INFORMAL SOLICITATION
Minnesota Department of Transportation (MnDOT)
Comparison of Material Distribution Systems for Winter Maintenance – Phase I

This document is available in alternative formats for persons with disabilities by calling Ashley Duran at 651-366-4627 or for persons who are hearing or speech impaired by calling the Minnesota Relay Service at 1-800-627-3529.

MnDOT Not Obligated To Complete Project
The issuance of this informal solicitation does not obligate MnDOT to award a Contract or complete the project and MnDOT reserves the right to cancel the solicitation if it is considered to be in its best interest.

Project Overview
Clear Roads is an ongoing pooled fund research project aimed at rigorous testing of winter maintenance materials, equipment and methods for use by highway maintenance crews. Clear Roads will fund and oversee the contract for this project in coordination with MnDOT. For more information, visit www.clearroads.org.

There are dozens of different types of solid material distribution systems used in winter maintenance such as chutes, spinners, zero velocity, augers, etc. These systems have a wide range of costs and effectiveness. Some agencies use commercially available systems and others create their own systems out of scrap material available at a maintenance garage. Agencies do not know which of these systems is most effective or have a way to determine which type is best suited to their agency’s needs.

Project Goal
The goal of this project is to identify as many solid material distribution systems as possible and develop a plan for field testing them. Systems with pre-wetting capabilities should be included in the study, although equipment for slurries or directly liquid applications is not included in the scope of this project. Phase I will focus on identifying and cataloging these systems, as well as developing a testing plan. Phase II would conduct field testing, identify the most effective systems and develop a recommended specification for a material distribution system.

Project Tasks

Task 1: Literature Search
The successful responder will conduct a literature search on the effectiveness of different types of commercial and homemade material distribution systems used in the North America and Europe. The resulting deliverable will summarize the pros and cons of different types of systems.

Task 2: Survey
The successful responder will survey Snow Belt states, as well as at least some large cities, urban counties and rural agencies, to identify the different types of distribution systems they are using, including both commercial and homemade systems. The goal is for survey results to include 30 to 60 domestic responses and at least 10 international responses. The survey will identify the pros and cons of different systems and the final list of questions should be developed in coordination with the Clear Roads Technical Advisory Committee (TAC).

Task 3: Cataloging Distribution Systems
The successful responder will categorize the systems identified and develop a photographic catalog of all the different types. Pictures of each type of system should be included and should capture specific in-house modifications where appropriate. Costs, reported benefits or problems, and equipment details, such as types of controllers, how controllers are integrated, how the spreader is driven (eg. electric, hydraulic, gas), adjustability, ratings of the trucks that haul them, etc, should all be included. An agency contact should also be identified for each system. Additional categories of information for the catalog may be identified in coordination with the Clear Roads TAC, based on the results of Task 2.
Task 4: Field-Testing Recommendations
The successful responder will recommend a plan of study for assessing the effectiveness of material distribution systems, using information gathered in Tasks 1-3. A necessary step in recommending the plan of study will be working with the TAC to develop a definition (or set of definitions for different circumstances) regarding what constitutes an effective distribution system. The successful responder will develop a structured plan for field-testing that includes a budget. The field testing recommendations should include details on how many different types of systems to test, test methodologies, test location considerations, etc.

Project Deliverables
The successful responder will provide the following deliverables under this Contract:

- **A Literature Search** – The successful responder will prepare and submit a literature search on the comparison and effectiveness of different types of commercial and homemade material distribution systems used in the North America and Europe. Systems with pre-wetting capabilities should be included in the study, although equipment for slurries or directly liquid applications is not included in the scope of this project. The resulting deliverable should identify the pros and cons of different types of systems.

- **A Summary of Survey Results** – The successful responder will prepare and submit a concise summary of survey results that identifies the pros and cons of both commercial and homemade material distribution systems, and synthesizes responses regarding key performance criteria identified in coordination with the Clear Roads TAC.

- **A Photographic Catalog** – The successful responder will develop a photographic catalog of all the different types of material distribution systems identified. Pictures of each type of system should be included and should capture specific in-house modifications where appropriate. This must include costs, reported benefits or problems, and equipment details, such as types of controllers, how controllers are integrated, how the spreader is driven (eg. electric, hydraulic, gas), adjustability, ratings of the trucks that haul them, etc. An agency contact should also be identified for each system. Additional categories of information for the catalog may be identified in coordination with the Clear Roads TAC, based on the results of Task 2.

- **Field Testing Recommendations** – The successful responder will develop a structured plan for field-testing that includes a budget. The field testing recommendations should include details on how many different types of systems to test, test methodologies, test location considerations, etc. A necessary step in recommending the plan of study will be working with the TAC to develop a definition (or set of definitions for different circumstances) regarding what constitutes an effective distribution system.

