed the following:

- ☐ I have clearly marked and placed any data I claim to be "trade secret information" in a separate envelope **AND** I am attaching an explanation justifying the trade secret designation.

Please note that failure to attach an explanation may result in a determination that the data does not meet the statutory trade secret definition. All data for which trade secret status is not justified will become public in accordance with Minn. Stat. § 13.591.

By submitting this response, responder agrees to indemnify and hold the State, its agents and employees, harmless from any claims or causes of action relating to the State's withholding of data based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by the State in defending such an action.

**STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
MATERIALS MANAGEMENT DIVISION
AFFIDAVIT OF NONCOLLUSION**

I hereby 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 response 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 vendor designed to limit fair or open competition;
3. That the contents of the RFB response 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 other individual prior to the official opening of the responses; and
4. I certify that the statements in this affidavit are true and accurate.

Authorized Signature: _____

Date: _____

Firm Name: _____

Subscribed and sworn to me this _____ day of _____

Notary Public

My commission expires _____

**STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
MATERIALS MANAGEMENT DIVISION**

SERVICE AND DELIVERY

Service and delivery are important requirements for all State contracts. The successful responder will be expected to ship all orders within the time specified in its response or, in the case of unanticipated problems causing a delay, notify the agency of the problem and when the shipment will be made. All requests for information from State agencies will be answered promptly. A copy of all correspondence to State agencies shall be sent to Acquisitions, Materials Management Division, 112 Administration Building, St. Paul, MN 55155. **Any Contract Vendor found to be providing unsatisfactory service during the Contract period may be disqualified for a subsequent Contract award.**

SUBSEQUENT CONTRACT REVISIONS. No verbal or written instructions from State agencies or officials to change any provision of the resulting Contract shall be accepted by the Contract Vendor without the approval of the Acquisition Management Specialist (AMS). The Contract Vendor shall report any such requests to the AMS who will issue approval or denial in writing.

CONTACT PERSON FOR ORDERS:

NAME:	_____	TITLE:	_____
TELEPHONE NUMBER:	_____	FAX NUMBER:	_____
TOLL FREE NUMBER:	_____	E-MAIL:	_____

CONTACT PERSON TO EXPEDITE ORDERS (if different from above):

NAME:	_____	TITLE:	_____
TELEPHONE NUMBER:	_____	FAX NUMBER:	_____
TOLL FREE NUMBER:	_____	E-MAIL:	_____

ORDER ADDRESS:

STREET/PO BOX:	_____		
CITY/STATE:	_____	ZIPCODE:	_____
TELEPHONE NUMBER:	_____	FAX NUMBER:	_____
TOLL FREE NUMBER:	_____	E-MAIL:	_____

REMIT-TO ADDRESS:

STREET/PO BOX:	_____		
CITY/STATE:	_____	ZIPCODE:	_____
TELEPHONE NUMBER:	_____	FAX NUMBER:	_____
TOLL FREE NUMBER:	_____	E-MAIL:	_____

**STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
MATERIALS MANAGEMENT DIVISION**

CONTRACT SAVINGS AND USAGE REPORTS

SAVINGS REPORT.

Responders are required to calculate the percentage savings the State will realize as a result of the Contract and include the amount of the percentage savings in the response.

Contract Prices Average: _____ % Less than the price quoted to the general public (for reporting purposes only).

USAGE REPORT, FREQUENCY (after Contract award).

Unless specified otherwise in the Special Terms and Conditions, the report on Contract usage must consist of the total dollars expended, broken down by:

- State agencies
- CPV members

Failure to provide these reports may result in Contract cancellation. The following reporting frequency is required, at a minimum:

- Annually, or as requested
- Final report after the end of the Contract

**STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
MATERIALS MANAGEMENT DIVISION**

ENVIRONMENTAL REPORTS

ENVIRONMENTAL PRODUCTS AND SERVICES

Environmental Characteristics for Reporting Purposes. The State desires to purchase environmentally responsible goods and services where practicable. To identify these products and report the purchasing results, the State must know the environmentally responsible characteristics of the goods and services offered. Using the list of environmental codes below, specify which line items have environmentally responsible characteristics and enter the appropriate environmental code. The environmental codes* are:

EE = Energy Efficient	EM = Remanufactured	
LT = Less Toxic	RE = Repair	
PB = Plant-based	US = Used	
RB = Rebuilt	WC = Water Conserving	
RC = Recycled Content	MU = Multiple Codes	Specify: _____
(post-consumer: _____ %)	TO = Other	Specify: _____
RK = Reduced Packaging	NO = None	

Enter the appropriate environmental code for each item offered, either after the description of the item, or after the price.

