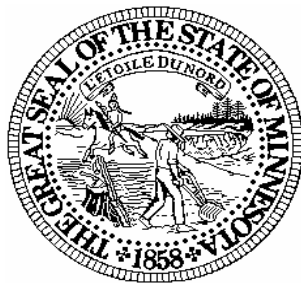


MINNESOTA
DEPARTMENT OF HUMAN SERVICES
PERFORMANCE MEASUREMENT & QUALITY IMPROVEMENT DIVISION

2008 Managed Care External Quality Review
REQUEST FOR PROPOSALS



FOR
A QUALIFIED CONTRACTOR(S) TO

Monitor and assess contracted managed care organization's compliance with federal, state and contractual requirements. The responder will produce a comprehensive written annual technical report (ATR) that meets the requirements of 42 CFR 438.364.

Proposals must be received no later than 1:00 PM Central Time on September 9, 2008.

Late or faxed proposals will not be accepted.

For communication assistance, contact Minnesota Relay Service at 7-1-1 or 1-800-627-3529. If you ask, we will give you this information in another form, such as Braille, large print, or audiotape.

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RFP Summary

Important Dates:

RFP Published:	July 21, 2008
Questions Due	August 12, 2008
Proposals Due	September 9, 2008
Anticipated Selection of Successful Responder(s)	October 3, 2008
Anticipated Start of Contract	October 31, 2008
Anticipated End of Contract	October 30, 2009
Anticipated Extensions:	Four twelve- month extensions starting October 30, 2009 through October 31, 2013.
Number of Copies:	Technical Proposal - One (1) original and six (6) copies. Cost Proposal - One (1) original and two (2) copies.
State Contact:	Robert Lloyd Performance Measurement & Quality Improvement Division Minnesota Department of Human Services P. O. Box 64986 St. Paul, MN 55164-0986 Phone: (651) 431 -2613 FAX #: (651) 431-7422 E-mail: robert.lloyd@state.mn.us

I. INTRODUCTION

A. PURPOSE OF REQUEST

The Minnesota Department of Human Services (DHS), through its Performance Measurement & Quality Improvement Division (State), is seeking Proposals from qualified External Quality Review Organizations (EQRO) to re-procure professional and technical consulting services to assist in the design, implementation and management of an annual “External Quality Review of Managed Care Organizations” for calendar year 2008. At DHS’ discretion, there will be an option of four annual extensions of the contract. The initial contract and annual extensions will not exceed five years.

The Review must be conducted to meet the requirements prescribed in the 42 CFR 438 Subparts D, E and F and current DHS Medicaid managed care contract requirements. The contractor will research, design, develop, conduct and report on, in accordance with the State, an external quality review based on analysis and evaluation of aggregated information on quality, timeliness and access to health care services that managed care organizations (MCO) furnish to Medicaid enrollees.

The Balanced Budget Act of 1997, sections 1932(c), 1903(a) (3)(C)(ii) and 1902(a)(4) require an annual external quality review of each contracting MCO. Minnesota Statute, 256L.12, subdivision 7(8), requires DHS to assess the quality of health care provided to MinnesotaCare enrollees, who receive health care services from prepaid MCOs under contract with DHS.

DHS requires these review activities be conducted by a neutral, unbiased organization to assure all interested parties that those with authority for administering these programs did not influence findings and recommendations. Responders must meet all qualifications to be an external quality review organization as outlined in Federal Regulation 42 CFR 438.354. Responders must describe in the proposal how the EQRO and subcontractors are independent from the State Medicaid Agency and from MCOs contracted with DHS.¹ Those Responders that do not meet all the requirements in 42 CFR 438.354 should not respond to this RFP.

B. OBJECTIVE OF THIS RFP

The objective of this RFP is to contract with a qualified Responder to perform the tasks and services set forth in this RFP. The term of any resulting contract is anticipated to be for one year, from October 31, 2008 until October 30, 2009, with the option of four annual extensions.

Proposals sent by U.S. mail must be received by September 9, 2008. If hand delivered or sent by carrier (e.g. UPS, FedEx, DHL) Proposals must be physically received by 1:00 p.m. Central Time on that date.

¹ 42 CFR 438.354(c)
Revised 2/2008

This RFP does not obligate the State to award a contract or complete the project, and the State reserves the right to cancel the solicitation if it is considered to be in its best interest. All costs incurred in responding to this RFP will be borne by the Responder.

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

C. BACKGROUND

DHS is a large agency providing health care, economic assistance and social services to Minnesotans who do not have the personal or family resources to meet basic needs. The State provides health care to more than 458,000 people through its prepaid Minnesota Health Care Programs. These programs include Minnesota Medicaid Medical Assistance (MA), General Assistance Medical Care (GAMC) and MinnesotaCare. Information about overall enrollment in Minnesota Health Care Programs is available at: www.dhs.state.mn.us/healthcare/enrollment/default.htm.

Most children, adults under age 65 who do not have a disability and seniors receive services through managed care arrangements. All MinnesotaCare enrollees receive health care through managed care arrangements. Minnesota Health Care Programs managed care programs include: Prepaid Medical Assistance Program (PMAP), Prepaid General Assistance Medical Care (PGAMC), MinnesotaCare, Minnesota Senior Care, Minnesota Senior Health Options (MSHO), Special Needs Basic Care (SNBC) and Minnesota Disability Health Options (MnDHO). To learn more about the State, its managed care programs and Medicaid waivers please see our webpage at www.dhs.state.mn.us/healthcare/waivers.

Ten MCOs, including 4 county-based purchasers (CBP), contract with the State: Blue Plus, First Plan Blue of Minnesota (First Plan), HealthPartners, Itasca Medical Care (IMCare), Medica Health Plans (Medica), Metropolitan Health Plan (MHP), PrimeWest Health System (PrimeWest), South Country Health Alliance (South Country), Steadfast Health Plan (begins enrollment 10/08) and UCare Minnesota (UCare). All CBPs must meet the same federal requirements as MCOs.

A copy of the 2006 ATR can be found on the DHS public web site Grants and RFPs page: http://www.dhs.state.mn.us/id_000102

II. SCOPE OF WORK

A. OVERVIEW

The Responder's primary function is to monitor and assess MCO compliance with federal, state and contractual requirements resulting in the Responder producing a comprehensive written annual technical report (ATR) that meets the requirements of 42 CFR 438.364.

All services under this contract shall be performed within the borders of the United States, except as may be otherwise required by the World Trade Organization Government Procurement Agreement of 1996². This includes all storage and processing of information and work performed by subcontractors at all tiers.

B. Responder Responsibilities, Duties and Deliverables

The Responder's proposal must address the following responsibilities, duties and deliverables. It is expected the Responder's proposal **will go beyond** the items listed below, to include additional creative approaches, methods and solutions that may deviate from those listed below. Additional creative approaches, methods and solutions, and any deviations offered by the responder **must be clearly marked**.

1. Working Knowledge. Demonstrate a working knowledge of DHS's programs, publicly funded managed care populations, MCO duties, Minnesota MCO licensing rules and regulations, and federal (Medicaid and Medicare) managed care and EQRO regulations. The responder is expected to remain up-to-date with any changes in MCO contracts, public programs and state or federal managed care regulations.
2. Project Timeline. Monitor and update the project timeline and task list as necessary to assure the project goals, objectives and contract deliverables are achieved. Notify DHS in writing if the responder anticipates that it will need to deviate from established timeline, with such notification including a revised timeline subject to DHS's prior approval.
3. DHS Notification. Notify DHS of any event, incident, or error that could compromise the undertakings specified in this contract or the privacy of enrollee medical and personal information. Initial notification to DHS' authorized representative may be by telephone and/or electronic form and must take place no later than 24 hours after the event, incident, or error is identified. A formal written report describing the circumstances leading to and possible implications of the event, incident, or error is to be submitted within 48 hours of its identification.
4. Effective Relationships. Describe how the responder will develop and maintain an effective and cooperative relationship with the MCOs and their staff. Demonstrate willingness and ability to communicate with MCOs and stakeholders on design elements, methodologies, interim progress and final

² The World Trade Organization Government Procurement Agreement of 1996 (WTO-GPA), signed by the United States and 27 other countries, is designed to open up as much business as possible to international competition. To that end, the member nations have agreed that they and their sub-central governments (states, provinces, prefectures, departments) will not discriminate against foreign products or suppliers of services when those products or services exceed an agreed upon threshold amount, which is currently \$528,000. In the case of this RFP, a contract would have to exceed the threshold amount (\$528,000) in order to be subject to the WTO-GPA requirement.

results as requested by DHS. If the responder experiences difficulties working with an MCO, the Responder will report the event to DHS.

