

PROFESSIONAL TECHNICAL CONTRACT INFORMAL SOLICITATION

21st Century Community Learning Center Programs Evaluation Reports & Capacity Building

The Minnesota Department of Education (MDE) is soliciting proposals to report on the impact on youth participants participating in 38, 21st Century afterschool programs in Minnesota and to develop a state level evaluation plan to measure the impact of future grants.

This informal solicitation does not obligate the state to award a contract or complete the project. The state reserves the right to cancel the solicitation if it is considered to be in its best interest. All expenses incurred in responding to this notice are solely the responsibility of the responder.

A. Description of the Project, Goals and Objectives

The federal Elementary and Secondary Education Act/ No Child Left Behind (ESEA/NCLB) requires that each state education agency receiving 21st Century Community Learning Center (21st CCLC) funds reports on the impact of those programs to the public on a regular basis, (Elementary-Secondary Education Act, Title IV, Part B, Sec. 4201-4026) In addition, the law requires that each state develop a state-level plan for on-going evaluation of the impact of program activities.

The contractor will review existing data provided by local 21st Century program sites and prepare two summary reports on the extent that programs have achieved the goals identified in their original applications for funds, identify barriers to effective program implementation, and will include recommendations to the Minnesota Department of Education. In addition, the contractor will develop a statewide evaluation plan for implementation by Minnesota Department of Education to measure the impact of programs implemented after July 1, 2007. Finally, the contractor will provide two days of training on data-driven decision-making for 21st CCLC program staff.

Background

The purpose of the 21st CCLC is to create community learning centers that provide students with academic enrichment opportunities as well as additional activities designed to complement their regular academic program. Community learning centers must also offer families of these students' literacy and related educational development. Centers – which can be located in elementary or secondary schools or other similarly accessible facilities in the community – provide a range of high-quality services to support student learning and development, including tutoring and mentoring, homework help, academic enrichment (such as hands-on science or technology programs), community service opportunities, as well as music, arts, sports and cultural activities. At the same time, centers help working parents by providing a safe environment for students when school is not in session.

The law's specific purposes are to; (1) provide opportunities for academic enrichment, including providing tutorial services to help students, particularly students who attend low-performing schools, to meet State and local student performance standards in core academic subjects, such as reading and mathematics; (2) offer students a broad array of additional services, programs, and activities, such as youth development activities, drug and violence

prevention programs, counseling programs, art, music, and recreation programs, technology education programs, and character education programs, that are designed to reinforce and complement the regular academic program of participating students; and (3) offer families of students served by community learning centers opportunities for literacy and related education development.

The Minnesota Department of Education was awarded U.S. Department of Education 21st Century Community Learning Center funds in July, 2002. Two cohorts of grants to local school/communities have been awarded funds since that date. The first cohort of 19 sub-grant sites began programming in 2003 and will end their grant period in September, 2007. The second cohort group of 19 sub-grant sites began implementation in 2004 and will end their grant period in September, 2009.

21st CCLC program sub-grantees report information on program process and impact data through an electronic system (PPICS) and through written progress reports to the MN Department of Education. This request is for a contractor to summarize the data collected beginning in 2003, through the end of summer, 2005. A second report will review and report on the data collected from that point, through summer 2007.

B. Project Tasks

1. Review program implementation and impact information available through written and electronic reports provided by program sites through meetings with state staff, access to program files and electronic data.
2. Submit a program report for activities occurring between Spring, 2003 and August 31, 2005 for MDE staff review by August 31, 2006. Content must include description of activities provided, demographic data, impact of programs, barriers to effectiveness and recommendation for program improvement.
3. Identify an advisory group of program evaluators to provide advice and direction to the Department of Education in the development and implementation of a statewide evaluation plan and enhancement of current program activities.
4. Facilitate as least four meetings of the program evaluator group in partnership with Minnesota Department of Education staff by December 31, 2007. Summarize recommendations from that group and provide that information to the Minnesota Department of Education.
5. Provide the Minnesota Department of Education with a recommended statewide evaluation plan by September 30, 2006. Update and provide a revised plan by September 30, 2007.
6. Submit a program report for 21st CCLC activities occurring between summer 2005 and August 31, 2007 by December 31, 2007. Content must include description of activities

provided, demographic data, impact of programs, barriers to effectiveness and recommendation for program improvement.

7. In partnership with MDE staff, develop and provide at least 2 days of training on evaluation best practice for 21st CLCC program staff by December 31, 2007.

Responder may propose additional tasks or activities if they will substantially improve the results of the project. The additional tasks or activities should be separated from the required items in the cost proposal.

C. Department Contact

Prospective responders who have questions regarding this Informal Solicitation should submit those questions in writing by email to the following individual by 2:00 P.M. Central Time, Monday, April 17, 2006. Phone questions will not be accepted. Email questions must be clearly labeled in the subject line with: "Questions on 21st Century Community Learning Center Programs Evaluation." Responses to all questions will be via email to all prospective responders requesting copies of this Informal Solicitation. It is anticipated that questions and responses will be emailed by 2:00 P.M., Central Time, Wednesday April 19 2006.