If all goods and services offered are the same environmental code, enter it here: _____

If none of the items being offered have environmental characteristics, please check and initial here: ☐ _____.

Mercury: As per Minnesota Statutes, the State cannot buy mercury in thermometers and certain other products. Please certify below if your product does or does not contain mercury. The actual product specification will stipulate if mercury is prohibited.

Does your product contain mercury? ☐ Yes ☐ No

If yes, list the components that contain mercury:

Environmental Codes Definitions

EE (Energy Efficient) - A product that uses less energy (either electricity or fossil fuel) to accomplish its task relative to a comparable product or to an earlier version of the same product by the same manufacturer.

LT (Less Toxic) - A product containing a smaller amount of toxic substances relative to a comparable product or a product reformulated to be less toxic.

PB (Plant-Based) - A product derived from renewable resources, including fiber crops (such as kenaf); chemical extracts from oilseeds, nuts, fruits and vegetables (such as corn and soybeans); agricultural residues (such as wheat straw and corn stover); and wood wastes generated from processing and manufacturing operations. These products stand in contrast to those made from fossil fuels (such as petroleum) and other less renewable resources (such as virgin timber).

RB (Rebuilt) - A product refurbished to a level less than a total remanufacture. The warranty is by the rebuilder, and may be different from the same product when new or remanufactured. Also called reconditioned or refurbished.

RC (Recycled Content) - A product containing materials that have been recovered or diverted from the solid waste stream after consumer use (post-consumer).

RK (Reduced Packaging) - A product presented for use with less packaging or alternative methods of packaging or shipping.

EM (Remanufactured) -A product restored to its original condition by extensive rebuilding, usually given an equal or better warranty than a new product.

RE (Repair) - A product that has had a defect corrected and can again serve its original function. Repairing is a less comprehensive process than either remanufacturing or rebuilding.

US (Used) - A product used or owned before without further manufacture.

WC (Water Conserving) - A product that requires less water to operate or to manufacture than a comparable product, or a different version of the same product from the same manufacturer.

MU (Multiple Codes) - A product that has several significant environmentally responsible characteristics, and could be classified under more than one code, but not one code is predominant.

TO (Other) - A product having environmentally responsible characteristics that does not fit into any of the categories listed above.

**STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
MATERIALS MANAGEMENT DIVISION**

TAXPAYER IDENTIFICATION

The Contract Vendor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number to federal and State tax agencies and State personnel involved in the payment of State obligations. These identification numbers may be used in the enforcement of federal and State tax laws which could result in action requiring the Contract Vendor to file tax returns and pay delinquent tax liabilities, if any (Minn. Stat. § 270C.65).

Firm Name: _____

Address: _____

Federal Employer ID Number or Social Security: _____

Minnesota State Tax ID Number: _____

Minnesota Vendor Registration Number: _____

If you are not registered as a vendor to the State, you may register online at
www.mmd.admin.state.mn.us/mn02000.htm.

(Note: If approved, you will receive your vendor number three business days after you register.)

Are you a sole proprietorship? ☐ Yes ☐ No

Are you an independent contractor? ☐ Yes ☐ No

State of Minnesota — Immigration Status Certification

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

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

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

1. The company shown below is in compliance with the Immigration Reform and Control Act of 1986 in relation to all employees performing work in the United States and does not knowingly employ persons in violation of the United States immigration laws. The company shown below will obtain this certification from all subcontractors who will participate in the performance of this contract and maintain subcontractor certifications for inspection by the state if such inspection is requested; and

2. By the date of the delivery of the product and/or performance of services, the company shown below will have implemented or will be in the process of implementing the *E-Verify* program for all newly hired employees in the United States who will perform work on behalf of the State of Minnesota.