5. Compliance. Comply with all state and federal laws, rules and regulations as applicable under this Contract, including, but not limited to data privacy, responder selection, open meetings use and results, as applicable, when receiving Medicaid Program reimbursement under Title XIX of the Social Security Act of 1995 (42 U.S.C. & 1396 et. seq.).
6. Staffing. Have policy and procedures to minimize assigned project staff turnover. Inform DHS in a timely manner when there are changes in assigned project staff and assure proposed replacement candidates are equally qualified and of a similar experience level. DHS reserves the right to approve or reject proposed replacement candidates if they do not have the necessary qualifications or experience as determined by DHS.
7. Submit all deliverables in a timely manner.
8. Participate in meetings (teleconference and/or videoconference) with DHS and MCOs.
9. Written Reports. The Responder will:
 - a). Describe the responder's process to assure draft and final reports are well-written and reasonably free of grammatical and typographical errors. The Responder will utilize the appropriate editorial staff to submit draft and final reports that are logically organized, and reasonably free of grammatical and typographical errors. All final written reports will be in a format consistent with The Gregg Reference Manual, Tenth Edition.
 - b). Follow directives on changes, such as, but not limited to:
 - Submit for review and approval a detailed ATR **outline**.
 - Draft(s) of the ATR will be submitted for review and approval. The ATR will provide findings, conclusions and recommendations based on data collected consistent with 42 CFR 438.364. MCOs will have 30 days to respond with comments to the final draft ATR. The Responder will incorporate into the final ATR a summary of MCO's comments as provided by DHS.
 - c). Provide a response to the following format and content issues:
 - Submit all interim, draft and final reports in electronic formats (Microsoft Word, Excel, Access or PowerPoint software).
 - Submit final ATR in written form (6 copies), an electronic copy in Microsoft Word software format suitable to be placed on DHS's website.
 - Provide DHS with final copies (paper and electronic) of all materials, tool(s) and analyses.

10. RFP Features. It is expected the responder's proposal will integrate the following features into its' RFP response:
 - a). Work cooperatively with DHS to assist in defining the parameters that better focus upon the extent of the issues concerning or related to project goals, objectives, project logistics, project outcomes and identify possible viable strategies. The responder will be expected to accommodate and be open to new issues and changes as necessary.
 - b). Demonstrate that the Responder has a comprehensive understanding of federal requirements as indicated in 42 CFR 438 and the current model DHS/MCO contracts.
 - c). Demonstrate the Responder's (subcontractor's) qualifications and experience in the development, design, and ability to assess MCO's strengths and weaknesses with respect to quality, timeliness and access to health care services furnished to Medicaid enrollees. Describe previous experience working with other State agencies to assess compliance with state and federal requirements.
 - d). Demonstrate ability to understand sources of performance data and how that data can be used effectively to influence performance. Provide recommendations on how to effectively incorporate performance data findings into the ATR.
 - e). Describe the Responder's plan, methods and policies that ensure the privacy and security of data obtained during the contract. The Responder must ensure that its security plan is HIPAA compliant. Describe how at the end of the contract, all data obtained, will be returned to DHS or be destroyed.
 - f). Designate a highly qualified project manager who will be responsible for all aspects of the Responder's contractual obligations. Describe the Responder's policies and procedures to minimize project staff turnover and methods to assure continuity if turnovers do occur.
 - g). Describe methods the Responder will use to coordinate activities of any subcontractors.
11. Contractual Assurances. It is expected the Responder will incorporate the following contractual assurances into their proposal.
 - a). The Responder shall not assign any interest or delegate any responsibility of the contract without the written consent of DHS. Any such request must be submitted to DHS at least 15 working days in advance of the desired date of assignment.
 - b). The Responder shall covenant that it, its officers, members or employees presently have no interest and shall not acquire any interest, direct or indirect, which would conflict or compromise in any manner or extent the performance of its service hereunder. The Responder further covenants that in the performance of this contract, the vendor shall periodically inquire of its officers, members and employees concerning such interests. Any such interests discovered shall be presented promptly in detail to DHS.
 - c). The scope of work to be done under this contract shall be subject to modification and supplementation upon the written agreement of the

duly authorized representatives of the contracting parties. No modification of the terms of the contract shall be made that would change the total contract price, unless such changes, including any increases or decreases in the amount of the responder's compensation, are mutually agreed between DHS and the Responder, and processed through and approved by DHS prior to the effective date of any such amendment.

- d). All materials developed or equipment acquired by the Responder for work done under the contract shall become the property of the State of Minnesota and must be delivered to DHS before the end of the contract.
- e). The Responder must agree to comply with all applicable federal and state non-discrimination laws and regulations to the end that no person shall be discriminated against in employment or in performance of this contract on the grounds of race, color, national origin, age, sex, or handicap.
- f). The Responder agrees to comply with all of the requirements of the Minnesota Government Data Practices Act (Chapter 13, 1986) in providing review services. The Responder must accept responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. The Responder must ensure that no private or confidential data collected, maintained, or used in the course of performance of the responsibilities of the reviewer shall be disseminated except as authorized by statute. The Responder should describe its plan for ensuring confidentiality and compliance with HIPAA regulations.
- g). The Responder shall indemnify and hold the State harmless from any and all claims or causes of actions arising out of or in connection with the acts or omissions of the Responder, its employees, subcontractors or agents, and shall reimburse the State of any costs, including reasonable attorney fees, incurred in defending against any such claims.
- h). The Responder agrees to assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, compensation, unemployment insurance, etc. The Responder must show evidence of compliance with the applicable state laws regarding unemployment insurance and workers compensation and must present evidence of a comprehensive liability insurance policy covering all of the responder's operations relevant to this RFP.
- i). Provide, upon request, all budget and financial information that may be required by state or federal regulations, including but not limited to full disclosure of any agreements or understandings, monetary or otherwise related to the responder's response to this RFP.
- j). Agree to allow DHS to:
 - Review and approve prior to use, sampling methodology, data collection methods, methods of data analysis, and program categorization scheme;

- Participate in a joint review process with the Responder to select subcontractors for data collection, data analysis, and any other subcontractor selected for work performed under the Contract;
 - Participate in a joint review process with the Responder to review and approve all subcontracts and final deliverable products;
 - Review and approve, prior to release, any final reports that include results or information regarding work performed under the Contract.
12. It is expected the Responder will address each of the following deliverables and where appropriate suggest additional creative approaches, methods, solutions and improvements.
- a). Project Work Plan: Assessment and Compliance Plan (AC Plan).
Describe a proposed plan that is a comprehensive description of all activities to be conducted during the contract period. The proposed AC Plan must be consistent with state and federal requirements and must be a stand alone document that is comprehensive and provides sufficient detail so the uninitiated reader would understand its key features. The plan will include the proposed methods to develop evaluation methodologies consistent with CMS protocols so as to produce a written detailed technical report as described in 42 CFR 438.364. The plan must provide a detailed description and proposed timeline of all tasks to be undertaken. The proposed AC Plan must also include a description of the following:
 - The Responder's policy and procedures to secure enrollee private data. The responder must ensure that their security plan is HIPAA compliant.
 - A description of how the Responder would conduct a systematic search for appropriate local and national benchmarks, and comparisons of services offered to public managed care program enrollees. Comparisons must be appropriate for comparable Medicaid populations in rural, urban and suburban areas and distributed by age and gender where appropriate to assess the MCO's compliance with federal requirements.
 - b) Written monthly activity reports that describe project activities undertaken or completed and other key aspects of the project.
 - c). Annual Technical Report. The Responder will propose an annual report format that is consistent with 42 CFR 438.364. The Annual Technical Report must include summaries of key issues from at least the following:
 - MCO's Annual Quality Assurance Work Plan;
 - MCO's Annual Quality Assessment and Performance Improvement Program Evaluation;
 - MCO's Audit of Provider Guidelines;
 - MCO's Performance Improvement Projects;
 - Performance Measures;
 - DHS or MCO Satisfaction Surveys;

- Reports, findings, and other results of a Medicare or private accreditation review from national accrediting organizations that have been approved by CMS which are applicable to comparable DHS standards as described in the state's Quality Strategy;
 - Medicare or private accreditation organization review findings, including all data, correspondence, information, and findings pertaining to an MCO's compliance with Medicare standards for access, quality assessment and performance improvement, health services, or delegation; performance measures and performance improvement projects for any MCO which is claiming exemption from the EQR;
 - Summary of MDH conducted quality examinations, corrective action plans and mid-cycle reviews.
 - Evaluation of each MCO's Quality Program's impact and effectiveness [42 CFR 438.240 (e)(1 and 2)]
 - Other information, documents and reports that may be used to assess the MCOs Quality Program.
- d). MCO Technical Assistance. Describe how the Responder will provide technical assistance to the MCOs on:
- MCO strengths and weaknesses associated with quality, timeliness and access to health care services;
 - Improving the quality of health services, and
 - Assessment of the extent to which the MCO effectively addressed EQRO recommendations during the previous year.

Nothing herein precludes DHS from changing these provisions through RFP addendums or contract negotiations, nor precludes Responders from proposing additional or different outcomes, requirements or features that may be more beneficial to DHS provided that such additions or differences are clearly identified as such. Failure to address items in this section could, at DHS' discretion, constitute a material deviation from the RFP, leading to the disqualification of the Responder's proposal from further consideration for contract award.

III. PROPOSAL FORMAT

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

A. REQUIRED PROPOSAL CONTENTS

Responses to this RFP must consist of all of the following components (See following sections for more detail on each component). Each of these components must be separate from the others and uniquely identified with labeled tabs.