- **A Final Report** – The successful responder will prepare and submit a final report, which will include an executive summary of the study format and findings; the results of each task; and recommendations for field testing.

- **Quarterly Reports** – The successful responder will provide written reports of progress to the Clear Roads TAC at the end of each quarter of the year (March 31, June 30, September 30, December 31) for the duration of the Contract.

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

Response Content
The following will be considered minimum contents of the response and must be submitted in the order listed:

1. **Contact Information:**
   Responders must clearly identify the company’s full, legal name, business address, the contact person’s name, telephone number, fax number and email address (as available).

2. **Project Understanding:**
   Responders must provide a statement of the objectives, goals and tasks to show or demonstrate their view of the nature of the Contract.

3. **Background and Experience (Company and Personnel):**
   Responders must provide an outline of their background and experience, with examples of similar work done and a list of personnel who will conduct the project, detailing their training and work experience. No change in personnel assigned to the project will be permitted without the written approval of MnDOT’s Project Manager.
4. **Detailed Work Plan:**
Responders must provide a detailed work plan, which must identify the major tasks to be accomplished. These tasks will be used as a scheduling and management tool, as well as the basis for invoicing. The work plan must present the responder’s approach, task breakdown, deliverable due dates and personnel working on the project and the hours assigned to each individual to reach the project results.

5. **Detailed Deliverables:**
Responders must provide a description of the deliverables to be provided.

6. **MnDOT Participation:**
Responders must clearly identify the level of MnDOT's participation that will be needed in the Contract, as well as any other services to be provided by MnDOT and details of cost allowances for this participation.

7. **Forms and Documents:**
Responders must complete and submit the forms and documents required under any other section of this Informal Solicitation.

8. **Cost Proposal:**
Responders must provide, in a separate envelope, one copy of the cost proposal, clearly mark on the outside “Cost Proposal”, along with the responder’s official business name and mailing address. For purposes of completing the cost proposal, MnDOT does not make regular payments based upon the passage of time; it only pays for services performed or work delivered after it is accomplished. Terms of the proposal as stated must be valid for the length of the project. If proposing a cost plus approach, use the responder's current MnDOT audited overhead rate. If proposing an hourly rate, unit rate or lump sum, include a breakdown (labor, overhead, profit & expenses) showing how the rate was derived. If proposing a cost plus fixed fee (profit) budget, Responder’s Overhead Rate must not exceed 160%. The responder must utilize their current MnDOT approved Overhead rate, not to exceed 160%. For the purposes of this Cost Proposal, Responders should utilize a fixed fee (profit) of 10%. Actual fixed fee (profit) will be determined/calculated by MnDOT upon selection. The responder must include a total project cost along with the following:

- A breakout of the hours by task for each employee.
- Identification of anticipated direct expenses.
- Identification of any assumption made while developing this cost proposal.
- Identification of any cost information related to additional services or tasks, include this in the cost proposal but identify it as additional costs and not make it part of the total project cost.

The responder must have the cost proposal signed in ink by authorized member of the firm. The responder must not include any cost information within the body of the informal solicitation technical proposal response.

Responders must limit their proposal to 50 single sided pages, with no less than 11 point font, not including the cover letter and the required forms. Excess pages will not be reviewed and evaluated.

**Questions**

Prospective responders who have any questions regarding this informal solicitation must submit questions by e-mail only to:

Ashley Duran, Contract Administrator

[ashley.duran@state.mn.us](mailto:ashley.duran@state.mn.us)

All questions and answers will be posted on MnDOT's Consultant Services Web Page at [www.dot.state.mn.us/consult/](http://www.dot.state.mn.us/consult/) under the “P/T Notices” section. All prospective responders will be responsible for checking the web page for any addendums to this Informal Solicitation and any questions that have been answered. Please note that questions will be posted verbatim as submitted.

Questions regarding this Informal Solicitation must be received by MnDOT no later than 2:00 p.m. Central Daylight Time on Thursday, August 16, 2012.
MnDOT anticipates posting answers to such questions no later than 2:00 p.m. Central Daylight Time on Friday, August 17, 2012.

No other MnDOT personnel are authorized to discuss the solicitation with anyone, including responders, before the submission deadline. Contact regarding this solicitation with any personnel not listed above may result in disqualification.

