

State of Minnesota

Department of Public Safety



REQUEST FOR PROPOSAL

HAZARDOUS MATERIALS PROGRAM

SWIFT Event 2000013294

Date Posted: September 6, 2022

- Responses must be received not later than 4:00 p.m. Central Time on Tuesday, September 27, 2022.
- Late responses will not be considered.

Minnesota's Commitment to Diversity and Inclusion

The State of Minnesota is committed to diversity and inclusion in its public procurement process. The goal is to ensure that those providing goods and services to the State are representative of our Minnesota communities and include businesses owned by minorities, women, veterans, and those with substantial physical disabilities. Creating broader opportunities for historically under-represented groups provides for additional options and greater competition in the marketplace, creates stronger relationships and engagement within our communities, and fosters economic development and equality.

To further this commitment, the Department of Administration operates a program for Minnesota-based small businesses owned by minorities, women, veterans, and those with substantial physical disabilities. For additional information on this program, or to determine eligibility, please call 651-296-2600 or go to [the Office of Equity in Procurement home page, at www.mn.gov/admin/oep](http://www.mn.gov/admin/oep).

SPECIAL NOTICE: This is a Request for Proposal. It does not obligate the State of Minnesota to award a contract or complete the proposed program, and the State reserves the right to cancel this solicitation if it is considered in its best interest.

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SECTION 1 – INSTRUCTIONS TO RESPONDERS

Steps for Completing Your Response	Follow the steps below to complete your response to this Solicitation: Step 1: Read the solicitation documents and ask questions, if any Step 2: Write your response Step 3: Submit your response
Incomplete Submittals	A response must be submitted along with any required additional documents. Incomplete responses that materially deviate from the required format and content may be rejected.

STEP 1: READ THE SOLICITATION DOCUMENT AND ASK QUESTIONS, IF ANY

How to Ask Questions	The contact person (“Solicitation Administrator”) for questions is: Kevin Donnan-Marsh, Contract Manager and Officer, Department of Public Safety Email Address: Kevin.Donnan-Marsh@state.mn.us Email Subject Line: HAZMAT Program Questions must be emailed to the Solicitation Administrator no later than 4:00 p.m. Central Time on Monday, September 12, 2022. The State will not respond to questions submitted by fax or telephone calls. Other personnel, regardless of position, are not authorized to answer questions regarding this solicitation. All questions will be answered in an addendum to this solicitation. The Q&A addendum will be issued no later 4:00 p.m. Central Time on Wednesday, September 14, 2022.
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STEP 2: WRITE YOUR RESPONSE

The Proposal Content section is in Section 4. Prepare a written response and supply all requested content. Responses should address the requested information and documents detailed in Section 4. **DO NOT INCLUDE** Non-Public/Trade Secret data (as defined by Minn. Stat. § 13.37).

Review, sign, and include ATTACHMENT A: RESPONDER DECLARATIONS with your response.

STEP 3: SUBMIT YOUR RESPONSE

Where to Send Your Response	All responses to this solicitation (termed an “Event” within SWIFT) must be submitted through SWIFT using the Supplier portal (https://mn.gov/supplier). Training and documentation on how to submit your response is available through the Supplier portal link above. Fax, e-mail, and printed responses will not be accepted or considered. All costs incurred in responding to this solicitation will be borne by the Responder. Late responses will not be considered. Responses received after End Date above will not be considered, even if errors or delays were caused by issues outside of Responders’ control. If Responder needs assistance, please contact the SWIFT Supplier Assistance Helpline at 651-201-8100, Option 1, or osphelp.line@state.mn.us . By submitting a response, Responder is making a binding legal offer for the period of time set forth below in Section 6.
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SECTION 2 – SUMMARY OF SCOPE

1. Procurement Overview.

The State Fire Marshal Division (“SFMD”) of the Department of Public Safety (“DPS”) is seeking proposals from entities to provide services corresponding to and authorized by the “Minnesota Hazardous Materials Incident Response Act,” Minnesota Statutes §§ 299A.48 through 299A.52 and Minnesota Rules 7514.0100 through 7514.2000.

HAZMAT Teams assist local authorities by providing technical advice to local incident commanders and recommend mitigation actions necessary to protect life, property, and the environment in keeping with locally available levels of hazardous materials training and response capability. The teams also assist in developing and recommending mitigation strategies, and assist with response operations as required.

This solicitation seeks proposals from entities interested in serving as a HAZMAT Team in any of the primary Response (geographic) Areas (see #4 below).

The State anticipates awarding multiple contracts to provide services in each geographic area identified by the SFMD.

2. Goal.

The goal of the Hazardous Materials Program is to protect the citizens and businesses of Minnesota, their property, and the environment from the effects of a hazardous materials release. The goal will be accomplished with properly trained and equipped teams strategically located throughout the State who respond to hazardous materials incidents at the request of local authorities. When deployed, teams will advise, assist and support local authorities mitigate the effects of a hazard materials release.

3. Sample Tasks and Deliverables.

Contractors for HAZMAT Teams will be responsible for all terms, tasks and conditions assigned by Minnesota Statutes §§ 299A.48 through 299A.52 and Minnesota Rules 7514.0100 through 7514.2000 including but not limited to the following:

- Coordinate on-scene emergency response operations with local, state, and federal agencies, Native American sovereignties, and private response organizations utilizing the Minnesota National Incident Management System.
- Ensure team members are in compliance with the initial, continuing education and team training requirements and annually certify such compliance.
- Ensure team members are in compliance with the medical requirements of the Code of Federal Regulations and the State of Minnesota.
- Deploy teams and equipment to a hazardous materials incident within an average of fifteen (15) minutes from the time the decision is made to dispatch the team.
- Conduct a formal evaluation of the team’s response to each incident and submit a detailed report of the incident as required by Minnesota Rules.
- Designate a primary and an alternate representative to SFMD’s Hazardous Materials Emergency Response Team Program Advisory Committee, who will attend all meetings of the committee and have the authority to make recommendations on behalf of the contractor.

- Designate a primary and an alternate representative who will be trained in applying the recommended operating guidelines and other administrative procedures of the response team program. [Note: The representatives will train their other team members.]
- Maintain and store emergency response vehicles and equipment, whether leased from the state or owned by the contractor, in working order and response ready at all times.
- Submit claims for recoverable costs as required by Minnesota Rules.
- Work closely with SFMD's assets team coordinator and other SFMD personnel to complete the above tasks.

For additional information, please visit <https://www.revisor.mn.gov/statutes/?id=299A> for more information about Minnesota Statutes §§ 299A.48 through 299A.52 and <https://www.revisor.mn.gov/rules/?id=7514> for more information about Minnesota Rules 7514.0100 through 7514.2000.