1. Table of Contents
2. Technical Requirements
 - a. Statement of Understanding
 - b. Responder Responsibilities, Duties and Deliverables.
 - c. Relevant Responder Experience/Resumes of Lead Responder Staff
3. Innovative Concepts (*If Applicable*)
4. Required Statements
 - a. Responder Information and Declarations
 - b. Exceptions to Terms and Conditions
 - c. Affidavit of Noncollusion
 - d. Trade Secret/Confidential Data Notification
 - e. Location of Service Disclosure and Certification
 - f. Proof of Targeted Group Small Business/Economically Disadvantaged Small Business Certification (*If Applicable*)
 - g. Affirmative Action Data Page
 - h. Certification and Restriction on Lobbying
 - i. State of Minnesota-Immigration Status Certification
5. Appendix (*If Applicable*)

Any additional information thought to be relevant, but not applicable to the prescribed format, may be included in the Appendix of your Proposal.
6. Cost Proposal
 - a. Cost Proposal – Proposed Rate
 - b. Project Cost Worksheets

B. TECHNICAL REQUIREMENTS PROPOSAL

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

1. Statement of Understanding

This component of the Proposal should demonstrate the Responder's understanding of the services requested in this RFP, the nature of the contract, and any problems anticipated in accomplishing the work. Specifically, the Proposal should demonstrate the Responder's familiarity with the project

elements, a summary of its solution(s) to the problems presented and knowledge of the requested services and/or deliverables.

2. *Responder Responsibilities, Duties and Deliverables.*

Describe how the Responder plans to address the RFP responsibilities and duties. Provide a description of the deliverables and how the major tasks are to be accomplished.

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

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

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

C. INNOVATIVE CONCEPTS (*If Applicable*)

The detailed needs and requirements for Responders in this RFP are not intended to limit the Responder's creativity in preparing a Proposal. Responders may submit innovative ideas, new concepts, partnership arrangements, and optional features in response to this RFP. However, Responder must still address the needs and requirements stated in this RFP. Submitting a different idea instead of addressing the needs and requirements stated in the RFP will result in the Responder's Proposal being found nonresponsive and receiving no further consideration.

Any additional innovative concept submitted by a Responder will only be reviewed after the required needs stated in the RFP have been addressed. The State will review such additional features to determine whether or not, in the State's sole discretion, the features enhance the rest of the Responder's Proposal. If, at the State's sole discretion, it is determined that the additional innovative concepts would enhance the rest of the Responder's Proposal, the State *may* award bonus points to the Responder's Proposal in accordance with the evaluation process of this RFP.

D. REQUIRED STATEMENTS

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

1. *Responder Information and Declarations*

Complete and submit the attached “*Responder Information and Declarations*” form. If you are required to submit additional information as a result of the declarations, include the additional information as part of this form.

2. *Exceptions to RFP Terms*

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

Responder should be aware of the State’s standard contract terms and conditions in preparing its response. A sample State of Minnesota, Department of Human Services, Contract is attached for reference. Much of the language reflected in the contract is required by statute. If you take exception to any of the terms, conditions or language in the contract, you must indicate those exceptions in your response to the RFP. Only those exceptions indicated in your response to the RFP will be available for discussion or negotiation.

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

3. *Affidavit of Noncollusion*

Each Responder must complete and submit the attached “*Affidavit of Noncollusion*” form.

4. *Trade Secret/Confidential Data Notification*

All materials submitted in response to this RFP will become property of the State and will become public record in accordance with Minnesota Statutes, section 13.591, after the evaluation process is completed. Pursuant to the statute, completion of the evaluation process occurs when the State has completed negotiating the contract with the Successful Responder. If a contract is awarded to the Responder, the State must have the right to use or disclose the trade secret data to the extent otherwise provided in the Contract or by law.

If the Responder submits information in response to this RFP that it believes to be trade secret/confidential materials, as defined by the Minnesota Government Data Practices Act, Minn. Stat. §13.37, and the Responder does not want such data used or disclosed for any purpose other than the evaluation of this Proposal, the Responder must:

- a. clearly mark every page of trade secret materials in its Proposal at the time the Proposal is submitted with the words “**TRADE SECRET**” or “**CONFIDENTIAL**” in capitalized, underlined and bolded type that is at least 20 pt.; the State does not assume liability for the use or disclosure of unmarked or unclearly marked trade secret/confidential data;
- b. fill out and submit the attached “*Trade Secret/Confidential Information Notification Form*”, specifying the pages of the Proposal which are to be restricted and justifying the trade secret designation for each item. If no material is being designated as protected, a statement of “None” should be listed on the form;
- c. satisfy the burden to justify any claim of trade secret/confidential information. Use of generic trade secret/confidential language encompassing substantial portions of the Proposal or simple assertions of trade secret interest without substantive explanation of the basis therefore will be regarded as nonresponsive requests for trade secret/confidential exception and will not be considered by the State in the event of a data request is received for Proposal information; and
- d. defend any action seeking release of the materials it believes to be trade secret and/or confidential, 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 this RFP, the Responder agrees that this indemnification survives as long as the trade secret materials are in the possession of the State. The State is required to keep all the basic documents related to its contracts, including selected responses to RFPs, for a minimum of six years after the end of the contract. Non-selected RFP Proposals will be kept by the State for a minimum of one year after the award of a contract, and could potentially be kept for much longer.

The State reserves the right to reject a claim if it determines Responder has not met the burden of establishing that the information constitutes a trade secret or is confidential. **The State will not consider prices or costs submitted by the Responder to be trade secret materials.** Any decision by the State to disclose information designated by the Responder as trade secret/confidential will be made consistent with the Minnesota Government Data Practices Act and other relevant laws and regulations. If certain information is found to constitute a trade secret/confidential, the remainder of the Proposal will become public; only the trade secret/confidential information will be removed and remain nonpublic.

The State also retains the right to use any or all system ideas presented in any Proposal received in response to this RFP unless the Responder presents a positive statement of objection in the Proposal. Exceptions to such Responder objections include: (1) public data, (2) ideas which were known to the State before submission of such Proposal, or (3) ideas which properly became known to the State thereafter through other sources or through acceptance of the Responder's Proposal.

5. *Location of Service Disclosure and Certification*

In accordance with Minnesota Executive Order 04-02 and Minnesota Statutes §16C.03, subdivision 8, all Responders must complete and submit the attached “*Location of Service Disclosure and Certification*” form.

6. *Proof of TGSB/EDSB Certification*

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

7. *Human Rights Compliance*

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

8. *Certification Regarding Lobbying*

Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore the Responder must complete and submit the attached “*Certification Regarding Lobbying*” form.

9. *State of Minnesota- Immigration Status Certification*

By order of the Governor’s Executive Order 08-01, all Contractors and all the Contractor’s subcontractors who will participate in the performance of the contract MUST certify compliance with the Immigration Reform and Control Act of 1986 (8 U.S.C.1101et 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>. Therefore, the Responder must complete and submit the attached “State of Minnesota- Immigration Status Certification” form.

E. COST PROPOSAL

Responders must use the attached “*Cost Proposal Sheets*” (Appendix H & I) to submit their Cost Proposal. The Cost Proposal must be submitted as a **separate and sealed** part of the Proposal and clearly identified as the Cost Proposal. **Do not include any cost information in the Technical Requirements part of the Proposal.** The Technical and Cost Proposals must be open for acceptance until a contract is approved, the RFP is cancelled, or 180 days after the submission deadline for the RFP, whichever comes first.

The rate(s) identified in the Cost Proposal must reflect all costs that resulted in the proposed rate. The Cost Proposal must include a breakdown of costs that reflects all costs for the proposed services and a narrative explanation for how proposed costs are determined (e.g., salaries, fringe benefits, travel and subsistence, office supplies, printing and copying, rent, utilities, equipment, telephone, postage, communication services, subcontractors, overhead, administrative fees, other costs, indirect cost, etc.). If the Responder charges indirect cost or utilizes a cost allocation plan, it should include all necessary documentation to substantiate such costs. Responders must list the names and titles of all persons to be assigned to the contract, their hourly rates, and the total number of hours the Responder will utilize them on the contract through completion of the final report.

If applicable, costs for travel, lodging and subsistence expenses incurred by the Responder’s personnel shall be considered to be reasonable and allowable to the extent they are consistent with the current “Commissioner’s Plan” as promulgated by the Minnesota Commissioner of Employee Relations (a copy can be found at [http://www.doer.state.mn.us/lab-rel/pdfs/0709/2007-2009 Commissioners Plan.pdf](http://www.doer.state.mn.us/lab-rel/pdfs/0709/2007-2009%20Commissioners%20Plan.pdf) All out-of-state travel must be approved by the State. Current rates:

Mileage: Federal IRS mileage reimbursement rate (50.5 cents per mile).

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Meals: In-state: Breakfast - \$7.00; Lunch - \$9.00; Dinner - \$15.00
Lodging: Actual and reasonable costs

One copy of the Responder's written travel policy shall be included in the proposal. If the Responder does not have a written policy, the Responder shall so state.

For purposes of completing the Cost Proposal, Responder should know that the State does not make regular payments based solely upon the passage of time; it only pays for services performed or work delivered after it is accomplished. The contract will contain no cost-of-living adjustment provision.