**Delivery of Responses**

All responses must be mailed (U.S. Postal Service), expressed (UPS, FedEx or other similar express carrier) or dropped off to the attention of:

Ashley Duran, Contract Administrator  
Minnesota Department of Transportation  
Consultant Services Section, Mail Stop 680  
395 John Ireland Boulevard  
St. Paul, Minnesota 55155-1899

All responses must be received no later 2:00 p.m. Central Daylight Time on Monday, August 27, 2012. Please note that MnDOT procedures do not allow non-MnDOT employees to have access to the elevators or the stairs. You should plan enough time and follow these instructions for drop-off:

- Enter through the Rice Street side of the Central Office building (1st Floor).
- Once you enter through the doors, you should walk straight ahead to the Information Desk.
- Proposals are accepted at the Information Desk only. The receptionist will call the Contract Administrator to come down and to time stamp the proposal.

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

MnDOT has estimated that the cost of this contract should not exceed $25,000.00-$50,000.00.

**Response Submittal**

Submit 1 hard copy of the proposal, along with one copy of the entire response in electronic format (CD-ROM, flash drive, etc.). The response(s) must be submitted in a sealed mailing envelope or package, clearly marked “Response” on the outside. An authorized member of the firm must sign the response, in ink.

Submit one copy of the Cost Proposal. This information should be placed in a separate envelope clearly marked on the outside “Cost Proposal” with the responder's name. For purposes of completing the cost proposal, MnDOT does not make regular payments based upon the passage of time, it only pays for services performed or work delivered after it is accomplished. Terms of the cost proposal as stated must be valid for the length of the project. If proposing an hourly rate, unit rate or lump sum, include a breakdown (labor, overhead, profit & expenses) showing how the rate was derived. An authorized representative must sign the copy of the cost proposal, in ink.

**Response Evaluation**

Representatives of MnDOT will evaluate all responses received by the deadline. In some instances, an interview may be part of the evaluation process. A 100-point scale will be used to create the final evaluation recommendation.

**The Factors and Weighting on Which Proposals Will Be Judged**

1. Project Understanding  
2. Work Plan / Detailed Deliverables  
3. Background and Experience of Company  
4. Background and Experience of Personnel  
5. Cost Detail

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<tr>
<th>Factor</th>
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<tr>
<td>Project Understanding</td>
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<tr>
<td>Work Plan / Detailed Deliverables</td>
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<tr>
<td>Background and Experience of Company</td>
<td>5%</td>
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<tr>
<td>Background and Experience of Personnel</td>
<td>20%</td>
</tr>
<tr>
<td>Cost Detail</td>
<td>30%</td>
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Responses will be evaluated on a “best value” basis with 70% qualifications and 30% cost considerations. The review committee will not open the cost proposal until after the qualifications points are awarded.

(CSS/CM Reviewed 5/10/2012)
The selected responder will be required to submit acceptable evidence of compliance with workers' compensation insurance coverage requirements prior to execution of the contract. The selected responder will be required to comply with MnDOT audit standards.

Disposition of Responses
All materials submitted in response to this informal solicitation will become property of MnDOT and will become public record after the evaluation process is completed.

MnDOT will not consider the prices submitted by the responder to be proprietary or trade secret materials.

Affidavit of Noncollusion
Responders must complete the attached “Affidavit of Noncollusion” and submit it as part of the proposal.

Conflicts of Interest
Responders must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that in contemplated in the Information Solicitation. This list should indicate the name of the entity, the relationship and a discussion of the conflict. Responders must complete the attached “Conflict of Interest Checklist and Disclosure Form” and submit it as part of the response.

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

Soliciting proposals by Disadvantaged Business Enterprises (DBE)
The MnDOT office of Civil Rights has assigned a Race/Gender Neutral Goal to this project. Responders are directed to read the DBE Special Provisions, as posted along with this RFP at www.dot.state.mn.us/consult/ under the “P/T Notices” section. The DBE Special Provisions explains how to comply with the DBE requirements. In particular, see pages one and two regarding documents that a responder must submit with its proposal. The form required in the proposal can be found on page 3 of the Special Provisions. To view a listing of certified DBE’s, please contact the MnDOT Office of Civil Rights at 651-366-3073, TTY 651-282-5799, or visit their website at www.dot.state.mn.us/eeocm.

E-Verify Certification (In accordance with Minnesota Statutes §16C.075)
By submission of a proposal for services in excess of $50,000, responders certify that as of the date of services performed on behalf of MnDOT, responder 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 MnDOT. In the event of Contract award, the successful responder will be 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 the successful responder and made available to MnDOT upon request.

(CSS/CM Reviewed 5/10/2012)
Early Retirement Incentive Reemployment Prohibition

Laws of Minnesota 2010, Chapter 337, Subdivision 5, provided an early retirement incentive to some State of Minnesota employees. The law provides that an individual who received an early retirement incentive payment may not be hired as a consultant by any agency or entity that participates in the State Employee Group Insurance Program for a period of three years after termination of service. By submitting a proposal under this RFP, the responder certifies that it will not utilize any former state employee in the performance of a contract who received an retirement incentive payment under Laws of Minnesota 2010, Chapter 337, unless three years have passed from the date of the employee’s separation from state service.