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

Name of Company: _____ Date: _____

Authorized Signature: _____ Telephone Number: _____

Printed Name: _____ Title: _____

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

For assistance with the *E-Verify* Program

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

For assistance with this form, contact:

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

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

Telephone: 651.296.2600

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

(01/08)

VETERAN-OWNED/SERVICE DISABLED VETERAN-OWNED PREFERENCE FORM

In accordance with Laws of Minnesota, 2009, Chapter 101, Article 2, Section 56, eligible certified veteran-owned and eligible certified service-disabled veteran-owned small businesses will receive a 6 percent preference on the basis of award for this RFB. The preference is applied only to the first \$500,000 of the response.

Eligible veteran-owned and eligible service-disabled veteran-owned small businesses include certified small businesses that are majority-owned and operated by either (check the box that applies and attach the certification documents with your response):

- ☐ (1) recently separated veterans, who are veterans as defined in Minn. Stat. §197.447, who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United States Department of Defense form DD-214 or by the commissioner of veterans affairs; or

Required Documentation:

- certification by the United States Department of Veterans Affairs as a veteran-owned small business
- discharge form (DD-214) dated on or after September 11, 2001 with condition honorable

- ☐ (2) veterans who are veterans as defined in Minn. Stat. § 197.447, with service-connected disabilities, as determined at any time by the United States Department of Veterans Affairs.

Required Documentation:

- certification by the United States Department of Veterans Affairs as a service-disabled veteran-owned small business.

Eligible veteran-owned and eligible service-disabled veteran-owned small businesses must be **currently** certified by the U.S. Department of Veterans Affairs prior to the solicitation opening date and time to receive the preference.

Information regarding certification by the United States Department of Veterans Affairs may be found at <http://www.vetbiz.gov>.

Provide this form and the documentation above with your response. If you don't check a box above, or you don't provide the requested documentation, or you do not return this form, you will not be considered for this preference.

EQUIPMENT INSURANCE REQUIREMENTS

The Contractor/Contract Vendor (Contract Vendor), and/or their authorized distributor, dealer, reseller, subcontractor (Subcontractor), shall maintain insurance to cover claims which may arise from operations under this Contract, whether such operations are by the Contract Vendor, their Subcontractor, or by anyone directly or indirectly employed under this Contract. The State will determine whether the Contract Vendor or the Contract Vendor's Subcontractor insurance will be filed with the State.

The Contract Vendor, or their Subcontractor, 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. The Contract Vendor, or their Subcontractor, under this Contract can provide applicable services to the State of Minnesota and/or CPV members, hereinafter referred to as Owner.

All policies and certificates shall provide that the policies shall remain in force and effect throughout the term of the Contract.

REQUIREMENTS FOR THE CONTRACT VENDOR OR THEIR SUBCONTRACTOR:

The Contract Vendor's policy(ies), or their Subcontractor'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.

An Umbrella or Excess Liability insurance policy may be used to supplement the Contract Vendor's policy limits, or their Subcontractor's policy limits, to satisfy the full policy limits required by the Contract.

The Contract Vendor's policy(ies), or their Subcontractor's policy(ies), shall 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.

The Contract Vendor, or their Subcontractor, is responsible for payment of Contract related insurance premiums and deductibles.

If the Contract Vendor, or their Subcontractor, is self-insured, a Certificate of Self-Insurance must be attached.

The Insurance Companies used must have an "AM Best" rating of A- (minus), Financial Size Category (FSC) VII or better, and be authorized to do business in the state of Minnesota.

NOTICE TO THE CONTRACT VENDOR OR THEIR SUBCONTRACTOR:

The failure of the State of Minnesota to obtain Certificate of Insurance, for the policies required under this Contract or renewals thereof or failure of the insurance company to notify the State of the cancellation of policies required under this Contract shall not constitute a waiver by the Owner to the Contract Vendor, or their Subcontractor, to provide such insurance.

The Owner will reserve the right to immediately terminate the Contract if the Contract Vendor, or their Subcontractor, is not in compliance with the insurance requirements and the Owner retains all rights to pursue any legal remedies against the Contract Vendor or their Subcontractor. All insurance policies must be open to inspection by the state, and copies of policies must be submitted to state's authorized agent upon written request.

NOTICE TO INSURER:

The Contract Vendor's insurance company, or their Subcontractor's insurance company, waives its right to assert the immunity of the State as a defense to any claims made under said insurance.