4. Primary Response Areas.

The current Primary (geographic) Response Areas have been established and one (1) HAZMAT Team will be designated to each Area. Assigned areas will become the contracted teams' primary response areas. In addition, teams will be assigned a secondary response area consisting of the entire State of Minnesota in order to provide an alternate response to incidents which may occur anywhere in the state. ***The State reserves the right to modify any Primary Response Area after all the teams' locations have been finalized and at any time thereafter if it is in the best interest of the State.***

The seven geographic areas presently identified are:

- Area 1: The entire Minnesota counties of: Hubbard, Cass, Itasca, Aitkin, Crow Wing, Beltrami south of Hwy 1.
- Area 2: The entire Minnesota counties of: McLeod, Carver, Hennepin, and Scott
- Area 3: The entire Minnesota counties of: Lake of the Woods, Koochiching, Beltrami north of Hwy 1, St Louis north of Hwy 1,
- Area 4: The entire Minnesota counties of: Sibley, Brown, Nicolett, Le Sueur, Blue Earth, Waseca, Faribault, Martin, Watonwan
- Area 5: The entire Minnesota counties of: Big Stone, Swift, Lac qui Parle, Chippewa, Yellow Medicine, Renville, Lyon, Redwood, Pipestone, Murray, Cottonwood, Rock, Nobles, Jackson
- Area 6: The entire Minnesota counties of: Anoka, Isanti, Chisago, Kanabec
- Area 7: The entire Minnesota counties of: Goodhue, Wabasha, Winona, Olmstead, Dodge, Steele, Rice, Freeborn, Mower, Fillmore, Houston

SECTION 3 – PROPOSAL INSTRUCTIONS AND ADDITIONAL INFORMATION

1. Anticipated Contract Term.

The term of this contract is anticipated to be from October 1, 2022 through June 30, 2024.

2. Question and Answer Instructions and Period.

The question-and-answer period begins at 10:00 a.m. Central Time on Tuesday, September 6, 2022, and ends at 4:00 p.m. Central Time on Monday, September 12, 2022. The designated Solicitation Administrator for questions is:

Kevin Donnan-Marsh, Contract Manager and Officer, Department of Public Safety

Email Address: Kevin.Donnan-Marsh@state.mn.us

Email Subject Line: HAZMAT Program

Other State personnel, regardless of position, are not authorized to answer questions regarding this solicitation. Contact regarding this solicitation with anyone other than the person identified above may result in disqualification of a Responder. This provision is not intended to prevent Responders from seeking guidance from state procurement assistance programs regarding general procurement questions.

Please submit all questions via email to the above named contact by 4:00 p.m. Central Time on Monday, September 12, 2022. All questions properly submitted will be answered in an addendum to this solicitation. The Q&A addendum will be issued no later than 4:00 p.m. Central Time on Wednesday, September 14, 2022.

The State is not obligated to answer questions submitted after the question submission deadline; and the State will not respond to questions submitted by fax or telephone calls or to persons other than the authorized individual above.

If a Responder discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in the solicitation, please immediately notify the contact person above via email of such error and request modification or clarification of the document in the Q&A addendum.

3. Response Submission Instructions.

All responses to this solicitation (termed an “Event” within SWIFT) must be submitted through SWIFT using the Supplier portal (<https://mn.gov/mmb/accounting/swift/vendor-resources/>) and received in SWIFT no later than the Event End Date and time as set forth in the SWIFT Event Details applicable to this solicitation.

Responses received after the End Date will not be considered, even if errors or delays were caused by issues outside of Responders’ control. The State shall not be responsible for any errors or delays caused by technology-related issues, even if they are caused by the State.

Training and documentation on how to submit a proposal is available through the Supplier portal link above. If a Responder needs assistance, please contact the SWIFT Vendor Assistance HelpLine at 651.201.8100, Option 1, or email osphelp.line@state.mn.us.

Late responses will not be considered. Fax, e-mail, and printed responses will not be accepted or considered. All costs incurred in responding to this solicitation shall be borne by the Responder.

All responses must include the following separately attached documents, unless otherwise specified:

- a Technical Proposal; and
- a Cost Proposal, which must be submitted separately from the Technical Proposal unless instructed otherwise.
- **DO NOT INCLUDE** Non-Public/Trade Secret data (as defined by Minnesota Statutes § 13.37).

Interested Responders may begin preparing and entering their response into SWIFT as soon as they have downloaded the solicitation document. Electronic submissions to the State will be accepted beginning on the SWIFT Start Date for this solicitation.

Cost Proposals (Attachment C) must be loaded into SWIFT as a separate document from the technical proposal. **See SWIFT Event for additional information.** Cost proposals will not be reviewed by the evaluation team prior to the technical scores being finalized.

Conciseness/Completeness of Proposal. It is highly desirable that the Responder submit its proposal in a complete, and concise manner. It is the Responder's sole responsibility to submit information as it relates to the evaluation categories. The State of Minnesota is under no obligation to solicit such information if it is not included in the response. The Responder's failure to submit such information may cause an adverse effect on the evaluation of its response. Unnecessary information should be excluded from the response.

IMPORTANT NOTE: If a Responder is reviewing this solicitation in the SWIFT system or downloaded the solicitation from the SWIFT system, then the Responder is already a registered supplier with the State.

If a Responder is reviewing this solicitation in paper form, then the Responder may need to register as a supplier by going to <https://mn.gov/mmb/accounting/swift/vendor-resources/>. For new suppliers, please note that approval of a registration may take 3–4 business days. If assistance is needed in completing the registration process, please contact the SWIFT Vendor Assistance Helpline at 651-201-8100, Option 1, or osphelp.line@state.mn.us.

4. Vendor SWIFT Registration.

Prior to doing business with the State of Minnesota, the State requires all suppliers to be registered in Statewide Integrated Financial Tools (SWIFT), the State's automated financial and contract system. If a Responder has not registered in SWIFT and received a unique ten-digit SWIFT supplier number, the Responder must register as a supplier by going to <https://mn.gov/mmb/accounting/swift/vendor-resources/>. Please note approval of a registration by Minnesota Management and Budget may take 3-4 business days. If assistance is needed to complete the registration process, please contact the SWIFT Vendor Assistance Helpline at 651-201-8100, Option 1, or osphelp.line@state.mn.us.

SECTION 4 – PROPOSAL CONTENT

Provide two separate proposals, a technical proposal and a cost proposal. Technical proposals will be evaluated according to responses in the following areas. Do not include any cost information in the Technical Proposal unless instructed otherwise.

Technical Proposal. Please be certain each of the following 13 sections are clearly identified with the same “headings” as those provided below.

1. Composition of the Proposed Team and Point of Contact for Contract Administration

Identify the following:

- Responder’s full legal name, e.g. City of San Diego acting on behalf of its Fire Department, or ABC HAZMAT, Incorporated
- Mailing address
- Street address if different than mailing address
- Name and title of the responder’s authorized representative, e.g. John Jones, Fire Chief, or Sally Johnson, President. This is the individual to whom SFMD will direct any questions about a submitted Proposal
- Primary daytime telephone number of responder’s authorized representative
- Direct email address of responder’s authorized representative

2. Point of Contact for Team Dispatch

Identify a single point of contact that will be used to dispatch the team including:

- Identification of the name of the dispatch center
- Mailing address
- Street address if different than mailing address
- Direct 24-hour emergency telephone phone number (Note: must be a non-911 number)
- Direct non-emergency telephone number
- Name, title, mailing address and direct daytime telephone number of the person responsible for the center’s operation

3. Employer Designation

Identify by legal name the employer responsible for the team members’ requirements as established in Minnesota Rules Chapter 7514 for any contract which may result from submission of a proposal. If this information is the same as identified in Section 2 above, responder may note “Same as #1 above.”