Insurance Requirements

1. **Insurance Certificates and Continuity of Coverage Required.** The successful responder must provide a certificate of insurance showing that they have each type of insurance coverage and limits required under this Contract. The certificate must be filed with MnDOT’s Authorized Representative within 30 days of execution of this Contract. Each policy and Certificate of Insurance must contain a 30 day notice of cancellation, nonrenewal or changes in coverage or limits to all named and additional insured. The successful responder must maintain such insurance in full force and effect throughout the term of this Contract.

2. **Required Insurance.** The following insurance coverages are required:

   a. **Workers’ Compensation Insurance:** Except as provided below, the successful responder will be required to provide Workers’ Compensation insurance for all its employees and, in case any work is subcontracted, will require its subcontractor(s) to provide Workers’ Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer’s Liability. Insurance minimum limits are as follows:

      - $100,000.00 – Bodily Injury by Disease per employee
      - $500,000.00 – Bodily Injury by Disease aggregate
      - $100,000.00 – Bodily Injury by Accident

      If Minnesota Statutes §176.041 exempts the successful responder from Workers’ Compensation insurance requirements, or if such responder has no employees in the State of Minnesota, they will be required to provide a written statement, signed by an authorized representative, indicating the qualifying exemption.

      If, during the course of the Contract, the successful responder becomes subject to the workers’ compensation insurance requirements, they will then be required to comply with such requirements and to provide MnDOT with a Certification of Insurance evidencing such coverage.

   b. **Commercial General Liability Insurance:** The successful responder will be 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 it or by a subcontractor or by anyone directly or indirectly employed by the successful responder pursuant to the Contract. Insurance minimum limits are as follows:

      - $2,000,000.00 – per occurrence
      - $2,000,000.00 – annual aggregate
      - $2,000,000.00 – annual aggregate – Products/Completed Operations

      The following coverages must 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

   c. **Commercial Automobile Liability Insurance:** The successful responder will be required to maintain insurance protecting the responder 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 the Contract, and in case any work is subcontracted the responder must require the subcontractor to provide Commercial Automobile Liability. Insurance minimum limits are as follows:

      - $2,000,000.00 – per occurrence Combined Single limit for Bodily Injury and Property Damage
In addition, the following coverages should be included:
  Owned, Hired and Non-owned Automobile

d. **Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance.** The successful responder will be required to provide coverage for all claims the successful responder is legally obligated to pay resulting from any actual or alleged negligent act, error or omission related to the successful responders professional services performed under this Contract. Unless otherwise specified within this Contract, the successful responder’s professional liability insurance minimum limits are as follows:
  
  $2,000,000.00 – per claim
  
  $2,000,000.00 – annual aggregate

On request, the successful responder must allow MnDOT to view reviewed or audited financial statements signed by a Certified Public Accountant which provides evidence that the successful responder has adequate assets to cover any deductible in excess of $50,000.00 that applies to this policy. MnDOT will treat such financial statements as non-public data to the extent permitted by the Minnesota Government Data Practices Act. The retroactive or prior acts date of coverage must not be later than the effective date of this Contract and the successful responder must maintain such coverage for a period of at least three years following the completion of work. If such insurance is discontinued, then extended reporting period coverage must be purchased to fulfill this requirement.

e. **Additional Insurance Conditions:**

i. The successful responder policies will be primary insurance to any other valid and collectible insurance available to MnDOT with respect to any claim arising out of the successful responder performance under this Contract;

ii. If the successful responder receives a cancellation notice from an insurance carrier affording coverage herein, the successful responder agrees to notify the State of Minnesota within five business days with a copy of the cancellation notice, unless the successful responder’s policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least 30 days advance written notice to the State of Minnesota.

iii. The successful responder policies and Certificates of Insurance will contain a provision that coverage afforded under the policies will not be canceled without at least 30 days advance written notice to MnDOT;

iv. The successful responder is responsible for payment of Contract related insurance premiums and deductibles;

v. If the successful responder is self insured, a Certificate of Self-Insurance must be attached;

vi. The successful responder policies will include legal defense fees in addition to its liability policy limits, with the exception of 26.2.5 above; and

vii. The successful responder will obtain insurance policies from insurance companies having an “AM BEST” rating of “A minus”, a Financial Size Category VII, or better, and authorized to do business in the state of Minnesota.