POLICY REQUIREMENTS:

1. Workers' Compensation Insurance:

- A. Statutory Compensation Coverage. If MN Statute 176.041 exempts the Contract Vendor, or their Subcontractor, from Workers' Compensation insurance or if the Contract Vendor, or their Subcontractor, has no employees in the State of Minnesota, the Contract Vendor, or their Subcontractor, must provide a written statement, signed by the authorized signer of the Contract, stating the qualifying exemption that excluded the Contract Vendor, or their Subcontractor, from MN Workers' Compensation requirements.

If during the course of the Contract the Contract Vendor, or their Subcontractor, becomes eligible for Workers' Compensation, the Contract Vendor, or their Subcontractor, must comply with the Workers' Compensation Insurance requirements included herein and provide the State of Minnesota with a certificate of insurance.

- B. Coverage B – Employer's Liability with limits of not less than:
\$100,000 Bodily Injury by Disease per Employee
\$500,000 Bodily Injury by Disease Aggregate
\$100,000 Bodily Injury by Accident

Evidence of Subcontractor insurance shall be filed with the Contract Vendor or as directed by the State.

2. Automobile Liability or Garage Liability Insurance:

The Contract Vendor, or their Subcontractor, shall maintain insurance to cover liability arising out of the operations, use, or maintenance of all owned, non-owned and hired automobiles.

Auto Liability insurance is required for Contract Vendors, or their Subcontractor, performing warranty or service work on mobile equipment.

Garage Liability insurance is required for Contract Vendors, or their Subcontractor, performing warranty or service work on autos or equipment attached to autos, including vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the State of Minnesota.

- A. Minimum Limits of Liability:
\$2,000,000 - Per Occurrence – Bodily Injury and Property Damage Combined Single Limit
- B. Coverages:
☒ Owned Automobile
☒ Non-owned Automobile
☒ Hired Automobile

Evidence of Subcontractor insurance shall be filed with the Contract Vendor or as directed by the State.

3. General Liability or Garage Liability Insurance:

The Contract Vendor, or their Subcontractor, shall 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.

General Liability insurance is required for Contract Vendors, or their Subcontractor, performing warranty or service work on mobile equipment.

Garage Liability insurance is required for Contract Vendors, or their Subcontractor, performing warranty or service work on autos or equipment attached to autos, including vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the State of Minnesota.

- A. Minimum Limits of Liability:
 - \$2,000,000 - Per Occurrence
 - \$2,000,000 - Annual Aggregate
 - \$2,000,000 - Annual Aggregate applying to Products/Completed Operations

- B. Coverages
 - ☒ Premises and Operations Bodily Injury and Property Damage
 - ☒ Personal & Advertising Injury
 - ☒ Blanket Contractual
 - ☒ Products and Completed Operations
 - ☒ **State of Minnesota named as an Additional Insured**

4. **Garagekeepers Liability or Property of Others Insurance or equivalent:**

The Contract Vendor, or their Subcontractor, shall maintain insurance to cover loss or damage to Owners autos or equipment in the care, custody, and control of Contract Vendor, or their Subcontractor, if ANY warranty or service work is performed by the Contract Vendor, or their Subcontractor.

Garagekeepers Liability insurance or equivalent is required for Contract Vendors, or their Subcontractor, performing warranty or service work on autos or equipment attached to autos, including vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the State of Minnesota.

Property of Others insurance or equivalent is required for Contract Vendors, or their Subcontractor, performing warranty or service work on mobile equipment.

SPECIAL TERMS AND CONDITIONS

SPECIAL TERMS, CONDITIONS, AND SPECIFICATIONS

PREFACE STATEMENT. THE INFORMATION CONTAINED BELOW DESCRIBES THE SPECIAL TERMS, CONDITIONS AND SPECIFICATIONS APPLICABLE TO THE REQUEST FOR BID (RFB) AND SUBSEQUENT CONTRACT, AND IS IN ADDITION TO THE GENERAL TERMS AND CONDITIONS.

1. **PURPOSE.** The purpose of this solicitation is to receive responses and award a Contract to a vendor(s) to provide Excavators to State agencies and Cooperative Purchasing Venture (CPV) members on an as needed basis.
2. **COOPERATIVE PURCHASING VENTURE (CPV) MEMBERS.** The Contract will also be available to all CPV members. Minn. Stat. § 16C.03, Subd. 10 authorizes the State, acting through its Materials Management Division, to enter into purchasing agreements with one or more governmental units and other entities allowable by law, as described in Minn. Stat. § 471.59, Subd. 1, to exercise jointly the purchasing powers and functions each has individually. This authority is referred to as the Cooperative Purchasing Venture program. For more information, see State web site www.mmd.admin.state.mn.us.
3. **VENDOR CAPABILITIES.** The Contract Vendor must be the equipment manufacturer, or an authorized distributor for the equipment manufacturer. The Contract Vendor must be capable of furnishing the equipment as outlined and must be able to provide proof of insurance in the amounts outlined in the RFB.