4. Membership of the Proposed Team

- a. Affirm [see Attachment E] composition of the Responder’s proposed team. A response team **must be composed** of at least nine (9) qualified members (Minnesota Rules 7514.0800, subpart 3). The Commissioner of Public Safety may permit a HAZMAT Team to be composed of fewer than nine (9) members when the team’s employer can demonstrate that three (3) members of the team will be available to respond at all times. (Minnesota Rules 7514.0800, subpart 4).
- b. Identify the **total number** of persons, by level of training, who will serve as members of the proposed team. For a team composed of more than one legal entity, identify the number of persons from each organizational affiliation who will serve as members of the team.

Special Note: Any responder requesting a waiver of the minimum number of required personnel must include in its proposal sufficient documentation to justify a requesting waiver from the Commissioner of

Public Safety and the SFMD.

5. Team Member Training

Affirm [see Attachment E] that current or proposed hazardous materials training provided to team members **meets the requirements** of Code of Federal Regulations, title 29, section 1910.120, and is in substantial compliance with NFPA 470, 472, 473, 1072 and, where applicable, NFPA 475.

6. Staffing Plan for Minimum Number of Response Personnel

When responding as a Materials Emergency Response Team, at least five (5) of the nine (9) members **must be certified** by the employer at the highest level of hazardous materials training (currently established at the specialist level) as defined by Code of Federal Regulations, title 29, section 1910.120. The one (1) member assigned to provide medical support to the team on each response **must be certified** by the employer at a minimum of the operations level as defined by Code of Federal Regulations, title 29, section 1940.120. The remaining three (3) members **must be certified** by the employer at a minimum of the technical level as defined by Code of Federal Regulations, title 29, section 1910.120 (Minnesota Rules 7514.0800. subpart 5).

HAZMAT Teams **must** have three (3) members available for response at all times (Minnesota Rules 7514.0800, subpart 3) but may propose to respond to each incident with up to five (5) persons. Responders **must state in their proposal** the number of persons who will respond. The agreed-upon number will be identified in a contract. The State will pay the contractor based on the agreed-upon number members in order to recover the costs related to that number of personnel from the party responsible for the incident.

Affirm [see Attachment E] the proposed team’s plan for scheduling and maintaining the minimum required level of staffing. Identify the number of team members that will respond to each incident as a HAZMAT Team and identify the minimum level of training of the personnel responding to each incident.

7. Geographic Location of the Proposed Team

Describe the location(s) of the proposed team(s) and proximity to the primary response area.

Respondents should identify by street address(es) and city(ies) the location(s) of the proposed team(s), including the location(s) of all stations from which the team(s) may respond. Teams composed of more than one entity should identify the location of each team.

8. Team Experience

Describe the team’s experience responding to hazardous material incidents, including the number of years the team has been in existence. Experience should also be described by providing documentation of the number of incidents demonstrating the Team’s technical experience with a variety of hazardous materials.

9. Existing Proposed Training and Exercise Programs

Describe the team’s existing and proposed training, continuing education and exercise training programs. To describe existing exercise training program(s), include a list of hazardous materials exercises for calendar years 2018, 2019, 2020, 2021, 2022 in which the team has played an active role as a participant.

Identify the source(s) which provide(s) existing and proposed training, continuing education and exercise training programs. Describe how the team(s) proposes to participate in exercise training programs conducted by local authorities in the primary response area. Include a statement which describes the extent to which the team(s) plans to participate in hazardous materials exercises conducted by local authorities in

the team's primary response area.

Special Note: A portion of the training funds available to the team(s) may be used to cover costs associated with exercises taking place outside the team's geographic jurisdiction.

10. Team Development

Affirm [see Attachment E] team will meet the minimum standards required by Minnesota Rules Chapter 7574. Include, if applicable, an estimate of the time period necessary for further development to bring the team up to the training standard where it will be ready to respond. Items that may be addressed in this section include the time period necessary to train team personnel to meet the minimum standards required by Minnesota Rules Chapter 7574, and/or acquiring necessary equipment and vehicles.

11. Direct and Indirect Support

The Hazardous Materials Program exists as a partnership between the State, business and industry, and the regional teams. The State, business and industry, participate in this partnership by providing funding and equipment to support the response to hazardous materials incidents whether they occur within or outside its geographic jurisdiction.

Describe any direct or indirect contributions the responder proposes to provide in support of the team including an estimated total monetary value of proposed direct and indirect support. Examples of direct contributions include but are not limited to: funding for personnel costs, supplies and equipment, training, personnel medical costs, administrative costs and vehicle and equipment maintenance costs provided by the contractor in addition to the potential contractor compensation provided by the State. Examples of indirect contributions include office space, office furniture and use of office equipment such as computers and copy machines.

Include, if applicable, a statement that state funding received from a contract resulting from this proposal will be used to supplant local funding for hazardous materials emergency response.

12. Deployment Time

Identify an estimate of the total time in minutes or hours needed for deployment of the team(s).

13. Response Time

Identify an estimated response time in minutes or hours, when traveling under favorable weather conditions, to the anticipated furthest point of the primary response area.

14. Response Equipment and Vehicles

List all hazardous materials response supplies and equipment, vehicle(s) and equipment trailer(s) currently owned, leased or otherwise available to the Responder. List of vehicle(s) and equipment trailer(s) should include make, model and storage location of the vehicle(s) and trailer(s).

Affirm [see Attachment E] the Responder will maintain all equipment, vehicle(s) and trailer(s) in proper operating condition; and store the equipment, vehicle(s), and trailer(s) in a climate- and temperature-controlled facility (see Note below).

Note About Vehicles: The State will provide one (1) emergency response vehicle and one (1) equipment trailer to contract awardees as required. Vehicles and trailers purchased by the State will be loaned to the

awardee for the term of the contract. Program teams, subject to written pre-approval by the State, may also propose: 1) the use of an existing vehicle or trailer; or 2) the awardee's own purchase of its vehicle and/or trailer subject to Minnesota Rules 7514.1400.

Note About Storage: The contract awardee is required to provide climate- and temperature-controlled storage for any equipment, vehicle and trailer used by the Team. Available funding will be included in the contract to cover 100% or a portion of the equipment, vehicle and trailer maintenance but the contract will not provide for construction or a climate- and temperature-controlled storage facility nor will the contract provide for renovation of an existing storage facility to fulfill the climate- and temperature-controlled requirement.

Cost Proposal

Using "Attachment C: Cost Proposal" attached to this solicitation, identify your *estimated* costs for each of the following periods:

October 1, 2022 through June 30, 2023

July 1, 2023 through June 30, 2024

Teams will be paid by the State for the following costs in each year of the contract associated with:

- A. Capital Equipment. Annual cost of capital equipment purchases including vehicles.
- B. Training. Annual cost of training team personnel, excluding exercise training.
- C. Medical Examinations. Annual cost of medical examinations for team personnel.
- D. Consumable Supplies. Annual cost of consumable supplies.
- E. Administration/Overhead. Annual cost of administrative overhead.
- F. Maintenance. Annual maintenance costs.