IV. RFP PROCESS

A. RESPONDERS' QUESTIONS

Responders' questions regarding this RFP must be submitted **in writing prior to 1:00 p.m. Central Time on August 12, 2008**. All questions must be addressed to:

Attention: Robert Lloyd
Performance Measurement & Quality Improvement Division
Minnesota Department of Human Services
P. O. Box 64986
St. Paul, MN 55164-0986
Phone (651) 431 -2613
FAX #: (651) 431-7422

Questions may also be e-mailed to robert.lloyd@state.mn.us.

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

Questions will be addressed in writing and distributed by e-mail to all identified prospective Responders. Every attempt will be made to provide answers timely, with the intent that they are sent no later than **August 22, 2008**.

C. PROPOSAL SUBMISSION

If sending by U.S. mail, Proposals must be physically received (not postmarked) by September 9, 2008, to be considered. If hand delivering or using a carrier service (e.g. UPS, FedEx, DHL) Proposals must be physically received by 1:00 p.m. on that date. Late Proposals will not be considered and will be returned unopened to the submitting party. **Faxed or e-mailed Proposals will not be accepted.**

Proposals must be submitted in three-ring binders with each section indexed with label tabs. The main body of the Proposal pages must be numbered and submitted in 12-point font on 8 ½ X 11 inch paper, single spaced. The size and/or style of pictures,

graphics, tabs, attachments, margin notes/highlights, etc. are not restricted by this RFP and their use and style are at the Responder's discretion. All Proposals must contain the following:

1. **One (1) original and six (6) copies of the Technical Proposal** (which includes everything except for cost information). Clearly label the original "Technical Proposal – Original". **The Technical Proposal must not contain any cost information.**
2. **One (1) original and two (2) copies of the Cost Proposal.** Clearly label the original "Cost Proposal – Original". Place the Cost Proposal original and copies in a **sealed envelope separate from the Technical Proposal**. Write "Cost Proposal" and the Responder's name and address clearly on the outside of the envelope.

The two Sections, including required copies, must be submitted in a single package or container. Insert the sealed Cost Proposal envelope within the Proposal package or container, making sure that no cost information is included with the Technical Proposal. The above-referenced packages and all correspondence related to this RFP must be delivered to:

**Request for Proposal Response
Attention: Robert Lloyd
Performance Measurement & Quality Improvement Division
Minnesota Department of Human Services
444 Lafayette Road North
St. Paul, MN 55155**

It is solely the responsibility of each Responder to assure that their Proposal is delivered at the specific place, in the specific format, and prior to the deadline for submission. **Failure to abide by these instructions for submitting Proposals may result in the disqualification of any non-complying Proposal.**

V. PROPOSAL EVALUATION AND SELECTION

A. OVERVIEW OF EVALUATION METHODOLOGY

1. All responsive Proposals received by the deadline will be evaluated by the State. Proposals will be evaluated on "best value" as specified below, using a 100 point scale (70 possible technical points and 30 possible cost points). The evaluation will be conducted in four phases:
 - a. Phase I Required Statements Review
 - b. Phase II Evaluation of Technical Proposal
 - c. Phase III Evaluation of Cost Proposals
 - d. Phase IV Selection of the Successful Responder

2. During the evaluation process, all information concerning the Proposals submitted, except identity of Responders, will remain non-public.
3. Nonselection of any Proposals will mean that either another Proposal(s) was determined to be more advantageous to the State or that the State exercised its right to reject any or all Proposals. At its discretion, the State may perform an appropriate cost and pricing analysis of a Responder's Proposal, including an audit of the reasonableness of any Proposal.

B. EVALUATION TEAM

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

C. EVALUATION PHASES

At any time during the evaluation phases, the State may, at the State's discretion, contact a Responder to: (1) provide further or missing information or clarification of their Proposal, (2) provide an oral presentation of their Proposal, or (3) obtain the opportunity to interview the proposed key personnel. Reference checks may also be made at this time. The STATE reserves the right to solicit relevant information from any available sources related to past performance on other projects and contracts including quality, cost controls, timeliness and business relations.

However, there is no guarantee that the State will look for information or clarification outside of the submitted written Proposal. Therefore, it is important that the Responder ensure that all sections of the Proposal have been completed to avoid the possibility of failing an evaluation phase or having their score reduced for lack of information.

1. Phase I – Required Statements Review

The Required Statements will be evaluated on a pass or fail basis. Responders must "pass" each of the requirements identified in these sections to move to Phase II. The Required Statements will also be reviewed for submission by the Responder of the optional certification as a Targeted Group Small Businesses or Economically Disadvantaged Small Businesses. If proper proof of such certification has been submitted, the eligible preference points will be awarded to the Responder at this time.

2. Phase II - Evaluation of Technical Proposals

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

<u>Component</u>	<u>Total Possible Points</u>
i. Statement of Understanding	0
ii. Responder Responsibilities, Duties and Deliverables	55
iii. Relevant Responder/Worker Exp.	15
iv. Extent to which work is performed within the U.S.	0

Total: 70

- b. The evaluation team will review the components of each responsive Proposal submitted. Each component will be evaluated on the team's evaluation of the Responder's understanding and the quality and completeness of the Responder's approach and solution to the problems or issues presented.
- c. After reviewing the Proposals, the members of the evaluation team will rate each Proposal component.
- d. **Innovative Concepts.** Only after the Technical Proposal have been ranked, and it has been determined that the Responder's Proposal has passed Phase II, will any innovative concepts submitted by Responder be reviewed. If a Proposal is found not to have passed Phase II, any innovative concepts submitted will not receive consideration. The amount of bonus points to be given a Proposal for innovative concepts is at the sole discretion of the State, depending on how much the State determines the ideas enhance the rest of the Proposal. The amount given, if any, will be by consensus of the evaluation team. The State is under no obligation to give a Proposal any bonus points in any situation. The maximum possible bonus points are **ten**.

3. Phase III - Evaluation of Cost Proposals

- a. **Prior to evaluation in Phase III, no Cost Proposal will be reviewed and all will remain sealed.**
- b. Only the Proposals found to be responsive under Phases I and II will be considered in Phase III. OR Only a short-list of the most qualified Responders, as determined by Phase II, will be considered in Phase III.
- c. The Cost Proposals will be examined to determine if they are complete, in compliance with the requirements of this RFP, accurate in their calculation, and consistent with their technical counterpart. Any Cost Proposal that does not meet these criteria may be considered nonresponsive and rejected.
- d. Cost will be of significant importance in selecting a Responder(s) deemed qualified to provide all the requested services, but will not be the sole determining factor.

- e. Points for Cost Proposals will be awarded as follows: Proposals will be rank from the lowest cost to the highest cost. The proposal with the lowest cost will receive 100% of the available points (30). The other proposals will receive points using the following formula:

$$\text{Lowest Cost Proposal} \div \text{by Other Proposal Cost} \times 30 = \text{Points}$$

- f. The evaluation team reserves the right to reject unreasonable costs proposed by Responders. Specifically, the evaluation team will not consider any proposed costs that are, at the sole discretion of the State, not rational or are not competitively priced. Such Proposals will be regarded as nonresponsive and receive no further consideration.

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

- a. Only the Proposals found to be responsive under Phases I, II, and III will be considered in Phase IV.
- b. The evaluation team will review the Proposal scores in making its recommendations of the Successful Responder(s). A Responder's total score will be the sum of the scores received for the Technical Proposal and the Cost Proposal, along with any points awarded as bonus and/or for being a Targeted Small Group Business/Economically Disadvantaged Small Business.
- c. The State may submit a list of detailed comments, questions, and concerns to one or more Responders after the initial evaluation. The State may require said response to be written, oral, or both. The State will only use written responses for evaluation purposes. This may include requesting one or more Responders' "Best and Final" offers on price or technical requirements, or both. The total scores for those Responders selected to submit additional information may be revised as a result of the new information.
- d. The evaluation team will make its recommendation based on the above-described evaluation process. The Successful Responder(s), if any, will be selected approximately **60 days** after the Proposal submission due date.
- e. The final award decision will be made by the Commissioner of the Minnesota Department of Human Services or his or her authorized designee ("Commissioner"). The Commissioner may accept or reject the recommendation of the evaluation team.

D. CONTRACT NEGOTIATIONS AND UNSUCCESSFUL RESPONDER NOTICE

If a Responder(s) is selected, the State will notify the Successful Responder(s) in writing of their selection and the State's desire to enter into contract negotiations. Until

the State successfully completes negotiations with the selected Responder(s), all submitted Proposals remain eligible for selection by the State.