If the manufacturer, or the authorized dealer for the manufacturer, is submitting a response and a Contract is awarded, and they are distributing their equipment through a network of authorized dealers or representatives, insurance is required.

Prior to Contract execution, the manufacturer or authorized dealer will require their authorized dealers or representatives to provide a certificate of insurance to the State with the coverage called for in the solicitation.

If the authorized dealer or representative has a current certificate of insurance on file, in the amounts called for in the solicitation, in the Materials Management Division, a new certificate of insurance will not be required.

4. **ESTIMATED AMOUNT.** The estimated total dollar value of the Contract for **one year** \$2,000,000.00. It shall be understood and accepted by the responder that if any quantities shown in this RFB they are estimated quantities only and impose no obligation upon the State either minimum or maximum.
5. **SPECIFICATIONS.** When brand names or manufacturers' numbers are stated in the specifications, they are intended to establish a standard only and are not restrictive unless the RFB states "No Substitute." Responses will be considered on other makes, models, or brands having comparable quality, style, and performance characteristics.
6. **ITEMS OFFERED AS NEW.** All products, material, supplies and equipment offered and furnished must be new, of current manufacturer production, and must have been formally announced by the manufacturer as being commercially available as of the date of the solicitation opening, unless otherwise stated in this solicitation.
7. **CONTRACT PRICES.** Any Contracts issued as a result of the solicitation will be fixed price contracts. **No price adjustments will be accepted during the term of the Contract.** If significant industry wide changes in commodity prices occur, and if deemed in the best interest of the State, the State reserves the right to cancel the Contract and reissue the Solicitation.

If a large volume one-time purchase situation arises, the State reserves the right to issue an additional solicitation, separate and aside from this RFB. The State may use whatever solicitation procedure that is most advantageous to the State. The State also reserves the right to issue another solicitation if new makes and models become available that would be of interest and benefit to the State or CPV members.

Under the umbrella of this Contract, Contract Vendors may not offer discounts on quantity purchases, reduced prices based on damaged equipment or lower prices contingent upon a potential equipment trade-in or any other ordering incentive. This includes, but is not limited to, offering optional items that are on the Price Schedule at "no charge" to secure the order.

Customers wishing to pursue additional price discounts or items that are not listed on the Contract must issue a separate solicitation according to their entities' purchasing procedures.

A Vendor Performance Report will be filed against any Contract Vendor who does not follow the terms of the Contract and may, but not limited to, have its Contract cancelled or may be suspended and/or debarred from doing business with the State.

8. **PRICING OFFERED IN RESPONSE.** Prices listed in your response to this solicitation must take into consideration all inherent costs of providing the requested goods and/or services. The responder agrees to pay any and all fees. The State will not pay any additional charges beyond the price(s) listed in the response, unless otherwise provided for by law or expressly allowed by the terms of the solicitation.
9. **SHIPPING REQUIREMENTS.** All deliveries are to be FOB Destination, prepay and added. If requested on the Price Schedule, the responder must state the delivery charge per loaded mile and the delivery starting point. Mileage distance will be the distance from the delivery starting point to the purchaser's delivery point only. Mileage distances will be determined from the website: <http://maps.yahoo.com>. The ordering agency may use the Contract Vendor delivery, may pick up the equipment, or may contract for delivery with anyone it chooses. The delivery charge will not be a factor in the award.
10. **DELIVERY REQUIREMENTS.** The Contract Vendor must notify the receiving agency at least 72 hours before delivery to allow for inspection and compliance. No delivery can be made on State holidays, Saturday or Sunday or after 4:00 p.m. on weekdays without prior approval by the agency to which the equipment is being delivered. The Contract Vendor must confirm delivery locations and requirements with the purchaser.
11. **BILLING REQUIREMENTS.** The Contract Vendor must submit separate detailed invoices (one original and two copies) for each purchase order to the "bill-to" address as shown on the purchase order.