Required and Optional Documents

Submit the following documents attached to this solicitation:

1. Attachment A: Responder Declarations (required)
2. Attachment B: Exceptions to State's Terms and Conditions (required)
3. Attachment D1: Veteran-Owned Preference Form (optional; if applicable)
4. Attachment D2: Workforce Certificate (required)
5. Attachment D3: Equal Pay Certificate (required)
6. Attachment E: Affirmation of Minnesota Rules, Federal Regulations and SFMD Requirements (required)

DO NOT INCLUDE Non-Public/Trade Secret data (as defined by Minn. Stat. § 13.37).

SECTION 5 – EVALUATION PROCEDURE AND CRITERIA

The State will conduct an evaluation of responses to this Solicitation. The evaluations will be conducted in three phases:

- Phase 1 - Review responses for responsiveness and pass/fail requirements
- Phase 2 - Evaluate responses
- Phase 3 - Select finalist(s)

Phase 1: Responsiveness and Pass/Fail Requirements.

The purpose of this phase is to determine if each response complies with mandatory requirements. The State will first review each proposal for responsiveness to determine if the Responder satisfies all mandatory requirements. The State will evaluate these requirements on a pass/fail basis.

Mandatory Requirements. The following will be considered on a pass/fail basis:

- Responses must be received by the due date and time specified in this RFP.
- Responder has signed and submitted Attachment E.

Phase 2: Evaluate Responses.

Only those responses found to have met Phase 1 criteria will be considered in Phase 2.

The factors and weighting on which responses will be evaluated are:

Technical Proposal (700 points)	
1. Tech Proposal #4, Membership of the Proposed Team	150 points
2. Tech Proposal #7, Geographic Location of the Proposed Team	50 points
3. Tech Proposal #8, Team Experience	175 points
4. Tech Proposal #9, Existing Proposed Training and Exercise Programs	25 points
5. Tech Proposal #11, Direct and Indirect Support	75 points
6. Tech Proposal #12, Deployment Time	150 points
7. Tech Proposal #13, Response Time	75 points
Cost Detail	<u>300 points</u>
Sub-Total	1,000 points
Preference Points (if applicable)	60 points
Total	1,060 points

Preference points are described under Section 6 and will be applied to the total score after points have been awarded.

Phase 3: Select Finalist(s).

Only those responses that have been evaluated under Phase 2 shall be eligible for Phase 3.

The State will make its selection based on best value as determined by this evaluation process. The State reserves the right to pursue negotiations on any exception taken to the State’s standard terms and conditions. In the event that negotiated terms cannot be reached, the State reserves the right to terminate negotiations and begin negotiating with the next highest scoring Responder or take other actions as the State deems appropriate. If the State anticipates multiple awards, the State reserves the right to negotiate with more than one Responder.

It is anticipated that the evaluation and selection will be completed by September 30, 2022.

SECTION 6 – SOLICITATION TERMS

1. **Competition in Responding.**

The State desires open and fair competition. Questions from Responders regarding any of the requirements of the Solicitation must be submitted via email to the Solicitation Administrator listed in the Solicitation before the due date and time. If changes are made the State will issue an addendum.

Any evidence of collusion among Responders in any form designed to defeat competitive responses will be reported to the Minnesota Attorney General for investigation and appropriate action.

2. **Addenda to the Solicitation.**

Changes to the Solicitation will be made by addendum with notification and posted in the same manner as the original Solicitation. Any addenda issued will become part of the Solicitation.

3. **Data Security - Foreign Outsourcing of Work is 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.

4. **Joint Ventures.**

The State allows joint ventures among groups of Responders when responding to the solicitation. However, one Responder must submit a response on behalf of all the others in the group. The Responder that submits the response will be considered legally responsible for the response (and the contract, if awarded).

5. **Withdrawing Response.**

A Responder may withdraw its response prior to the due date and time of the Solicitation. For solicitations in the SWIFT Supplier Portal, a Responder may withdraw its response from the SWIFT Supplier Portal. For solicitations done any other way, a Responder may withdraw its response by notifying the Solicitation Administrator in writing of the desire to withdraw.

After the due date and time of this Solicitation, a Responder may withdraw a response only upon showing that an obvious error exists in the response. The showing and request for withdrawal must be made in writing to the Solicitation Administrator within a reasonable time and prior to the State's detrimental reliance on the response.

6. **Rights Reserved.**

The State reserves the right to:

- Reject any and all responses received;
- Waive or modify any informalities, irregularities, or inconsistencies in the responses received;
- Negotiate with the highest scoring Responder[s];
- Terminate negotiations and select the next response providing the best value for the State;
- Consider documented past performance resulting from a State contract may be considered in the evaluation process;
- Short list the highest scoring Responders;
- Require Responders to conduct presentations, demonstrations, or submit samples;
- Interview key personnel or references;

- Request a best and final offer from one or more Responders;
- Request additional information;
- Use estimated usage or scenarios for the purpose of conducting pricing evaluations; and
- Modify scenarios, and to request or add additional scenarios for the evaluation.

7. Samples and Demonstrations.

Upon request, Responders are to provide samples to the State at no charge. Except for those destroyed or mutilated in testing, the State will return samples if requested and at the Responder's expense. All costs to conduct and associated with a demonstration will be the sole responsibility of the Responder.

8. Responses are Nonpublic during Evaluation Process.

All materials submitted in response to this Solicitation will become property of the State. During the evaluation process, all information concerning the responses submitted will remain private or nonpublic and will not be disclosed to anyone whose official duties do not require such knowledge. Responses are private or nonpublic data until the completion of the evaluation process as defined by Minn. Stat. § 13.591. The completion of the evaluation process is defined as the State having completed negotiating a contract with the selected Responder. The State will notify all Responders in writing of the evaluation results.

9. Trade Secret Information.

- 9.1** Responders must not submit as part of their response trade secret material, as defined by Minn. Stat. § 13.37.
- 9.2** In the event trade secret data are submitted, Responder must defend any action seeking release of data it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments awarded against the State in favor of the party requesting the data, and any and all costs connected with that defense.
- 9.3** The State does not consider cost or prices to be trade secret material, as defined by Minn. Stat. § 13.37.
- 9.4** A Responder may present and discuss trade secret information during an interview or demonstration with the State, if applicable.

10. Conditions of Offer.

Unless otherwise approved in writing by the State, Responder's cost proposal and all terms offered in its response that pertain to the completion of professional and technical services will remain firm for 180 days, until they are accepted or rejected by the State, or they are changed by further negotiations with the State prior to contract execution.

11. Award.

Any award that may result from this solicitation will be based upon the total accumulated points as established in the solicitation. The State reserves the right to award this solicitation to a single Responder, or to multiple Responders, whichever is in the best interest of the State, providing each Responder is in compliance with all terms and conditions of the solicitation. The State reserves the right to accept all or part of an offer, to reject all offers, to cancel the solicitation, or to re-issue the solicitation, whichever is in the best interest of the State.