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

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

VI. REQUIRED TERMS AND CONDITIONS

- A. **Requirements.** All Responders must be willing to comply with all state and federal legal requirements regarding the performance of the Contract. The requirements are set forth throughout this RFP and are contained in the attached Draft Contract.
- B. **Governing Law/Venue.** This RFP and any subsequent contract must be governed by the laws of the State of Minnesota. Any and all legal proceedings arising from this RFP or any resulting contract in which the State is made a party must be brought in the State of Minnesota, District Court of Ramsey County. The venue of any federal action or proceeding arising here from in which the State is a party must be the United States District Court for the State of Minnesota.
- C. **Travel.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the contractor as a result of the contract will be in no greater amount than provided in the current "Commissioner's Plan" promulgated by the commissioner of Employee Relations. Reimbursements will not be made for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.
- D. **Preparation Costs.** The State is not liable for any cost incurred by Responders in the preparation and production of a Proposal. Any work preformed prior to the issuance of a fully executed contract will be done only to the extent the Responder voluntarily assumes risk of non-payment.
- E. **Contingency Fees Prohibited.** Pursuant to Minn. Stat. §10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.
- F. **Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.** Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore the Responder must certify the following, as required by the regulations implementing Executive Order 12549:

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

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but

is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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

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

G. Insurance Requirements

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

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

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

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

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

The following coverages shall be included:

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

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

\$1,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile

d. Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance (if applicable)

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

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

\$1,000,000 – per claim or event

\$1,000,000 – annual aggregate

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

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

3. Additional Insurance Conditions:

- Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contractor's performance under this contract;
- Contractor's policy(ies) and Certificates of Insurance shall contain a provision that coverage afforded under the policies shall not be cancelled or non-renewed without at least thirty (30) days advanced written notice to the State of Minnesota;
- Contractor is responsible for payment of contract related insurance premiums and deductibles;
- If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
- Include legal defense fees in addition to its liability policy limits, with the exception of G.2.d above; and

- Obtain insurance policies from an insurance company having an “AM BEST” rating of A- (minus); Financial Size Category (FSC) VII or better and must be authorized to do business in the State of Minnesota.
4. The State will reserve the right to immediately terminate the contract if the Contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State’s authorized representative upon written request.
 5. The successful Responder is required to submit acceptable evidence of insurance coverage requirements prior to commencing work under the contract.

H. *Criminal Background Check Required*

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

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

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

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

I. *State of Minnesota- Immigration Status Certification*

By order of the Governor’s Executive Order 08-01, all Contractors and all the Contractor’s subcontractors who will participate in the performance of the contract MUST certify compliance with the Immigration Reform and Control Act of 1986 (8 U.S.C.1101et 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>.

Contractors and subcontractors must certify compliance with items 1 and 2 identified in the State of Minnesota-Immigration Status Certification form. In addition, prior to the delivery of the product or initiation of services, Contractor **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 Contractor and made available to the State upon request.

J. Independence

By signing and submitting this proposal, the Responder certifies that it, its principals, and all of its subcontractors, does not exert control over any managed care organization being reviewed under this contract through:

- a) stock ownership
- b) stock options and convertible debentures
- c) voting trusts
- d) common management, including interlocking management
- e) contractual relationships in which they: deliver any health care services to Medicaid recipients; conduct, on the State's behalf, ongoing Medicaid managed care program operations related to oversight of the quality of MCO services, except for EQR-related activities; have a present, or known future, direct or indirect financial relationship that it will review under this contract. For purpose of this section, financial relationship means a direct or indirect ownership or investment interest (including an option or non-vested interest) in any entity, in any form of equity, debt or other means, including indirect ownership or investment interest no matter how many levels removed from direct interest, or a compensation arrangements with an entity.

VII. STATE'S RIGHTS RESERVED

Notwithstanding anything to the contrary, the State reserves the right to:

- A. Reject any and all Proposals received in response to this RFP;
- B. Disqualify any Responder whose conduct or Proposal fails to conform to the requirements of this RFP;
- C. Have unlimited rights to duplicate all materials submitted for purposes of RFP evaluation, and duplicate all public information in response to data requests regarding the Proposal;
- D. Select for contract or for negotiations a Proposal other than that with the lowest cost or the highest evaluation score;

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- E. Consider a late modification of a Proposal if the Proposal itself was submitted on time and if the modifications were requested by the State and the modifications make the terms of the Proposal more favorable to the State, and accept such Proposal as modified.
- F. At its sole discretion, reserve the right to waive any non-material deviations from the requirements and procedures of this RFP;
- G. Negotiate as to any aspect of the Proposal with any Responder and negotiate with more than one Responder at the same time, including asking for Responders' "Best and Final" offers as to price, technical provisions, or both;
- H. Extend the contract, in increments determined by the State, not to exceed a total contract term of five years; and
- I. Cancel the Request for Proposal at any time and for any reason with no cost or penalty to the State.
- J. Correct or amend the RFP at any time with no cost or penalty to the State. If the State should correct or amend any segment of the RFP after submission of Proposals and prior to announcement of the Successful Responder, all Responders will be afforded ample opportunity to revise their Proposal to accommodate the RFP amendment and the dates for submission of revised Proposals announced at that time. The State will not be liable for any errors in the RFP or other responses related to the RFP.
- K. Alter the composition of the evaluation team and their specific responsibilities.

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APPENDICES TO FOLLOW

APPENDICES

Responder Information/Declarations**RESPONDER INFORMATION****Responder Name:****Website:****Address:****Telephone Number:****CONTACT INFORMATION****Contact Name:****Title:****Telephone Number:****Fax Number:****E-mail:**

Name(s) of individuals involved with the preparation of this Proposal (to assist in determining potential conflict of interest):

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

By submission of this Proposal, Responder warrants that:

1. The information provided is true, correct and reliable for purposes of evaluation for potential contract award. Responder understands that the submission of inaccurate or misleading information may be grounds for disqualification from the award as well as subject the Responder to suspension or debarment proceedings as well as other remedies available by law.
2. It is competent to provide all the services set forth in its Proposal.
3. Each person signing a section of this Proposal is authorized to make decisions as to the prices quoted and/or duties proposed, is legally authorized to bind the company to those decisions.
4. If it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals, Responder will provide, along with this form, a list containing the names of the entities, the relationship, and a discussion of the conflict.
5. To the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, a vendor is unable or potentially unable to render impartial assistance or advice to the State, or the vendor's objectivity in performing the contract work is or might be otherwise impaired, or the vendor has an unfair competitive advantage. Responder agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing will be made to the Assistant Director of the Department of Administration's Materials Management Division ("MMD") which will include a description of the action which Responder has taken or proposes to take to avoid or mitigate such conflicts. If an organization

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conflict of interest is determined to exist, the State may, at its discretion, cancel the contract. In the event the Responder was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to MMD, the State may terminate the contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms “contract,” “contractor,” and “contracting officer” modified appropriately to preserve the State’s rights.

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

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

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____ Telephone Number: _____

APPENDIX B

EXCEPTIONS TO TERMS AND CONDITIONS

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

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

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

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

Responder Name:	
<u>Term & Condition Number/Provision</u>	<u>Explanation of Exception</u>

By signing this form, I acknowledge that the above named Responder accepts, without qualification, all terms and conditions stated in this RFP (including the sample contract) except those clearly outlined as exceptions above.

Signature _____

Title

Date

**STATE OF MINNESOTA
AFFIDAVIT OF NONCOLLUSION**

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

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

Responder's Firm Name: _____

Authorized Signature: _____

Date: _____

Subscribed and sworn to me this _____ day of _____

Notary Public

My commission expires: _____

Trade Secret/Confidential Data Notice

Responder/Company Name: _____

It is the position of the above-named Responder that certain data contained in the following page(s) of the attached Proposal have been submitted in confidence and contain trade secrets and/or privileged or confidential information (*list pages -- If no protected information has been submitted, state "NONE"*):

The justification for the Trade Secret/Confidential data designation is (*be specific, do not make general statements of confidentiality. Include reference to specific facts, licenses, trademarks, etc., and any relevant statutes or other law, such as how the data meets the requirements of Minn. Stat. §13.37, subd. 1 (b). Add additional pages if necessary*):

The Responder acknowledges that, in accordance with Minn. Stat. §§ 13.591 and 16C.06, Subd. 3, upon completion of contract negotiations, all materials submitted in response to this RFP will become the property of the STATE and will become public record, with the exception of any portion(s) of an RFP or supporting data that are determined to be nonpublic "trade secret information."

The Responder asserts that it has clearly marked every page of trade secret or confidential materials in the attached Proposal at the time the Proposal was submitted with the words "**TRADE SECRET**" or "**CONFIDENTIAL**" in capitalized, underlined and bolded type that is at least 20 pt. Responder acknowledges that the State is not liable for the use or disclosure of trade secret data or confidential data that Responder has failed to clearly mark as such.

Responder agrees to defend any action seeking release of the materials it believes to be trade secret or confidential, 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 reasonable costs connected with that defense. This indemnification survives the STATE'S award of a contract and remains as long as the trade secret and/or confidential materials are in the possession of the STATE.

Responder acknowledges that the STATE is required to keep all the basic documents related to its contracts, including selected responses to RFPs, for a minimum of six years after the end of the contract. Non-selected RFP Proposals will be kept by the STATE for a minimum of one year after the award of a contract, and may be kept for much longer. **Responder acknowledges that prices submitted by the Responder will not be considered trade secret materials.**

The Responder acknowledges that the STATE reserves the right to reject Responder's claim of trade secret/confidential data if the STATE determines that the Responder has not met the legal burden of establishing that the information constitutes a trade secret or is confidential. The Responder also acknowledges that if certain information is found to constitute a trade secret or is confidential, the remainder of the Proposal will become public; only the protected information will be removed and remain nonpublic.