Name: Sheila Oehrlein
Division: Federal Program Supports
Department: Education
Address: 1500 Highway 36 West, St. Paul MN 55113
Phone: 651-582-8448
Fax: 651-582-8499
E-Mail address: Sheila.Oehrlein@state.mn.us

Other personnel are NOT authorized to answer questions or discuss the project with anyone, including responders, before the proposal submission deadline.

D. Submission of Responses

All responses must be in writing and sent to:

Name: Ann Iweriebor
Department of Education
Room #: U18
Address: 1500 Highway 36 West, Roseville, MN 55113

All responses must be received not later than 3:00 P.M. Central Time, Friday, April 21, 2006.

Late Proposals will not be considered. Fax and E-Mail responses will not be considered.

All responses must be delivered or sent to the exact above location. Proposals will **NOT** be accepted at the receptionist desk located in the Department's main lobby area.

Submit four hard copies and one electronic of the response. Proposals must be clearly labeled "21st Century Community Learning Center Programs Evaluation".

Prices and terms of the response as stated must be valid for the length of any resulting contract.

E. Project Costs

The department has estimated the cost of this project should not exceed \$45,000.00.

F. Project Timelines:

The anticipated project period is June 1, 2006 through December 31, 2007.

G. Response Contents

The following will be considered minimum contents of the response:

1. Experience
 - a. Demonstrated knowledge of and experience with evaluation of afterschool programs and NCLB, Title IV, Part B requirements.
2. Project Plan
 - a. Brief project overview that describes the scope of work to accomplish the tasks listed in Section B of this solicitation that result in the two summary impact reports identified in that section, the development of a statewide evaluation plan, and the provision of training to project grant staff.
 - b. How the contractor will interact with MDE 21st CCLC staff and/or local program staff in the development of project activities.
 - c. How and in what formats will the contractor make information from the summary reports available to MDE staff, local program staff and other constituents.
 - d. How the contractor proposes to identify and ensure the participation of other evaluation specialists in the development and improvement of a statewide evaluation plan.

3. Budget
 - a. Breakout of costs for responder resources required to complete the tasks. Costs must be itemized by tasks or deliverables.
 - b. Proposed travel expenses must be itemized.

H. Response Evaluation

All responses received by the due date and time will be evaluated on best value. In some instances an interview may be part of the evaluation process. A 100-point scale will be used. The factors and weighting upon which responses will be evaluated are:

Evaluation Criteria

- | | |
|--|----|
| a. Experience with evaluation of afterschool programs | 35 |
| b. Project Plan – extent to which the project plan is reasonable and will result in use of 21 st CCLC program data for program improvement and more effective use of program resources to meet federal outcome/impact requirements. | 35 |
| c. Budget – extent to which costs are within limits and reasonable given proposed tasks, personnel and timelines. | 30 |

If interviews are conducted up to 10 additional points may be added. Responders invited to interview will be provided with the interview questions and/or requirements and associated evaluation points.

It is anticipated the evaluation and selection will be completed by Friday April 28, 2006. All responders will be notified of the results.

I. Proposal Certification

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

J. Foreign Outsourcing of Work Prohibited

All services under this contract shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision also applies to work performed by subcontractors at all tiers. Proposals received indicating work will be performed outside the borders of the United States will be considered non-responsive and will not be evaluated.

K. State of Minnesota Location of Service Disclosure and Certification Form

Each Responder must complete the attached State of Minnesota Location of Service Disclosure and Certification Form and include it with the proposal.

L. Preference to Targeted Group and Economically Disadvantaged Businesses and Individuals

If applicable, in accordance with Minnesota Rules 1230.1810, subpart B, and Minnesota Rules 1230.1830, certified Targeted Group Businesses and individuals submitting proposals as prime contractors shall receive the equivalent of a 6% 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 6% preference in the evaluation of their proposal. For information regarding certification, contact the Materials Management HelpLine at 651-296-2600, or you may reach the HelpLine by e-mail to mmd.help.line@state.mn.us. For TTY/TDD communications, contact the HelpLine through the Minnesota Relay Services at 1-800-627-3529.

M. Disposition of Responses

All materials submitted in response to this Informal Solicitation will become property of the State and will become public record in accordance with Minn. Stat. § 13.591 after the evaluation process is completed. Pursuant to the statute, completion of the evaluation process occurs when the agency has completed negotiating the contract with the selected vendor.

If the responder submits information in response to this Informal Solicitation that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minn. Stat. § 13.37, the responder must:

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

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

Responses to the Informal Solicitation will not be open for public review until the State has completed the evaluation process and has completed negotiating the contract with the selected vendor.

N. Conflicts of Interest

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

O. Organizational Conflicts of Interest

The responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances that 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 or competitive advantage. The responder agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the Assistant Director of the Department of Administration's Materials Management Division (MMD) which must include a description of the action the contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the contract. In the event the 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.