12. Requirements Prior to Contract Execution.

Prior to contract execution, a Responder receiving a contract award must comply with any submittal requests. A submittal request may include, but is not limited to, a Certificate of Insurance.

ATTACHMENT A: RESPONDER DECLARATIONS

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

A. Response Contents. 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.

B. Authorized Signature. This Declaration is signed by the appropriate person(s), with the authority to contractually bind the Responder, as required by applicable articles, bylaws, resolutions, minutes, and ordinances.

C. Non-Collusion Certification.

1. The Proposal has been arrived at by the Responder independently and has been submitted without collusion and without any agreement, understanding or planned common course of action with any other vendor designed to limit fair or open competition; and
2. The contents of the Response have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any other individual prior to the due date and time of this Solicitation. Any evidence of collusion among Responders in any form designed to defeat competitive responses will be reported to the Minnesota Attorney General for investigation and appropriate action.

D. Organizational Conflicts of Interest. To the best of Responder's knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons,

1. a vendor is unable or potentially unable to render impartial assistance or advice to the State;
2. the vendor's objectivity in performing the contract work is or might be otherwise impaired; or
3. the vendor has an unfair competitive advantage.

If after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the State's Chief Procurement Officer which must include a description of the action which the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the contract. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to the Office of State Procurement, the State may terminate the contract for default.

Organizational conflicts of interest terms apply to any subcontractors for this work.

E. 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 sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients 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 and 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.

F. Copyrighted Material Waiver. By signing its Response, the Responder certifies that it has obtained all necessary approvals for the reproduction and distribution of the contents of its response.

G. Diverse Spend Reporting. The Sample Contract contains a clause for Diverse Spend Reporting. When this clause applies, Contractor will be required to register in a free portal to report diverse spend.

Please see [Diverse Spend Reporting Frequently Asked Questions](#) for additional information.

By signing this form, Responder acknowledges and certifies compliance with all applicable requirements indicated above.

Responder Name: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Phone Number: _____

Email Address: _____

ATTACHMENT B: EXCEPTIONS TO STATE’S TERMS AND CONDITIONS

The State presumes a Responder agrees to the terms and conditions of this solicitation unless a Responder takes specific exception to one or more of the conditions on this form.

The State reserves the right to reject, negotiate, or accept any exception listed to the State’s terms and conditions (including those found in the attached Sample Contract).

INSTRUCTIONS: A Responder must explicitly list all exceptions to State’s terms and conditions, if any (including those found in the attached Sample Contract). Reference the clause number and page number of the State's term and condition for each of a Responder’s exceptions. 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 response. *(Add additional pages if necessary.)*

Clause and Page Number	Suggested Change to Clause	Explanation or Justification

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

Signature: _____

Printed Name: _____

Title: _____

Date: _____

ATTACHMENT C: COST PROPOSAL

Using "Attachment C: Cost Proposal," identify your *estimated* costs for each of the following periods:

October 1, 2022 through June 30, 2023

July 1, 2023 through June 30, 2024

Teams will be paid by the State for the following costs in each year of the contract associated with:

- A. Capital Equipment. Annual cost of capital equipment purchases including vehicles.
- B. Training. Annual cost of training team personnel, excluding exercise training.
- C. Medical Examinations. Annual cost of medical examinations for team personnel.
- D. Consumable Supplies. Annual cost of consumable supplies.
- E. Administration/Overhead. Annual cost of administrative overhead.
- F. Maintenance. Annual maintenance costs.

ATTACHMENT D1: VETERAN-OWNED PREFERENCE FORM
[Optional; complete and submit if applicable.]
STATE OF MINNESOTA

Unless a greater preference is applicable and allowed by law, in accordance with Minn. Stat. §16C.16, subd. 6a, the State will award a 6% preference on State procurement to certified small businesses that are majority owned and operated by veterans.

Veteran-Owned Preference Requirements - See Minn. Stat. § 16C.19(d):

1. The business has been certified by the Office of Equity in Procurement as being a veteran-owned or service-disabled veteran-owned small business.

or

2. The principal place of business is in Minnesota AND the United States Department of Veterans Affairs verifies the business as being a veteran-owned or service-disabled veteran-owned small business under Public Law 109-461 and Code of Federal Regulations, title 38, part 74 (Supported By Documentation).

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

Claim the Preference. By signing below, I confirm that:

My company is claiming the veteran-owned preference afforded by Minn. Stat. § 16C.16, subd. 6a. By making this claim, I verify that:

- The business has been certified by the Office of Equity in Procurement as being a veteran-owned or service-disabled veteran-owned small business.

or

- My company's principal place of business is in Minnesota **and** the United States Department of Veteran's Affairs verifies my company as being a veteran-owned or service-disabled veteran-owned small business (Supported By Attached Documentation)

Name of Company: _____ Date: _____

Authorized Signature: _____ Telephone: _____

Printed Name: _____ Title: _____

Attach documentation, sign, and return this form with your solicitation response to claim the veteran-owned preference.

**ATTACHMENT D2: WORKFORCE CERTIFICATE
STATE OF MINNESOTA**

Information required for ALL bids or proposals that could exceed \$100,000

Complete Box A or B of this form, and sign and return it with your bid or proposal. A Workforce Certificate or exemption from the Minnesota Department of Human Rights (MDHR) is required to execute a contract in excess of \$100,000 under Minn. Stat. §363A.36.

BOX A – COMPANIES that have employed 40 or more full-time employees in this state or a state where the business has its primary place of business on any single working day during the previous 12 months, check one option below:

- Attached is our current Workforce Certificate issued by the Minnesota Department of Human Rights (MDHR).
- Attached is confirmation that MDHR received our application for a Minnesota Workforce Certificate on _____ (date).
- Our company does not yet have a Workforce Certificate, but we acknowledge that a Workforce Certificate is required before a contract in excess of \$100,000 can be executed with the State of Minnesota or other covered entities.

BOX B – EXEMPT COMPANIES that have not employed 40 or more full-time employees on a single working day in Minnesota or any state where it has its primary place of business during the previous 12 months, check option below if applicable:

- We attest to MDHR that we are exempt. If our company is awarded a contract, upon request, we will submit to MDHR within 5 business days after the contract is fully signed, the names of our employees during the previous 12 months, the date of separation, if applicable, and the state in which the persons were employed.
Send to compliance.MDHR@state.mn.us.

Signature

By signing this statement, I certify that the information provided is accurate and that I am authorized to sign on behalf of the company.

Name of Company

Authorized Signature

Date

Printed Name

Phone Number

Title

For assistance with this form, contact:

Minnesota Department of Human Rights

Web: <http://mn.gov/mdhr/>

Email: compliance.mdhr@state.mn.us

Rev. 7/21

DPS RFP (rev. 6-8-2022)

Toll Free: 1-800-657-3704

MN Relay: 711/ 1-800-627-3529

**ATTACHMENT D3: EQUAL PAY CERTIFICATE
STATE OF MINNESOTA**

If your response could be in excess of \$500,000, please complete and submit this form with your submission. **It is your sole responsibility to provide the information requested and when necessary to obtain an Equal Pay Certificate (Equal Pay Certificate) from the Minnesota Department of Human Rights (MDHR) prior to contract execution. You must supply this document with your submission.** Please contact MDHR with questions at: 651-539-1095 (metro), 1-800-657-3704 (toll free), 711 or 1-800-627-3529 (MN Relay) or at compliance.MDHR@state.mn.us.