3. **Right to Terminate.** MnDOT will reserve the right to immediately terminate the Contract if the successful responder is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the successful responder. All insurance policies must be open to inspection by MnDOT and copies of policies must be submitted to MnDOT’s Contract Administrator upon written request.

**Sample Contract**
You should be aware of MnDOT’s standard Contract terms and conditions in preparing your response. A sample State of Minnesota Professional/Technical Contract is attached for your reference. Much of the language reflected in the Contract is required by statute. If you take exception to any of the terms, conditions or language in the Contract, you must indicate in your response to the Informal Solicitation; certain exceptions may result in your response being disqualified from further review and evaluation. Only those exceptions indicated in your response to this Informal Solicitation will be available for discussion or negotiation.
I swear (or affirm) under the penalty of perjury:

1. That I am the Responder (if the Responder is an individual), a partner in the company (if the Responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Responder is a corporation);

2. That the attached proposal submitted in response to the Request for Proposals has been arrived at by the Responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Responder of materials, supplies, equipment or services described in the Request for Proposal, designed to limit fair and open competition;

3. That the contents of the proposal have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any such persons prior to the official opening of the proposals; and

4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Responder’s Firm Name: ________________________________

Authorized Signature: ________________________________

Date: ________________

Subscribed and sworn to me this _____________ day of _____________

______________________________
Notary Public

My commission expires: _____________

(CSS/CM Reviewed 5/10/2012)
CONFLICT OF INTEREST CHECKLIST AND DISCLOSURE FORM

**Purpose of this Checklist:** This checklist is provided to assist proposers in screening for potential organizational conflicts of interest. The checklist is for the internal use of proposers and does not need to be submitted to MnDOT, however, the Disclosure of Potential Conflict of Interest form should be submitted in a separate envelope along with your proposal.

**Definition of “Proposer”:** As used herein, the word “Proposer” includes both the prime Contractor and all proposed Subcontractors.

**Checklist is not Exclusive:** Please note that this checklist serves as a guide only, and that there may be additional potential conflict situations not covered by this checklist. If a proposer determines a potential conflict of interest exists that is not covered by this checklist, that potential conflict must still be disclosed.

**Use of the Disclosure Form:** Proposer must complete the attached disclosure form and submit it with their Proposal (or separately as directed by MnDOT for projects not awarded through a competitive solicitation). If the proposer determines a potential conflict of interest exists, it must disclose the potential conflict to MnDOT; however, such a disclosure will not necessarily disqualify a proposer from being awarded a Contract. To avoid any unfair “taint” of the selection process, the disclosure form should be provided separate from the bound proposal, and it will not be provided to selection committee members. MnDOT Contract Management personnel will review the disclosure and the appropriateness of the proposed mitigation measures to determine if the proposer may be awarded the Contract notwithstanding the potential conflict. MnDOT Contract Management personnel may consult with MnDOT’s Project Manager and Department of Administration personnel. By statute, resolution of conflict of interest issues is ultimately at the sole discretion of the Commissioner of Administration.

**Material Representation:** Proposer is required to submit the attached disclosure form either declaring, to the best of its knowledge and belief, either that no potential conflict exists, or identifying potential conflicts and proposing remedial measures to ameliorate such conflict. The proposer must also update conflict information if such information changes after the submission of the proposal. Information provided on the form will constitute a material representation as to the award of this Contract. MnDOT reserves the right to cancel or amend the resulting Contract if the successful proposer failed to disclose a potential conflict, which it knew or should have known about, or if the proposer provided information on the disclosure form that is materially false or misleading.

**Approach to Reviewing Potential Conflicts:** MnDOT recognizes that proposer’s must maintain business relations with other public and private sector entities in order to continue as viable businesses. MnDOT will take this reality into account as it evaluates the appropriateness of proposed measures to mitigate potential conflicts. It is not MnDOT’s intent to disqualify proposers based merely on the existence of a business relationship with another entity, but rather only when such relationship causes a conflict that potentially impairs the proposer’s ability to provide objective advice to MnDOT. MnDOT would seek to disqualify proposers only in those cases where a potential conflict cannot be adequately mitigated. Nevertheless, MnDOT must follow statutory guidance on Organizational Conflicts of Interest.

**Statutory Guidance:** Minnesota Statutes §16C.02, subdivision 10(a) places limits on state agencies ability to Contract with entities having an “Organizational Conflict of Interest”. For purposes of this checklist and disclosure requirement, the term “Vendor” includes “Proposer” as defined above. Pursuant to such statute, “Organizational Conflict of Interest” means that because of existing or planned activities or because of relationships with other persons: (1) the 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 otherwise be impaired; or (3) the vendor has an unfair advantage.