If requested, the Contract Vendor must submit one copy of the original purchase order issued from the State Agency or CPV member and one copy of the final invoice for each transaction against the Contract to the AMS. The invoice must be itemized per the detail in the Manufacturer's Vendor Price Schedule that is submitted with the RFB. The State intends that the final invoice is generated only after the equipment has been delivered, inspected, approved and accepted.

12. **INTEREST RATE ON UNPAID BALANCE.** Per Minn. Stat. § 16a, Subdivision 5, Paragraph A: A State agency shall pay interest to a vendor for undisputed billings when the agency has not paid within 30 days following receipt of the invoice, merchandise, or service, whichever is later. A negotiated contract or agreement between a vendor and a State agency which requires an audit by the State agency prior to acceptance and payment of the vendor's invoice shall not be considered past due until 30 days after the completion of the audit by State agency for such interest. Per Minn. Stat. § 16a, Subdivision 5, Paragraph B: The rate of interest paid by the agency on undisputed bills not paid within 30 days shall be 1-1/2 percent per month or any part thereof.

For the purposes of this solicitation, this provision applies to both State agencies and Cooperative Purchasing Venture (CPV) members.

Based on the State law stated above, responders should not calculate additional interest into the price offered for the equipment to cover expense on unpaid balances.

13. **USAGE REPORTS.** The Contract Vendor is required to furnish the Acquisition Management Specialist a usage report, by customer name, which includes, but is not limited to, the following information.
 - Customer name (State agency or CPV member name)
 - Purchase order number
 - Make and model number ordered
 - Quantity
 - Date order was received
 - Date order was delivered
 - Invoice number
 - Unit price
 - Delivery price

The actual form for reporting will be sent in Excel® to the Contract Vendor, via e-mail, by the Acquisition Management Specialist and will include the reporting schedule.

Failure to provide these reports may result in the Contract Vendor to be considered in default and may result in Contract cancellation.

14. **EQUIPMENT LITERATURE.** Upon request by a State agency or CPV member, the Contract Vendor shall provide literature at no cost for the equipment offered in its response.
15. **EQUIPMENT SPECIFICATIONS. DO NOT OFFER EQUIPMENT THAT DOES NOT MEET THE SPECIFICATIONS OUTLINED.** All equipment and options offered in response to the Solicitation must meet the specifications as outlined in the technical section of the Solicitation. The responder's signature certifies that any offer submitted to participate in the State's solicitation process is for equipment and options that will meet the specifications as outlined and that any equipment and options proposed and delivered, as a result of an offer, will conform to the manufacturer's specifications and will be equipped with OEM optional equipment, if requested and specified by the purchaser.

It is agreed that any equipment delivered that fails to meet the specifications will be replaced or brought up to specification at no additional expense to the purchaser and that all equipment and options quoted will comply with the State and federal regulations in effect at the date of manufacture. Any deviation from specifications must be clearly indicated by the responder, otherwise the offer will be considered in strict compliance.

16. **EQUIPMENT WARRANTY.** The Contract Vendor shall furnish a standard manufacturer's warranty. The Contract Vendor shall be responsible for the cost of any inspections, adjustments, parts, labor, travel, pickup and/or delivery charges that are a result of equipment failure(s) during the warranty period. This shall be performed immediately without any delay. This warranty shall commence when the unit is put into service. The responder shall also state the warranty for all items offered on the Price Schedule. If responder is making a downtime offering, a copy of all terms and conditions pertaining to the agreement must be submitted as part of the RFB offer.
17. **OPTIONAL EQUIPMENT.** The State intends that any optional equipment and packages that are available from the manufacturer for the type of equipment outlined in the RFB be included with the response.

Optional equipment should be offered at the lowest price available to the State. For optional items in lieu of standard items, the price shall be the difference paid to achieve the upgrade rather than full purchase price.

If there are similar items covered by other State Contracts, the State agency may choose which Contract to purchase from.

Any requests for optional items that were not offered with the response and contracted by the State may not be sold against the Contract. If additional equipment is requested that is not covered by the Contract, the purchaser must follow the purchasing procedures for their agency and issue a separate purchaser order.