Signature

Title

Date

* *Whether or not protected information is provided, the Responder must sign and date this form and submit it with the "Required Statements".*

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

LOCATION OF SERVICE DISCLOSURE

Check all that apply:

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

CERTIFICATION

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

Name of Company: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____ Telephone Number: _____

APPENDIX F

State Of Minnesota – Affirmative Action Data Page

If your response to this solicitation is 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 execution of the contract. The State of Minnesota is under no obligation to delay proceeding with a contract until a company receives Human Rights certification**

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

Your response will be rejected unless your business:

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

-or-

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

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

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

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

BOX B – For those companies not described in BOX A

Check below.

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

BOX C – For all companies

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

Website: www.humanrights.state.mn.us

Fax: (651) 296-9042

TTY: (651) 296-1283

Email: employerinfo@therightsplace.net

CERTIFICATION REGARDING LOBBYING

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

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, A Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Organization Name

Name and Title of Official Signing for Organization

By: _____
Signature of Official

Date

Cost Proposal – Proposed Rate

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

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

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

RFP responding to: _____

Company Name and Address:

Rate(s): \$_____

Attach a breakdown of costs that resulted in this rate.

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

Signature

Title

Date

2008 Managed Care EQR RFP

Overall Project Cost Worksheet

<i>Categories</i>	Amount
1. Personnel	
2. Fringe Benefits (Rate %)	
3. Travel	
4. Equipment	
5. Supplies	
6. Printing & Copying	
7. Telephone & Postage	
8. Contractual (Attach a separate Budget Information page for each Subcontractor(s).	
9. Indirect Cost (Rate %)	
10. Fee	
11. Other Costs: List	
TOTAL BUDGET	

Remarks

2008 Managed Care EQR RFP

AC Plan Cost Worksheet

<i>Categories</i>	<i>Amount</i>
1. Personnel	
2. Fringe Benefits (Rate %)	
3. Travel	
4. Equipment	
5. Supplies	
6. Printing & Copying	
7. Telephone & Postage	
8. Contractual (Attach a separate Budget Information page for each Subcontractor(s).	
9. Indirect Cost (Rate %)	
10. Fee	
11. Other Costs: List	
TOTAL BUDGET	

Remarks

2008 Managed Care EQR RFP

ATR Cost Worksheet

<i>Categories</i>	<i>Amount</i>
1. Personnel	
2. Fringe Benefits (Rate %)	
3. Travel	
4. Equipment	
5. Supplies	
6. Printing & Copying	
7. Telephone & Postage	
8. Contractual (Attach a separate Budget Information page for each Subcontractor(s).	
9. Indirect Cost (Rate %)	
10. Fee	
11. Other Costs: List	
TOTAL BUDGET	

Remarks

2008 Managed Care EQR RFP

MCO Technical Assistance Cost Worksheet

<i>Categories</i>	Amount
1. Personnel	
2. Fringe Benefits (Rate %)	
3. Travel	
4. Equipment	
5. Supplies	
6. Printing & Copying	
7. Telephone & Postage	
8. Contractual (Attach a separate Budget Information page for each Subcontractor(s).	
9. Indirect Cost (Rate %)	
10. Fee	
11. Other Costs: List	
TOTAL BUDGET	

Remarks

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 debarring 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

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

THIS CONTRACT, and amendments and supplements thereto, is between the State of Minnesota, acting through its Department of Human Services, Performance Measurement & Quality Improvement Division (the "STATE"), and _____, an independent contractor, not an employee of the State of Minnesota, (the "CONTRACTOR").

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

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

The STATE is in need of the following services: _____.

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

The parties therefore agree as follows:

1. Term of Contract.

- 1.1 **Effective date.** The effective date of this contract is ___ (DATE) ___, or the date that the STATE obtains all required signatures under Minnesota Statutes, section 16C.05, subdivision 2, whichever is later. **The CONTRACTOR must not begin work under this contract until ALL required signatures have been obtained, and CONTRACTOR has been notified by the STATE'S Authorized Representative to begin work.**
- 1.2 **Expiration date.** The expiration date of this contract is ___ (DATE) ___, or until all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation, or termination of this contract: 7. Information Privacy Protection; 8. Intellectual Property Rights; 9. Liability; 12. Publicity and Endorsement; 14. Audit Requirements and Contractor Debarment Information; 15. Data Disclosure; and 20. Governing Law, Jurisdiction and Venue.

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

3. **Time.** CONTRACTOR will perform its duties within the time limits established in this contract unless prior approval is obtained from STATE. In performance of this contract, time is of the essence.

4. **Consideration and Payment.**

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

- (a) **Compensation.** The CONTRACTOR will be paid as follows:
- (b) **Reimbursement.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by CONTRACTOR in performance of this contract in an amount not to exceed _____ **dollars (\$_____.00)**; provided, that CONTRACTOR will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than is provided in the current Commissioner's Plan (which is incorporated by reference) established by the Commissioner of Employee Relations. CONTRACTOR will not be reimbursed for travel and subsistence expense incurred outside the State of Minnesota unless it has received prior written approval for such out of state travel from the STATE.
- (c) **Total Obligation.** The total obligation of the STATE for all compensation and reimbursements to CONTRACTOR will not exceed _____ **dollars (\$_____.00).**
- (d) (If applicable.) For compensation payable under this contract, which is subject to withholding under state or federal law, appropriate amounts will be deducted and withheld by STATE as required.

4.2. **Payment.**

- (a) **Invoices.** The STATE, using the Minnesota Department of Finance's Electronic Fund Payment System, will promptly pay the CONTRACTOR after the CONTRACTOR presents itemized invoices for services performed and the STATE'S authorized representative accepts the invoiced services as satisfactory. Prior to submitting the first invoice under this contract, the CONTRACTOR will complete and submit to the Minnesota Department of Finance a Direct Deposit Authorization for Electronic Funds Transfer Form authorizing electronic contract payments. Invoices will be submitted timely, in a form prescribed by the STATE and according to Section 2.
- (b) **Retainage.** Under Minnesota Statutes, section 16C.08, subdivision 5(b), no more than ninety (90%) percent of the compensation due under this contract may be paid until the final product(s) of the contract has been reviewed by the STATE and it has been determined that the CONTRACTOR has satisfactorily fulfilled all the terms of the contract.

- (c) **Liquidated Damages:** In the event that CONTRACTOR fails to perform in accordance with Section 2 (Contractor's Duties), the STATE, at its option, may require the CONTRACTOR to pay liquidated damages in an amount equal to 5% of the total contract obligation amount. Such liquidated damages shall be payable to reimburse or compensate, at least in part, the STATE for:

- 1) Loss of revenue by the STATE resulting from the CONTRACTOR'S submission of unsatisfactory deliverables; and/or
- 2) Loss of revenue by the STATE resulting from the CONTRACTOR'S failure to meet deliverables deadlines; and/or
- 3) Other administrative costs and expenditures incurred by the STATE directly as a result of the CONTRACTOR'S failure to satisfactorily complete deliverables and/or meet deliverable deadlines; and/or
- 4) Use of STATE staff time to edit and/or correct unsatisfactory deliverables.

- (d) **Federal funds.** Payments under this contract will be made from federal funds obtained by the STATE through Title XIX, Catalog of Federal Domestic Assistance (CFDA) Number 93.778, of the Social Security Act of 1995 (Public law 42 U.S.C. 1396 and amendments thereto). The CONTRACTOR is responsible for compliance with all applicable federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by CONTRACTOR'S failure to comply with federal requirements. If at any time such funds become unavailable, this contract will be terminated immediately upon written notice of such fact by the STATE to the CONTRACTOR. In the event of such termination, CONTRACTOR will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

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

5. **Conditions of Payment.** All services provided by CONTRACTOR under this contract must be performed to the STATE'S satisfaction, as determined by the STATE'S authorized representative, and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. CONTRACTOR will not receive payment for work found by the STATE to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation.

6. **Authorized Representatives and Responsible Authority.**

6.1 **STATE.** The STATE'S authorized representative is _____ or his/her

successor, who has the responsibility to monitor the CONTRACTOR'S performance and the authority to accept the services provided under this contract. If the services are satisfactory, the STATE'S Authorized Representative will certify acceptance on each invoice submitted for payment, in accordance with Clause 4.2.

6.2 **CONTRACTOR.** The CONTRACTOR'S Authorized Representative is _____ or his/her successor. If the CONTRACTOR'S Authorized Representative changes at any time during this contract, the CONTRACTOR must immediately notify STATE.

6.3 **Information Privacy and Security.** (If applicable) CONTRACTOR'S responsible authority for the purposes of complying with data privacy and security for this agreement is _____ or his/her successor.

7. **Information Privacy and Security.**

For purposes of executing its responsibilities and to the extent set forth in this contract, the CONTRACTOR will be considered part of the "welfare system," as defined in Minnesota Statutes, section 13.46, subdivision 1.