P. 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.

Q. Insurance Requirements

A. Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the Contract.

B. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

1. **Workers' Compensation Insurance:** Contractor must provide Worker's 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 Statutes exempts Contractor from Worker's 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 Worker's Compensation requirements.

2. **Commercial General Liability:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the contractor or by a subcontractor or by anyone directly or indirectly employed 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 should be included:

Premises and Operations Bodily Injury and Property Damage

Personal and Advertising Injury

Blanket Contractual Liability

Products and Completed Operations Liability

Other; please list _____

State of Minnesota named as an Additional Insured

3. **Commercial Automobile Liability:** Contractor is required to maintain insurance protecting the contractor from claims for damages for bodily injury, 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 such operations were by the contractor or by a subcontractor or by anyone directly or indirectly employed under the contract. Insurance **minimum** amounts are as follows:

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

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile
State of Minnesota named as an Additional Insured

CONTRACTOR will be required to:

- Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of this contract;
- Contractor will provide the State of Minnesota with thirty (30) days advance notice of cancellation, nonrenewal, or reduction in limits of coverage or other material change;
- Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
- Include legal defense fees in addition to its liability policy limits, and
- Obtain insurance policies from an insurance company having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better and must be authorized to do business in the State of Minnesota.

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

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

R. Sample State Contract

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

S. Payments and Reimbursements

The State does not make advance or up-front payments under a professional technical contract, or regular payments based on the passage of time. Payments are only made for services performed or work delivered after it is accomplished.

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.

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 identify 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 _____

SAMPLE CONTRACT FOR INCLUSION WITH
INFORMAL SOLICITATION OR RFP

Following is the text (not the actual format) that is used by the State of Minnesota to enter into professional technical services contracts. The terms and conditions are required by state statute. If you take exception to any of the terms, conditions or language in the contract, you must indicate those exceptions in your response. Certain exceptions may result in your response being disqualified from further review and evaluation. Only those exceptions identified in your response will be available for discussion or negotiation.

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

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

Recitals

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

Contract

1 Term of Contract

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

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

1.2 **Expiration date:** _____, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this contract: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 13. Publicity and Endorsement; 14. Governing Law, Jurisdiction, and Venue; and 16 Data Disclosure.

2 Contractor's Duties

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

3 Time

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

4 Consideration and Payment

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

(A) **Compensation.** The Contractor will be paid an amount not to exceed \$ _____ based on the following breakdown of costs: _____.

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

4.2. **Payment**

- (A) **Invoices.** The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the following schedule:
- (B) **Retainage.** Under Minnesota Statutes Section 16C.08, subdivision 5(b), no more than 90% of the amount due under this contract may be paid until the final product of this contract has been reviewed by the State's agency head. The balance due will be paid when the State's agency head determines that the Contractor has satisfactorily fulfilled all the terms of this contract.
- (C) **Federal funds.** (Where applicable, if blank this section does not apply) Payments under this contract will be made from federal funds obtained by the State through Title _____ CFDA number _____ of the _____ Act of _____. The Contractor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

5 **Conditions of Payment**

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

6 **Authorized Representatives**

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

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

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

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

- 7.2 **Amendments.** Any amendment to this contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original contract, or their successors in office.
- 7.3 **Waiver.** If the State fails to enforce any provision of this contract, that failure does not waive the provision or its right to enforce it.
- 7.4 **Contract Complete.** This contract contains all negotiations and agreements between the State and the Contractor. No other understanding regarding this contract, whether written or oral, may be used to bind either party.

8 Liability

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

9 State Audits

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

10 Government Data Practices and Intellectual Property

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

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

10.2. Intellectual Property Rights.

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

(B) Obligations

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

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

11 Workers' Compensation and Other Insurance

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

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

12 Publicity and Endorsement

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

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

13 Governing Law, Jurisdiction, and Venue

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

14 Data Disclosure

Under Minn. Stat. § 270.66, and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies and state personnel involved in the payment of state obligations.

These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

15 Payment to Subcontractors

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

16 Minn. Stat. §181.59 The vendor will comply with the provisions of Minn. Stat. § 181.59 which requires:

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

17 Termination

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

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

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

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

18.1 Covered Contracts and Contractors. If the Contract exceeds \$100,000 and the contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts

- 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.
- 18.2 **Minn. Stat. § 363A.36.** Minn. Stat. § 363A.36 requires the Contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights (“Commissioner”) as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.
- 18.3 **Minn. R. Parts 5000.3400-5000.3600.**
- (A) *General.* Minn. R. Parts 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor’s compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. Parts 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.
- (B) *Disabled Workers.* The Contractor must comply with the following affirmative action requirements for disabled workers.
- (1) The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - (2) The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (3) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (4) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
 - (5) The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minnesota Statutes Section 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- (C) *Consequences.* The consequences for the Contractor’s failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the State.
- (D) *Certification.* The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

19 Foreign Outsourcing

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

[Signatures as required by the state.]