**Additional Guidance for Professionals Licensed by the Minnesota Board of Engineering:** The Minnesota Board of Engineering has established conflict of interest rules applicable to those professionals licensed by the Board (see Minnesota Rules part 1805.0300) Subpart 1 of the rule provides “A licensee shall avoid accepting a commission where duty to the client or the public would conflict with the personal interest of the licensee or the interest of another client. Prior to accepting such employment the licensee shall disclose to a prospective client such facts as may give rise to a conflict of interest.”
An organizational conflict of interest may exist in any of the following cases:

- The proposer, or its principals, own real property in a location where there may be a positive or adverse impact on the value of such property based on the recommendations, designs, appraisals, or other deliverables required by this Contract.

- The proposer, or its principals, in previous work for the state has provided the final design or related services that are directly related to performance of work required under this contract. Comment: this provision will, for example, disqualify a proposer who performed final design for the State and now seeks to provide Construction Administration Services for that same project. MnDOT believes this is necessary because the firm that prepared the plans may be unable to objectively determine plan errors and omissions. This may cause a situation where: (1) the vendor is unable or potentially unable to render impartial assistance or advice to the state; and (2) the vendor’s objectivity in performing the contract work is or might otherwise be impaired.

- The proposer is providing services to another governmental or private entity and the proposer knows or has reason to believe, that entity’s interests are, or may be, adverse to the state’s interests with respect to the specific project covered by this Contract. Comment: the mere existence of a business relationship with another entity would not ordinarily need to be disclosed. Rather, this focuses on the nature of services commissioned by the other entity. For example, it would not be appropriate to propose on a MnDOT project if a local government has also retained the proposer for the purpose of persuading MnDOT to stop or alter the project plans.

- The Contract is for right-of-way acquisition services or related services (e.g. geotechnical exploration) and the proposer has an existing business relationship with a governmental or private entity that owns property to be acquired pursuant to the Contract.

- The proposer is providing real estate or design services to a private entity, including but not limited to developers, whom the proposer knows or has good reason to believe, own or are planning to purchase property affected by the project covered by this Contract, when the value or potential uses of such property may be affected by the proposer’s performance of work pursuant to this Contract. “Property affected by the project” includes property that is in, adjacent to, or in reasonable proximity to current or potential right-of-way for the project. The value or potential uses of the proposer’s property may be affected by the proposer’s work pursuant to the Contract when such work involves providing recommendations for right-of-way acquisition, access control and the design or location of frontage roads and interchanges. Comment: this provision does not presume proposers know nor have a duty to inquire as to all of the business objectives of their clients. Rather, it seeks the disclosure of information regarding cases where the proposer has reason to believe that its performance of work under this contract may materially affect the value or viability of a project it is performing for the other entity.

- The proposer has a business arrangement with a current MnDOT employee or immediate family member of such employee, including promised future employment of such person, or a subcontracting arrangement with such person, when such arrangement is contingent on the proposer being awarded this Contract. This item does not apply to pre-existing employment of current or former MnDOT employees, or their immediate family members. Comment: this provision is not intended to supercede any MnDOT policies applicable to its own employees accepting outside employment. This provision is intended to focus on identifying situations where promises of employment have been made contingent on the outcome of this particular procurement. It is intended to avoid a situation where a proposer may have unfair access to “inside” information.

- The proposer has, in previous work for the state, been given access to “data” relevant to this procurement or this project that is classified as “private” or “nonpublic” under the Minnesota Government Data Practices Act, and such data potentially provides the proposer with an unfair advantage in preparing a proposal for this project. Comment: this provision will not, for example, necessarily disqualify a proposer who performed some preliminary work from obtaining a final design Contract, especially when the results of such previous work are public data available to all other proposers. Rather, it attempts to avoid an “unfair advantage” when such information cannot be provided to other potential proposers. Definitions of “government data”, “public data”, “non-public data” and “private data” can be found in Minnesota Statutes Chapter 13.

- The proposer has, in previous work for the state, helped create the “ground rules” for this solicitation by performing work such as: writing this solicitation, or preparing evaluation criteria or evaluation guides for this solicitation.

- The proposer, or any of its principals, because of any current or planned business arrangement, investment interest, or ownership interest in any other business, may be unable to provide objective advice to the state.
DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST

Having had the opportunity to review the Organizational Conflict of Interest Checklist, the proposer hereby indicates that it has, to the best of its knowledge and belief:

___ Determined that no potential organizational conflict of interest exists.

___ Determined that a potential organizational conflict of interest exists, as follows:

Describe nature of potential conflict:

Describe measures proposed to mitigate the potential conflict:

__________________________________________________________________________  ______________________________________________________________________
Signature                                            Date

If a potential conflict has been identified, please provide name and phone number for a contact person authorized to discuss this disclosure form with MnDOT contract personnel.