Option A – If you have employed 40 or more full-time employees on any single working day during the previous 12 months in Minnesota or the state where you have your primary place of business, please check the applicable box below:

- Attached is our current MDHR Equal Pay Certificate.
- Attached is MDHR’s confirmation of our Equal Pay Certificate application.

Option B – If you have not employed 40 or more full-time employees on any single working day during the previous 12 months in Minnesota or the state where you have your primary place of business, please check the box below.

- We are exempt. We agree that if we are selected we will submit to MDHR within five (5) business days of final contract execution, the names of our employees during the previous 12 months, date of separation if applicable, and the state in which the persons were employed. Documentation should be sent to compliance.MDHR@state.mn.us.

The State of Minnesota reserves the right to request additional information from you. **If you are unable to check any of the preceding boxes, please contact MDHR to avoid a determination that a contract with your organization cannot be executed.**

Your signature certifies that you are authorized to make the representations, the information provided is accurate, the State of Minnesota can rely upon the information provided, and the State of Minnesota may take action to suspend or revoke any agreement with you for any false information provided.

Authorized Signature	Printed Name	Title
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Organization	MN/FED Tax ID#	Date
--------------	----------------	------

Issuing Entity	Project # or Lease Address
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ATTACHMENT E: AFFIRMATION OF MINNESOTA RULES, FEDERAL REGULATIONS AND SFMD REQUIREMENTS
[See SECTION 4 – PROPOSAL CONTENT]

- 4. Membership of the Proposed Team.** Responder affirms it has read Minnesota Rule 7514.0800, subparts 3 and 4, and understands the minimum requirements identified by the Rule.

- 5. Team Member Training.** Responder affirms it has read and understands the Code of Federal Regulations, title 29, section 1910.120, and is in substantial compliance with NFPA 470, 472, 473, 1072 and, where applicable, NFPA 475.

- 6. Staffing Plan for Minimum Number of Response Personnel.** Responder affirms it has read Code of Federal Regulations, title 29, section 1910.120, Code of Federal Regulations, title 29, section 1940.120, and Minnesota Rule 7514.0800, subpart 5, and understands the minimum requirements identified by the Codes and Rule.

- 10. Team Development.** Responder affirms it has read Minnesota Rules Chapter 7475 and understands the minimum requirements identified by the Chapter.

- 14. Response Equipment and Vehicles.** Responder affirms it has read Minnesota Rule 7514.1400 and understands the minimum requirements identified by the Rule. Responder also acknowledge the State’s and State Fire Marshal’s requirement that all vehicles, trailers and equipment pursuant to this solicitation and resulting contract will be stored in a climate- and temperature-controlled facility.

By signing this form, Responder affirms the above and certifies it will comply with all applicable federal regulations, state rules, and State and State Fire Marshal requirements identified above.

Responder Name: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Phone Number: _____

Email Address: _____

IMPORTANT NOTE TO RESPONDERS: If you take exception to any of the terms, conditions or language in the contract, identify those exceptions in ATTACHMENT B: EXCEPTION TO STATE’S TERMS AND CONDITIONS.



State of Minnesota Contract

SWIFT Contract No.:

This Contract is between the **State of Minnesota**, acting through its Commissioner of Public Safety on behalf of the [insert name of division here, e.g. State Fire Marshal] division (“State”), and [insert full legal name of Contractor here, e.g. John Jones; ABC Corporation; XYZ Company, LLC, dba KLM] whose designated business address is [insert Contractor’s full business street address here] (“Contractor”). The State and Contractor may be referred to jointly as “Parties.”

Recitals

1. State issued a solicitation identified as Event [insert SWIFT or Quick Call Event Number here] on [insert solicitation date here] for [insert brief narrative describing purpose of solicitation] (“Solicitation”); and
2. Contractor provided a response to the Solicitation indicating its interest in and ability to provide the services requested in the Solicitation; and
3. Subsequent to an evaluation in accordance with the terms of the Solicitation and negotiation, the Parties desire to enter into a contract.

Accordingly, the Parties agree as follows:

Contract

1. Term of Contract

- 1.1 Effective Date. [Spell out full date, e.g. January 1, 2022], or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later. The Contractor must not begin work under this Contract until this Contract is fully executed and the Contractor has been notified by the State’s Authorized Representative to begin work.
- 1.2 Expiration Date. [Spell out full date, e.g. March 30, 2023], or until all obligations have been satisfactorily fulfilled, whichever occurs first.

2. Contractor’s Duties

The Contractor shall perform all duties described in this Contract to the satisfaction of the State.

The Contractor, who is not a State employee, shall:

[List the Contractor’s duties, deliverables, and completion dates with precise detail here.]

3. Representations and Warranties

- 3.1 Under Minn. Stat. §§ 15.061 and 16C.03, subd. 3, and other applicable law [Insert additional statutory authorization if necessary], the State is empowered to engage such assistance as deemed necessary.
- 3.2 Contractor warrants that it is duly qualified and shall perform its obligations under this Contract in accordance with the commercially reasonable standards of care, skill, and diligence in Contractor's industry, trade, or profession, and in accordance with the specifications set forth in this Contract, to the satisfaction of the State.
- 3.3 Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms.

4. 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.

5. Consideration and Payment

- 5.1 Consideration. The State will pay for performance by the Contractor under this Contract as follows:
- 5.1.1 Compensation. The Contractor will be paid [Explain how the Contractor will be paid].
- 5.1.2 Travel Expenses. Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of this Contract will not exceed [Insert total amount of travel budget here. If none, insert \$0.00]; 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" established by the Commissioner of Minnesota Management and Budget which is incorporated into this Contract by reference. The Contractor will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out-of-state travel. Minnesota will be considered the home state for determining whether travel is out of state.
- 5.1.3 Total Obligation. The total obligation of the State for all compensation and reimbursements to the Contractor under this Contract will not exceed [Insert total financial obligation here. This must be the combined total of compensation and travel expenses, if applicable.]
- 5.2 Payment.
- 5.2.1 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: [Example: "upon completion of the services," or if there are specific deliverables, list how much will be paid for each deliverable. The State does not pay merely for the passage of time; all payments must be tied to the completion of work.]
- 5.2.2 Retainage. Under Minn. Stat. § 16C.08, subd. 2(10), no more than 90 percent of the amount due under this Contract may be paid until the final product of this Contract has been reviewed by the State. The balance due will be paid when the State determines that the Contractor has satisfactorily fulfilled all the terms of this Contract.
- 5.2.3 Conditions of Payment. All services delivered by the Contractor under this Contract must be performed to the State's satisfaction and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Secretary of State. 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

6.1 State’s Authorized Representative.

The State's Authorized Representative is the individual below, or his/her successor, and has the responsibility to monitor the Contractor’s performance.