18. **EQUIPMENT TRAINING.** The cost of the equipment must include training to the purchaser that includes, but is not limited to, equipment operating instructions, mounting, removal, operating and safety instructions. The Contract Vendor should provide the training before the purchase of equipment will be considered complete. No additional training fees may be charged to the purchaser.
19. **TRADE-IN EQUIPMENT.** If requested by the purchaser, the Contract Vendor will allow equipment to be used as trade-in against new equipment purchases. This will be allowed on a case by case basis, and the purchaser has the right to refuse any offer made by the Contract Vendor.

In all cases, State agencies must obtain approval from the Department of Administration and must follow the requirements for liquidation of surplus goods. CPV members are solely responsible for compliance with their local government's requirements for liquidation of surplus goods.

Trade-in will occur when the new equipment is complete, delivered and accepted unless otherwise agreed by the Contract Vendor and the purchaser. The time of the transfer of the equipment will be mutually arranged between the purchaser and the Contract Vendor. The purchaser assumes all costs associated with the transfer of the trade-in equipment unless otherwise agreed by the Contract Vendor and the purchaser. Title of the trade-in equipment shall be provided to the Contract Vendor by the purchaser in accordance with Minn. Stat. § 168A.11. All equipment will be traded "as is, where is," with no guarantee expressed or implied.

20. **EQUIPMENT RENTAL PROGRAM.** If requested on the Price Schedule, the responder may offer rental equipment. The Contract Vendor agrees to accept a State agency or CPV member purchase order and will not require the State agency or CPV member to sign a rental agreement. The Contract Vendor must submit with its response a copy of the terms and conditions pertaining to its equipment rental program.

21. **VENDOR OWNED RENTAL OR DEMO EQUIPMENT.** During the term of the Contract, if makes and models of Excavators that are Contract Vendor rental returns or demo equipment become available, this equipment may be offered in response to the solicitation.

The equipment shall not be older than two years from the manufactured date and the remaining manufacturer's warranty shall be transferred to the new owner. The price will be based on the price deduction per used hour offered from the original State Contract price. Deliveries to the customer will be FOB Destination and transportation costs will be based on the price per loaded mile offered in this solicitation.

22. **USED EQUIPMENT.** Used equipment is not part of the solicitation and may not be offered.

23. **INFORMATION REQUIRED FOR RESPONSE RFB**

RESPONSES SHOULD BE IN THE FOLLOWING ORDER:

23a. **Response and all Required Forms**

ONE "ORIGINAL" AND ONE "COPY" OF THE RESPONSE MUST INCLUDE THE INFORMATION LISTED BELOW. MARK THE ORIGINAL RESPONSE "ORIGINAL" AND MARK THE COPY "COPY."

23a1. The response, including any addenda, with an original signature from a company officer who is authorized to enter into a Contract.

23a2. The name of the manufacturer's make and model being offered.

23a3. A completed Price Schedule for **EACH** make and model being offered.
BOTH A PAPER (ONE "ORIGINAL" AND ONE "COPY") AND TWO ELECTRONIC COPIES ON CD OR USB FLASH DRIVE IS REQUIRED.

23a4. Detailed warranty information on each make and model being offered.

PROVIDE CATALOG SHEETS AND TECHNICAL INFORMATION ON ALL EQUIPMENT OFFERED. THE RESPONDER NEEDS TO PROVIDE THE FOLLOWING COPIES OF TECHNICAL INFORMATION USING ONE OF THE FOLLOWING METHODS:

1. **ELECTRONIC CATALOG** – Catalog sheets and technical information may be submitted electronically on a CD or USB Flash Drive – **TWO COPIES ARE REQUIRED.**
2. **MANUFACTURER'S OR RESPONDER WEBSITE** – Catalog sheets and technical information may be offered by referencing the manufacturer's or the responder's website. Provide the website URL address to the specific location of the equipment being offered and any required password.
3. **PAPER SUBMISSION** – The State would prefer to receive the catalog sheets and technical information either electronically using the manufacturer's or responder's website.

If paper is the only method available to the responder – **TWO** paper copies of the catalog sheets and technical information are required for each piece of equipment offered.

23b. **EQUIPMENT SPECIFICATION INSTRUCTIONS**

DO NOT OFFER EQUIPMENT THAT DOES NOT MEET THE SPECIFICATIONS INCLUDED WITH THE SOLICITATION. IF RESPONDERS SUBMIT EQUIPMENT THAT DOES NOT MEET THE SPECIFICATIONS AS OUTLINED, THE STATE RESERVES THE RIGHT TO REJECT ALL OR PART OF THE OFFER.