__________________________________________________________________________  ________________________________
Name                                                Phone
SAMPLE CONTRACT
STATE OF MINNESOTA
PROFESSIONAL AND TECHNICAL SERVICES CONTRACT

Federal Project Number: _________
Project Identification: ______________________________________________________________

This Contract is between the State of Minnesota, acting through its Commissioner of Transportation (“State”) and [GIVE THE FULL NAME OF THE CONTRACTOR INCLUDING ITS ADDRESS] (“Contractor”).

Recitals

Minnesota Statutes §15.061 authorizes State to engage such assistance as deemed necessary.

State is in need of [ADD BRIEF NARRATIVE OF THE PURPOSE OF THE CONTRACT].

Contractor represents that it is duly qualified and agrees to perform all services described in this Contract to the satisfaction of State.

Contract

1 Term of Contract; Survival of Terms; Incorporation of Exhibits
1.1 Effective Date: This Contract will be effective on the date State obtains all required signatures under Minnesota Statutes §16C.05, subdivision 2.
Contractor must not begin work under this contract until this Contract is fully executed and Contractor has been notified by State’s Authorized Representative to begin the work.
1.2 Expiration Date: This Contract will expire on [INSERT DATE], or when all obligations have been satisfactorily fulfilled, whichever occurs first.
1.3 Survival of Terms: All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Contract, including, without limitation, the following clauses: 8. Indemnification; 9. State Audits; 10. Government Data Practices and Intellectual Property; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction and Venue; and 14. Data Disclosure.
1.4 Exhibits: Exhibits _ through _ are attached and incorporated into this Contract.

2 Contractor’s Duties
2.1 Contractor, who is not a state employee, will: [PROVIDE SUFFICIENT DETAIL OF THE DUTIES]

3 Time
3.1 Contractor must comply with all the time requirements described in this Contract. In the performance of this Contract, time is of the essence.

4 Consideration and Payment
[Fixed Hourly Rate]
4.1 Consideration. State will pay for all services performed by Contractor under this Contract as follows:
4.1.1 Compensation. Contractor will be paid an Hourly Rate of $_____ up to maximum of ____ hours, but not to exceed $_______.
4.1.2 Total Obligation. The total obligation of State for all compensation and reimbursements to Contractor under this Contract will not exceed $_______.

[Lump Sum]
4.1 Consideration. State will pay for all services performed by Contractor under this Contract as follows:
4.1.1 Compensation. Contractor will be paid a Lump Sum of $______________.
4.1.2 Total Obligation. The total obligation of State for all compensation and reimbursements to Contractor under this Contract will be $________.

[Unit Rate]
4.1 Consideration. State will pay for all services performed by Contractor under this Contract as follows:

(CSS/CM Reviewed 5/10/2012)
4.1.1 Compensation. Contractor will be paid on a Unit Rate basis as follows:

- Direct Labor Costs: $___________________
- Direct Expense Costs: $___________________
- Subcontractor(s) Costs:
  - $___________________
  - $___________________

4.1.2 Direct Costs. Allowable direct costs include project specific costs listed on Exhibit _. Any other direct costs not listed in Exhibit _ must be approved, in writing, by State’s Authorized Representative prior to expenditure.

4.1.3 Budget Details. See Exhibit _ for budget details on Contractor and its Subcontractor(s).

4.1.4 Travel Expenses. Contractor will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current “Minnesota Department of Transportation Travel Regulations”. Contractor will not be reimbursed for travel and subsistence expenses incurred outside the State of Minnesota unless it has received prior written approval from State for such out of state travel. The state of Minnesota will be considered the home base for determining whether travel is “out of state”. See Exhibit _ for the current Minnesota Department of Transportation Reimbursement Rates for Travel Expenses.

4.1.5 Total Obligation. The total obligation of State for all compensation and reimbursements to Contractor under this Contract will not exceed $_______.

[Cost Plus Fixed Fee]

4.1 Consideration. State will pay for all services performed by Contractor under this Contract as follows:

4.1.1 Compensation. Contractor will be paid on a Cost Plus Fixed Fee (profit) basis as follows:

- Direct Labor Costs: $___________________
- Overhead Costs: $___________________
- Fixed Fee Costs: $___________________
- Direct Expense Costs: $___________________
- Subcontractor(s) Costs:
  - $___________________
  - $___________________

4.1.2 Overhead Rate. The overhead rate of XXX.XX% [For all work except Drilling, overhead rates are not to exceed 160%. Contact Audit to determine Contractor’s most recent Audited Overhead Rate] of direct Salary Costs will be used on a provisional basis determined by State’s Office of Audit and will not exceed 160%. [Drilling rates are NOT capped at 160%, and should be determined by Audit]

4.1.3 Direct Costs. Allowable direct costs include project specific costs listed in Exhibit _. Any other direct costs not listed in Exhibit _ must be approved, in writing, by State’s Authorized Representative prior to expenditure.