Name:

Address: Department of Public Safety; [insert name of division here]

Telephone:

Email Address:

6.2 Contractor’s Authorized Representative.

The Contractor's Authorized Representative is the individual below, or his/her successor. If the Contractor’s Authorized Representative changes at any time during this Contract, the Contractor must notify the State in writing/email within ten (10) business days.

Name:

Address:

Telephone:

Email Address:

7. Exhibits

The following Exhibits are attached and incorporated into this Contract. In the event of a conflict between the terms of this Contract and its Exhibits, or between Exhibits, the order of precedence is first the Contract, and then in the following order:

Exhibit A: Contract Terms

Exhibit B: Insurance Terms and Requirements

Exhibit C: Specifications, Duties, and Scope of Work

Exhibit D: Pricing

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1. State Encumbrance Verification
Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05

Print name: _____

Signature: _____

Title: _____ Date: _____

SWIFT PO Number: _____

3. State: Department of Public Safety; State Fire Marshal Division
With delegated authority

Print name: _____

Signature: _____

Title: _____ Date: _____

2. Contractor: [insert full legal name here]
The Contractor certifies that the appropriate person has executed this Contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

Print name: _____

Signature: _____

Title: _____ Date: _____

4. Commissioner of Administration
As delegated to the Office of State Procurement

Print name: _____

Signature: _____

Title: _____ Date: _____

Exhibit A: Contract Terms

1. Prompt Payment and Invoicing

Prompt Payment. The State will pay the Contractor pursuant to Minn. Stat. § 16A.124 which requires payment within 30 days following receipt of an undisputed invoice or service, whichever is later. Terms requesting payment in less than 30 days will be changed to read “Net 30 days.” The payment will only be made for services actually performed that have been accepted by the State’s Authorized Representative, and that meet all terms, conditions, and specifications of the Contract and the solicitation document.

2. Assignment, Amendments, Waiver, and Contract Complete

- 2.1 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 authorized parties or their successors.
- 2.2 Amendments. Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the authorized parties or their successors.
- 2.3 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.
- 2.4 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.

3. Termination

- 3.1 Termination for Convenience. 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 for convenience, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.
- 3.2 Termination for Breach. The State may terminate this Contract, with cause, upon 30 days’ written notice to Contractor of the alleged breach and opportunity to cure. If after 30 days, the alleged breach has not been remedied, the State may immediately terminate the Contract.
- 3.3 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 payment of the services addressed within this Contract. Termination must be by written 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 dedicated 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. This notice will be provided within a reasonable time of the State’s receiving notice.

4. Force Majeure

Neither party shall be responsible to the other or considered in default of its obligations within this Contract to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot, disruption of government, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party relying on this provision to excuse performance must

provide the other party prompt written notice of the inability to perform and take all necessary steps to bring about performance as soon as practicable.

5. Indemnification

5.1 In the performance of this Contract, the Indemnifying Party must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the State, to the extent caused by Indemnifying Party's:

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

The Indemnifying Party is defined to include the Contractor, Contractor's reseller, any third party that has a business relationship with the Contractor, or Contractor's agents or employees, and to the fullest extent permitted by law. The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Indemnifying Party may have for the State's failure to fulfill its obligation under this Contract.

5.2 Nothing within this Contract, whether express or implied, shall be deemed to create an obligation on the part of the State to indemnify, defend, hold harmless or release the Indemnifying Party. This shall extend to all agreements related to the subject matter of this Contract, and to all terms subsequently added, without regard to order of precedence.

6. 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.

7. 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.

8. Subcontracting and Subcontract Payment

8.1 Subcontracting Allowed. A subcontractor is a person or company that has been awarded a portion of the Contract by Contractor. During this Contract, if a subcontractor is determined to be performing unsatisfactorily by the State's Authorized Representative, the Contractor will receive written notification that the subcontractor can no longer be used for this Contract.

The provisions of the Contract shall apply with equal force and effect to all subcontractors engaged by the Contractor. Notwithstanding approval by the State, no subcontract shall serve to terminate or in any way affect the primary legal responsibility of the Contractor for timely and satisfactory performances of the obligations contemplated by the Contract.

8.2 Subcontractor Payment. Contractor must pay any subcontractor in accordance with Minn. Stat. § 16A.1245.

9. Data Disclosure

Under Minn. Stat. § 270C.65, subd. 3, and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and 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.

10. 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 governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, 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 and consult with the State's Authorized Representative as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

11. Intellectual Property Rights

11.1 Definitions. For the purpose of this Section, the following words and phrases have the assigned definitions:

11.1.1 "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.

11.1.2 "Pre-Existing Intellectual Property" means intellectual property developed prior to or outside the scope of this Contract, and any derivatives of that intellectual property.

11.1.3 "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.

11.2 Ownership. 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*. The Documents shall 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.

11.3 Pre-existing Intellectual Property. Each Party shall retain ownership of its respective Pre-Existing Intellectual Property. The Contractor grants the State a perpetual, irrevocable, non-exclusive, royalty free license for Contractor's Pre-Existing Intellectual Property that are incorporated in the products, materials, equipment, deliverables, or services that are purchased through the Contract.

11.4 Obligations.

11.4.1 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 State's Authorized Representative with complete information and/or disclosure thereon.

- 11.4.2 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.
- 11.4.3 Indemnification. Notwithstanding any other indemnification obligations addressed within this Contract, 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.

12. Copyright

The Contractor shall save and hold harmless the State of Minnesota, its officers, agents, servants and employees, from liability of any kind or nature, arising from the use of any copyrighted or noncopyrighted compositions, secret process, patented or nonpatented invention, article or appliance furnished or used in the performance of the Contract.

13. Contractor's Documents

Any licensing and maintenance agreement, or any order-specific agreement or document, including any pre-installation, linked or "click through" agreement that is allowed by, referenced within or incorporated within the Contract whenever the Contract is used for a State procurement, whether directly by the Contractor or through a Contractor's agent, subcontractor or reseller, is agreed to only to the extent the terms within any such agreement or document do not conflict with the Contract or applicable Minnesota or Federal law, and only to the extent that the terms do not modify, diminish or derogate the terms of the Contract or create an additional financial obligation to the State. Any such agreement or document must not be construed to deprive the State of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applicable to this Contract or afforded to the State by Minnesota law. A State employee's decision to choose "accept" or an equivalent option associated with a "click-through" agreement does not constitute the State's concurrence or acceptance of terms, if such terms are in conflict with this section.

14. 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, the State Auditor, or Legislative Auditor, as appropriate, for a minimum of six (6) years from the expiration or termination of this Contract.

15. Diverse Spend Reporting

If the total value of this Contract may exceed \$500,000, including all extension options, Contractor must track and report, on a quarterly basis, the amount paid to diverse businesses both: 1) directly to subcontractors performing under the Contract, and 2) indirectly to diverse businesses that provide supplies/services to your company (in proportion to the revenue from this Contract compared to Contractor's overall revenue). When this applies, Contractor will register in a free portal to help report the Tier 2 diverse spend, and the requirement continues as long as the Contract is in effect.