7.1 **Information Covered by this Provision.** In carrying out its duties, CONTRACTOR will be handling one or more types of private information, collectively referred to as "protected information," concerning individual STATE clients. "Protected information," for purposes of this contract, includes any or all of the following:

- (a) *Private data* (as defined in Minnesota Statutes §13.02, subd. 12), *confidential data* (as defined in Minn. Stat. §13.02, subd. 3), *welfare data* (as governed by Minn. Stat. §13.46), *medical data* (as governed by Minn. Stat. §13.384), and other non-public data governed elsewhere in Minnesota Government Data Practices Act (MGDPA), Minn. Stats. Chapter 13;
- (b) *Health records* (as governed by the Minnesota Health Records Act [Minn. Stat. §§144.291-144.298]);
- (c) *Chemical health records* (as governed by 42 U.S.C. § 290dd-2 and 42 CFR § 2.1 to § 2.67);
- (d) *Protected health information* ("PHI") (as defined in and governed by the Health Insurance Portability Accountability Act ["HIPAA"], 45 CFR § 164.501); and
- (e) Other data subject to applicable state and federal statutes, rules, and regulations affecting the collection, storage, use, or dissemination of private or confidential information.

7.2 **Duties Relating to Protection of Information.**

- (a) **Duty to ensure proper handling of information.** CONTRACTOR shall be responsible for ensuring proper handling and safeguarding by its employees,

subcontractors, and authorized agents of protected information collected, created, used, maintained, or disclosed on behalf of STATE. This responsibility includes ensuring that employees and agents comply with and are properly trained regarding, as applicable, the laws listed above in paragraph 7.1.

- (b) **Minimum necessary access to information.** CONTRACTOR shall comply with the “minimum necessary” access and disclosure rule set forth in the HIPAA and the MGDPA. The collection, creation, use, maintenance, and disclosure by CONTRACTOR shall be limited to “that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government.” See, respectively, 45 CFR §§ 164.502(b) and 164.514(d), and Minn. Stat. § 13.05 subd. 3.
- (c) **Information Requests.** Unless provided for otherwise in this contract, if CONTRACTOR receives a request to release the information referred to in this Clause, CONTRACTOR must immediately notify STATE. STATE will give CONTRACTOR instructions concerning the release of the data to the requesting party before the data is released.

7.3 **CONTRACTOR’S Use of Information.** CONTRACTOR shall:

- (a) Not use or further disclose protected information created, collected, received, stored, used, maintained or disseminated in the course or performance of this contract other than as permitted or required by this contract or as required by law, either during the period of this contract or hereafter.
- (b) Use appropriate safeguards to prevent use or disclosure of the protected information by its employees, subcontractors and agents other than as provided for by this contract. This includes, but is not limited to, having implemented administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic protected health information that it creates, receives, maintains, or transmits on behalf of STATE.
- (c) Report to STATE any privacy or security incident of which it becomes aware. For purposes of this contract, “*Security incident*” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. “*Privacy incident*” means violation of the Minnesota Government Data Practices Act (MGDPA) and/or the HIPAA Privacy Rule (45 CFR Part 164, Subpart E), including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached.
- (d) Consistent with this contract, ensure that any agents (including Contractors and subcontractors), analysts, and others to whom it provides protected information, agree in writing to be bound by the same restrictions and conditions that apply to it with respect to such information.

- (e) Mitigate, to the extent practicable, any harmful effects known to it of a use, disclosure, or breach of security with respect to protected information by it in violation of this contract.

7.4 **STATE’S Duties.** STATE shall:

- (a) Only release information which it is authorized by law or regulation to share with CONTRACTOR.
- (b) Obtain any required consents, authorizations or other permissions that may be necessary for it to share information with CONTRACTOR.
- (c) Notify CONTRACTOR of limitation(s), restrictions, changes, or revocation of permission by an individual to use or disclose protected information, to the extent that such limitation(s), restrictions, changes or revocation may affect CONTRACTOR’S use or disclosure of protected information.
- (d) Not request CONTRACTOR to use or disclose protected information in any manner that would not be permitted under law if done by STATE.

7.5 **Disposition and/or Retention of Protected Information/Data upon Completion, Expiration, or Agreement Termination.**

Upon completion, expiration, or termination of this contract, CONTRACTOR will return or destroy all protected information received from STATE or created or received by CONTRACTOR for purposes associated with this contract. CONTRACTOR will retain no copies of such protected information, provided that if both parties agree that such return or destruction is not feasible, or if CONTRACTOR is required by the applicable regulation, rule or statutory retention schedule to retain beyond the life of this contract, CONTRACTOR will extend the protection of the Information Privacy and Security Clause of this contract to the protected information not returned or destroyed, and refrain from further use or disclosure of such information for as long as CONTRACTOR retains the protected information.

7.6 **Sanctions.** In addition to acknowledging and accepting the terms set forth in Section 9 of this contract relating to liability, the parties acknowledge that violation of the laws and protections described above could result in limitations being placed on future access to protected information, in investigation and imposition of sanctions by the U.S. Department of Health and Human Services, Office for Civil Rights, and/or in civil and criminal penalties.

7.7 **Additional Business Associate Duties.** To the extent CONTRACTOR is handling protected health information in order to provide health care-related administrative services on behalf of STATE, CONTRACTOR is a “Business Associate” of STATE, as that term is defined in HIPPA. As a result, in addition to the duties already detailed in this section, CONTRACTOR shall:

- (a) Make available protected health information in accordance with 45 CFR §164.524.
- (b) Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.526.
- (c) Make its internal practices, books, records, policies, procedures, and documentation relating to the use, disclosure, and/or security of protected health information available to the other Party and/or the Secretary of the United States Department of Health and Human Services (HHS) for purposes of determining compliance with the Privacy Rule and Security Standards, subject to attorney-client and other applicable legal privileges.
- (d) Comply with any and all other applicable provisions of the HIPAA Privacy Rule and Security Standards, including future amendments thereto.
- (e) Document such disclosures of protected health information and information related to such disclosures as would be required for STATE to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.
- (f) Provide to STATE information required to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with 45 CFR §164.528.

8. Intellectual Property Rights.

- 8.1 **Definitions.** *Works* means all inventions, improvements, discoveries (whether or not patentable or copyrightable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the CONTRACTOR, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this contract. *Works* includes “*Documents*.” *Documents* are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the CONTRACTOR, its employees, agents, or subcontractors, in the performance of this contract.
- 8.2 **Ownership.** The STATE owns all rights, title, and interest in all of the intellectual property, including copyrights, patents, trade secrets, trademarks, and service marks in the *Works* and *Documents created and paid for under this contract*. The *Works* and *Documents* will be the exclusive property of the STATE and all such *Works* and *Documents* must be immediately returned to the STATE by the CONTRACTOR upon completion or cancellation of this contract. To the extent possible, those *Works* eligible for copyright protection under the United States Copyright Act will be deemed to be “works made for hire.”

8.3 **Obligations.**

- (a) **Notification.** Whenever any Works or Documents (whether or not patentable) are made or conceived for the first time or actually or constructively reduced to practice by the CONTRACTOR, including its employees and subcontractors, and are created and paid for under this contract, the CONTRACTOR will immediately give the STATE'S Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon. The CONTRACTOR will assign all right, title, and interest it may have in the Works and the Documents to the STATE.
- (b) **Filing and recording of ownership interests.** The CONTRACTOR must, at the request of the STATE, execute all papers and perform all other acts necessary to transfer or record the STATE'S ownership interest in the Works and Documents created and paid for under this contract. The CONTRACTOR must perform all acts, and take all steps necessary to ensure that all intellectual property rights in these Works and Documents are the sole property of the STATE, and that neither CONTRACTOR nor its employees, agents, or subcontractors retain any interest in and to these Works and Documents.
- (c) **Duty not to Infringe on intellectual property rights of others.** The CONTRACTOR represents and warrants that the Works and Documents created and paid for under this contract do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 10, the CONTRACTOR will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the STATE, at the CONTRACTOR'S expense, from any action or claim brought against the STATE to the extent that it is based on a claim that all or part of these Works or Documents infringe upon the intellectual property rights of others. The CONTRACTOR will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the CONTRACTOR'S or the STATE'S opinion is likely to arise, the CONTRACTOR must, at the STATE'S discretion, either procure for the STATE the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the STATE will be in addition to and not exclusive of other remedies provided by law.

9. **Workers' Compensation and Other Insurance.**

- 9.1 **Workers' Compensation.** The CONTRACTOR certifies that, if applicable, it is in compliance with Minn. Stat. §176.181, subdivision 2, pertaining to workers' compensation insurance coverage. If CONTRACTOR is required to comply with the above statute, CONTRACTOR must provide STATE with evidence of compliance. The CONTRACTOR'S employees and agents will not be considered employees of STATE. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the STATE'S obligation or responsibility.

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

10. **Liability.** CONTRACTOR agrees to indemnify and save and hold the STATE, its representatives and employees harmless from any and all claims or causes of action, including all attorneys' fees incurred by the STATE, arising from the performance of this contract by CONTRACTOR or CONTRACTOR'S agents or employees. This clause will not be construed to bar any legal remedies CONTRACTOR may have for the STATE'S failure to fulfill its obligations pursuant to this contract.