A completed “**EQUIPMENT SPECIFICATION**” must be submitted with each response. To complete the “**EQUIPMENT SPECIFICATION**,” follow the instructions below. Responses not in compliance may be rejected

- 23b1. Complete manufacturer’s specifications and illustrated description should be submitted with each response. Any changes to the current production model should be clearly indicated on the literature/cover letter. Insufficient descriptive information may be cause for rejection of the response.

24. PRICE SCHEDULE. RESPONDERS SHALL USE THE ELECTRONIC PRICE SCHEDULE INCLUDED WITH THE SOLICITATION UNLESS AN EXCEPTION IS GRANTED BY THE AMS. IF THE EXCEPTION IS GRANTED THAT A RESPONDER MAY USE THEIR OWN PRICING PAGES, THE PRICING PAGES MUST MIRROR THE FORMAT OF THE PRICE SCHEDULE INCLUDED WITH THIS SOLICITATION. FAILURE TO INCLUDE ALL OF THE REQUIRED INFORMATION ON THE PRICE SCHEDULE MAY RESULT IN THE VENDOR’S RESPONSE BEING REJECTED.

Responders must include a completed Price Schedule for each item offered. A separate Price Schedule must be completed for each manufacturer’s make and model being offered. Do not put more than one model per Price Schedule.

ELECTRONIC FILE TO DOWNLOAD, COMPLETE, AND RETURN. Responders must download an [Excel/Word] document from the following link:

[http://www.mmd.admin.state.mn.us/process/admin/spreadsheets/13638E-95\(5\)PricePages.xls](http://www.mmd.admin.state.mn.us/process/admin/spreadsheets/13638E-95(5)PricePages.xls)

This document contains solicitation items and quantities for entering price information. In order for you to download the document, you must type or copy and paste the link’s file path and name into your browser address line. When the document file opens, use the “Save As...” feature to save the document to your computer hard drive or a disk.

The “Save As” feature does not work from the printed link - you need to put the complete file name and path in your browser’s address line and open the document to be able to save the document to a disk. If you need assistance please contact our helpline at 651.296.2600.

The Price Schedule includes the following 11 tabs on the bottom of the Spread Sheet:

Price Schedule Tabs

- Tab 1: Instructions
- Tab 2: Make/Model
- Tab 3: Options

**STATE OF MINNESOTA
EQUIPMENT SPECIFICATION
STATE OF MINNESOTA**

SPECIFICATION: 770-110

EXCAVATOR

JANUARY 2010

1.0 SCOPE:

This unit shall be the most current advertised production model as modified per specifications and approved by Mn/DOT, furnished with all standard equipment advertised whether or not specifically called for here except where the item is replaced by optional over standard equipment or conflicting equipment is specified. The unit shall be complete with all equipment required and ready for immediate operation to function as listed below. The unit must meet applicable codes and standards.

2.0 EXCAVATOR REQUIREMENTS:

- 2.1 Excavator shall have operating weight from 3,400 lbs. to 100,000 lbs.
- 2.2 Excavator shall be self powered with gas or diesel engine and be track (rubber or steel), tire or walking carriage. Excavators that are attachments are not allowed.
- 2.3 Excavator shall have hydraulic control lock at cab.
- 2.4 Controls shall be ISO standard (Caterpillar) pattern with other excavator (John Deere) pattern offered as an option in section 5.0 hydraulic options, on pricing pages.
- 2.5 Excavators shall include an enclosed cab with door(s) if available.
- 2.6 Excavator shall have bucket offered as an option. If bucket is included with base unit, indicate in the bucket section of pricing pages how much to deduct if customer does not wish to purchase base unit bucket.
- 2.7 When offering optional auxiliary valves for excavator, detail what is included. Indicate if one way/two way, adjustable (or not), how far plumbed, GPM, etc. Offer enough options so customer can accomplish desired auxiliary valving requirements.
- 2.8 Excavator shall be supplied with one complete set of parts, service, repair and operations manuals.
- 2.9 Responder shall offer one complete set of OEM air and fluid filters as an option.
- 2.10 Manufacturer's standard paint color acceptable; must be lead free paint.
- 2.11 Responder to ensure equipment meets all current federal and Minnesota safety codes.