16. Publicity and Endorsement

16.1 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, information posted on corporate or other websites, 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.

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

17. Debarment by State, its Departments, Commissions, Agencies, or Political Subdivisions

Contractor certifies that neither it nor its principals is presently debarred or suspended by the Federal government, the State, or any of the State's departments, commissions, agencies, or political subdivisions. Contractor's certification is a material representation upon which the Contract award was based. Contractor shall provide immediate written notice to the State's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

18. 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.

19. Certification of Nondiscrimination (in accordance with Minn. Stat. § 16C.053)

If the value of this Contract, including all extensions, is \$50,000 or more, Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

20. Non-discrimination (in accordance with Minn. Stat. § 181.59)

The Contractor will comply with the provisions of Minn. Stat. § 181.59.

21. E-Verify Certification (in accordance with Minn. Stat. § 16C.075)

For services valued in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of the State. Contractor is responsible for collecting all subcontractor certifications

and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

22. Affirmative Action Requirements

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

- 22.1 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. 5000.3400-5000.3600.
- 22.2 General. Minn. R. 5000.3400-5000.3600 implements 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, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.
- 22.3 Disabled Workers. The Contractor must comply with the following affirmative action requirements for disabled workers.

AFFIRMATIVE ACTION FOR DISABLED WORKERS

- 22.3.1 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.
- 22.3.2 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.
- 22.3.3 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.
- 22.3.4 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. 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.
- 22.3.5 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.
- 22.4 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.

22.5 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.

23. Equal Pay Certification

If required by Minn. Stat. §363A.44, the Contractor must have a current Equal Pay Certificate prior to Contract execution. If Contractor's Equal Pay Certificate expires during the term of this Contract, Contractor must promptly re-apply for an Equal Pay Certificate with the Minnesota Department of Human Rights and notify the State's Authorized Representative once the Contractor has received the renewed Equal Pay Certificate. If Contractor claims to be exempt, the State may require Contractor to verify its exempt status.

24. IT Accessibility Standard

If applicable, Contractor acknowledges and is fully aware that the State of Minnesota (Executive branch state agencies) has developed IT Accessibility Standard effective September 1, 2010. The standard entails, in part, the Web Content Accessibility Guidelines (WCAG) and Section 508 which can be viewed at: <https://mn.gov/mnit/government/policies/accessibility/>.

The Standards apply to web sites, software applications, electronic reports and output documentation, training delivered in electronic formats (including, but not limited to, documents, videos, and webinars), among others. As upgrades are made to the software, products, or subscriptions available through this Contract, the Contractor agrees to develop functionality which supports accessibility. If any issues arise due to nonconformance with the above-mentioned accessibility Standards, the Contractor agrees to provide alternative solutions upon request at no additional charge to the State.

When updates or upgrades are made to the products or services available through this Contract, the Contractor agrees to document how the changes will impact or improve the product's or service's accessibility and usability. This documentation, upon request, must be provided to the State in advance of the change, occurring within an agreed upon timeframe sufficient for the state to review the changes and either approve them or request a remediation plan from the Contractor. Contractor warrants that its products comply with the above-mentioned accessibility standards and agrees to indemnify, defend, and hold harmless the State against any claims related to non-compliance of Contractor's product with the above-mentioned accessibility standards. If agreed-upon updates fail to improve the product or service's accessibility or usability as planned, the failure to comply with this requirement may be cause for contract cancellation or for the State to consider the Contractor in default.

25. Nonvisual Access Standards

Pursuant to Minn. Stat. § 16C.145, the Contractor must comply with the following nonvisual technology access standards to the extent required by law:

- That the effective interactive control and use of the technology, including the operating system applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means; and
- That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact; and
- That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and

- That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired; and
- Executive branch state agencies subject to Minn. Stat. § 16E.03, subd. 9, are not required to include nonvisual technology access standards developed under this Section in contracts for the procurement of information technology.

These standards do not require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

26. Survival of Terms

The following clauses survive the expiration or cancellation of this Contract: Indemnification; State Audits; Government Data Practices; Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue; and Data Disclosure. Any other Contract term that expressly states or by its nature shall survive, shall survive.

Exhibit B: Insurance Terms and Requirements

1. Notice to Contractor

- 1.1 The Contractor is required, if requested by the State, to submit Certificates of Insurance acceptable to the State as evidence of insurance coverage requirements prior to commencing work under this Contract.
- 1.2 Contractor shall not commence work under the Contract until it has obtained all the insurance described below. Contractor shall maintain such insurance in force and effect throughout the term of this Contract.
- 1.3 The failure of the Contractor to provide a Certificate of Insurance, if requested by the State, for the policies required under this Contract or renewals thereof, or failure of the insurance company to notify the State of the cancellation of policies required under this Contract shall not constitute a waiver by the State to the Contractor to provide such insurance.
- 1.4 The State reserves the right to immediately terminate this 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.

2. Notice to Insurer

- 2.1 The Contractor's insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.
- 2.2 Insurance certificates, if requested by the State, shall be addressed as follows:
John Kreuser, State Emergency Response Teams Coordinator
John.Kreuser@state.mn.us

3. Additional Insurance Conditions. The following apply to the Contractor or the Contractor's subcontractor:

- 3.1 Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State with respect to any claim arising out of Contractor's performance under this Contract.
- 3.2 If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State.
- 3.3 Contractor is responsible for payment of Contract related insurance premiums and deductibles.
- 3.4 If Contractor is self-insured, a Certificate of Self-Insurance shall be submitted to the State prior to beginning work pursuant to this Contract.
- 3.5 Contractor's policy(ies) shall include legal defense fees in addition to its policy limits with the exception of professional liability.
- 3.6 Contractor's insurance companies must either: (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota; or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the Minnesota Department of Commerce if they are not rated by AM Best.
- 3.7 An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.

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

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

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

The following coverages shall be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal and Advertising Injury
- Blanket Contractual Liability
- Products and Completed Operations Liability

State of Minnesota named as an Additional Insured, to the extent permitted by law

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

- \$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included: Owned, Hired, and Non-owned Automobile.

Evidence of the subcontractor’s insurance shall be filed with the Contractor.

4.3 **Workers’ Compensation Insurance.** Statutory Compensation Coverage. 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, including Coverage B, Employer’s Liability. Insurance minimum limits are as follows:

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

If Minn. Stat. § 176.041 exempts Contractor from Workers’ Compensation insurance or if the Contractor has no employees in the State, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers’ Compensation requirements. If during the course of the Contract the Contractor is required to provide Workers’ Compensation Insurance, the Contractor must comply with the

Workers' Compensation Insurance requirements herein and provide the State with a certificate of insurance.

- 4.4 **Professional Liability, Errors, and Omissions Insurance.** 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. Insurance **minimum** limits are as follows:

\$2,000,000 - per claim or event

\$2,000,000 - annual aggregate

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

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

Exhibit C: Specifications, Duties, and Scope of Work
[Delete Exhibit if Contractor's duties are described in Contract Section 2]

Exhibit D: Pricing

[Delete Exhibit if payment is described in Contract Section 5]