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

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

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

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

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

- (1) The CONTRACTOR must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The CONTRACTOR agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - (2) The CONTRACTOR agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (3) In the event of the CONTRACTOR'S noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. §363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (4) The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the CONTRACTOR'S obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
 - (5) The CONTRACTOR must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minn. Stat. §363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- (c) *Consequences.* The consequences for the CONTRACTOR'S failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the STATE.
- (d) *Certification.* The CONTRACTOR hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

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

- (a) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;
- (b) That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (a) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;
- (c) That a violation of this section is a misdemeanor; and
- (d) That this contract may be canceled or terminated, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

12. **Publicity and Endorsement.**

12.1 **Publicity.** Any publicity regarding the subject matter of this contract must identify the STATE as the sponsoring agency and must not be released without prior written approval from the STATE'S authorized representative. For purposes of this provision, publicity includes, notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the CONTRACTOR or its employees individually or jointly with others or any subcontractors, with respect to the program, publications, or services provided resulting from this contract.

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

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

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

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

14.2 **Compliance with Single Audit Act.** All sub-recipients receiving \$500,000 or more of federal assistance in a fiscal year will obtain a financial and compliance audit made in

accordance with the Single Audit Act, OMB Circular A-133. CONTRACTOR certifies it will comply with the Single Audit Act, OMB Circular A-133, if applicable. Failure to comply with these requirements could result in forfeiture of federal funds.

- 14.3 **Contractor debarment, suspension and responsibility certification.** Federal Regulation 45 CFR 92.35 prohibits the STATE from purchasing goods or services with federal money from vendors who have been suspended or debarred by the federal government. Similarly, Minnesota Statutes 16C.03, subdivision 2 provides the Commissioner of Administration with the authority to debar and suspend vendors who seek to contract with the State.

BY SIGNING THIS CONTRACT, CONTRACTOR CERTIFIES THAT IT AND ITS PRINCIPALS:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transacting business by or with any federal, state or local governmental department or agency; and
- (b) Have not within a three-year period preceding this contract: a) been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract; b) violated any federal or state antitrust statutes; or c) committed embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
- (c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity for: a) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction; b) violating any federal or state antitrust statutes; or c) committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
- (d) Are not aware of any information and possess no knowledge that any subcontractor(s) that will perform work pursuant to this contract are in violation of any of the certifications set forth above.
- (e) Will immediately give written notice to the STATE should CONTRACTOR come under investigation for allegations of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing; a public (federal, state or local government) transaction; violating any federal or state antitrust statutes; or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

15. **Data Disclosure.** Under Minnesota Statutes §270C.65, subdivision 3, and other applicable law, the CONTRACTOR consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, to the STATE, to

federal and state agencies and state personnel involved in the approval and payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the CONTRACTOR to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities. **This contract will not be approved unless these numbers are provided.**

16. **Prohibition on Weapons.** CONTRACTOR agrees to comply with all terms of the Department of Human Services' policy prohibiting carrying or possessing weapons wherever and whenever the CONTRACTOR is performing services within the scope of this contract. This policy, which is located at the business location of the STATE and is available to CONTRACTOR upon request, is incorporated by reference into this contract. Any violations of this policy by CONTRACTOR or CONTRACTOR'S employees may be grounds for immediate suspension or termination of the contract.
17. **Foreign Outsourcing.** (If applicable) CONTRACTOR agrees that the disclosures and certifications made in its Location of Service Disclosure and Certification Form submitted with its proposal are true, accurate and incorporated into this contract by reference.
18. **Severability.** If any provision of this contract is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this contract shall remain in full force and effect.
19. **Cancellation or Termination.**
 - 19.1 **Cancellation.** This contract may be canceled by the STATE or the Minnesota Commissioner of Administration at any time, with or without cause, upon thirty (30) days written notice to the CONTRACTOR. In the event of such a cancellation, CONTRACTOR will be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed.
 - 19.2 **Insufficient Funding.** Notwithstanding clause 19.1, the STATE may immediately terminate this contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination will be by written or fax notice to the CONTRACTOR. The STATE is not obligated to pay for any services that are provided after notice and effective date of termination. However, the CONTRACTOR will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The STATE will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The STATE must provide the CONTRACTOR notice of the lack of funding within a reasonable time of the STATE'S receiving that notice.
 - 19.3 **Breach.** Upon clause 19.1, upon STATE'S knowledge of a curable material breach of this contract by CONTRACTOR, STATE shall provide CONTRACTOR written notice of the breach and ten (10) days to cure the breach. If CONTRACTOR does not cure the breach within the time allowed, CONTRACTOR will be in default of this contract and STATE may cancel the contract immediately thereafter. If CONTRACTOR has

breached a material term of this contract and cure is not possible, STATE may immediately terminate this contract.

20. **Governing Law, Jurisdiction and Venue.** Minnesota law, without regard to its choice of law provisions, governs this contract and amendments and supplements thereto. Venue for all legal proceedings arising out of this contract, or breach thereof, will be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.
21. **Assignment, Amendments, Waiver, and Contract Complete.**
 - 21.1 **Assignment.** The CONTRACTOR may neither assign nor transfer any rights or obligations under this contract without the prior consent of the STATE and a fully executed Assignment Agreement, approved by the same parties who executed and approved this contract, or their successors in office.
 - 21.2 **Amendments.** Any amendment to this contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original contract, or their successors in office.
 - 21.3 **Waiver.** If the STATE fails to enforce any provision of this contract, that failure does not waive the provision or STATE'S right to enforce it.
 - 21.4 **Contract Complete.** This contract contains all negotiations and agreements between the STATE and the CONTRACTOR. No other understanding regarding this contract, whether written or oral, may be used to bind either party.
22. **Other Provisions.**
 - 22.1 **Criminal Background Check Required.** CONTRACTOR and employees of CONTRACTOR working on site at STATE'S Central Office and accessing STATE'S protected information (as defined in 7. Information Privacy and Security of this contract.), must submit to or provide evidence of a computerized criminal history system background check (hereinafter "CCH background check") performed within the last 12 months before work can begin under this contract. "CCH background check" is defined as a background check including search of the computerized criminal history system of the Minnesota Department of Public Safety's Bureau of Criminal Apprehension.
 - 22.2 **Employee Status.** By order of the Governor's Executive Order 08-01, if this contract, including any extension options, is or could be in excess of \$50,000, CONTRACTOR certifies that it and its subcontractors:
 - (a) Comply with the Immigration Reform and Control Act of 1986 (U.S.C. 1101 et. seq.) in relation to all employees performing work in the United States and do not knowingly employ persons in violation of the United States' immigrations laws; and

- (b) By the date of the performance of services under this contract, CONTRACTOR and all its subcontractors 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 behalf of the State of Minnesota.

- 22.3 **External Quality Review Organization Competence.** The CONTRACTOR certifies:
- a. Staff has demonstrated experience and knowledge of Medicaid enrollees, policies, data systems and processes; managed care delivery systems, organizations, and financing; quality assessment and improvement methods; research design and methodology, including statistical analysis, and
 - b. Sufficient physical, technological and financial resources to conduct this type of project, and
 - c. Other clinical and non-clinical skills necessary to carry out the project and to oversee the work of any subcontractors.

22.4 **Independence.**

By signing this contract, the CONTRACTOR certifies that it, its principals, and all of its subcontractors, does not exert control over any managed care organization (MCO) being reviewed under this contract through:

- a) stock ownership;
- b) stock options and convertible debentures;
- c) voting trusts;
- d) common management, including interlocking management;
- e) contractual relationships in which they: deliver any health care services to Medicaid recipients; conduct, on the STATE'S behalf, ongoing Medicaid managed care program operations related to oversight of the quality of MCO services, except for EQR-related activities; have a present, or known future, direct or indirect financial relationship that it will review under this contract. For purpose of this section, financial relationship means a direct or indirect ownership or investment interest (including an option or non-vested interest) in any entity, in any form of equity, debt or other means, including indirect ownership or investment interest no matter how many levels removed from direct interest, or a compensation arrangements with an entity.

CONTRACTOR shall obtain certifications of compliance with this section from all subcontractors who will participate in the performance of this contract. Subcontractor certifications shall be maintained by CONTRACTOR and made available to the STATE upon request. If CONTRACTOR or its subcontractors are not in compliance with 1 or 2 above or have not begun or implemented the *E-Verify* program for all newly hired employees performing work under the 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 debaring the CONTRACTOR from state purchasing.

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(Signature Page Follows)**

2008 Managed Care EQR RFP

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

APPROVED:

1. STATE ENCUMBRANCE VERIFICATION:

Individual certifies that funds have been encumbered as required by Minn. Stat. 16A.15 and 16C.05.

By:
Date:
CFMS Contract No.:

2. CONTRACTOR:

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

By:
Title:
Date:

By:
Title:
Date:

3. STATE AGENCY:

By:
Title:
Date:

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

By:
Title: Assistant Commissioner
Date:

5. COMMISSIONER OF ADMINISTRATION:

By:
Date

Distribution (One fully executed original contract each):

Dept. of Administration
Appeals & Regulations Division
Agency
Contractor

State Authorized Representative – (copy)