4.1.4 Budget Details. See Exhibit _ for budget details on Contractor and its Subcontractor(s).

4.1.5 Travel Expenses. Contractor will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current “Minnesota Department of Transportation Travel Regulations”. Contractor will not be reimbursed for travel and subsistence expenses incurred outside the State of Minnesota unless it has received prior written approval from State for such out of state travel. The state of Minnesota will be considered the home base for determining whether travel is “out of state”. See Exhibit _ for the current Minnesota Department of Transportation Reimbursement Rates for Travel Expenses.

4.1.6 Total Obligation. The total obligation of State for all compensation and reimbursements to Contractor under this Contract will not exceed $_______.

4.2 Payment

4.2.1 Invoices. Contractor must submit invoices electronically for payment, using the format set forth in Exhibit _. Contractor will submit invoices for payment in accordance with the following schedule:
4.2.2 Progress Reports. Contractor must submit a monthly progress report, using the format set forth in Exhibit __ showing the progress of work in work hours according to the tasks listed in Article 2 Scope of Work.

4.2.3 State’s Payment Requirements. State will promptly pay all valid obligations under this Contract as required by Minnesota Statutes §16A.124. State will make undisputed payments no later than 30 days after receiving Contractor’s invoices and progress reports for services performed. If an invoice is incorrect, defective or otherwise improper, State will notify Contractor within 10 days of discovering the error. After State receives the corrected invoice, State will pay Contractor within 30 days of receipt of such invoice.

4.2.4 Invoice Package Submittal. Contractor must submit the signed invoice, the signed progress report and all required supporting documentation, for review and payment, to State’s Consultant Services Section, at ptinvoices.dot@state.mn.us. Invoices will not be considered “received” within the meaning of Minnesota Statutes §16A.124 until the signed documents are received by State’s Consultant Services Section.

4.2.4.1 Each invoice must contain the following information: MnDOT Contract Number, Contractor’s invoice number (sequentially numbered), Contractor’s billing and remittance address, if different from business address, and Contractor’s signature attesting that the invoiced services and costs are new and that no previous charge for those services and goods has been included in any prior invoice.

4.2.4.2 Except for Lump Sum Contracts, direct nonsalary costs allocable to the work under this Contract, must be itemized and supported with invoices or billing documents to show that such costs are properly allocable to the work. Direct nonsalary costs are any costs that are not the salaried costs directly related to the work of Contractor. Supporting documentation must be provided in a manner that corresponds to each direct cost.

4.2.4.3 Except for Lump Sum Contracts, Contractor must provide, upon request of State’s Authorized Representative, the following supporting documentation:

4.2.4.3.1 Direct salary costs of employees’ time directly chargeable for the services performed under this Contract. This must include a payroll cost breakdown identifying the name of the employee, classification, actual rate of pay, hours worked and total payment for each invoice period; and

4.2.4.3.2 Signed time sheets or payroll cost breakdown for each employee listing dates and hours worked. Computer generated printouts of labor costs for the project must contain the project number, each employee’s name, hourly rate, regular and overtime hours and the dollar amount charged to the project for each pay period.

4.2.5 Subcontractors. If Contractor is authorized by State to use or uses any subcontractors, Contractor must include all the above supporting documentation in any subcontractor’s Contract and Contractor must make timely payments to its subcontractors. Contractor must require subcontractors’ invoices to follow the same form and contain the same information as set forth above.

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

4.2.7 Federal Funds. If federal funds are used, Contractor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by Contractor’s failure to comply with federal requirements.

5 Conditions of Payment

5.1 All services provided by Contractor under this Contract must be performed to State’s satisfaction, as determined at the sole discretion of State’s Authorized Representative and in accordance with all applicable federal, state and local laws, ordinances, rules and regulations, including registration requirements of the Office of the Secretary of State. Contractor will not receive payment for work found by State to be unsatisfactory or performed in violation of federal, state or local law.
6 Authorized Representatives

6.1 State’s Authorized Representative. State’s Authorized Representative will be:
Name/Title:
Address:
Telephone:
Fax:
E-Mail:
State’s Authorized Representative, or his/her successor, will monitor Contractor’s performance and has the authority to accept or reject the services provided under this Contract.

6.2 State’s Project Manager. State’s Project Manager will be:
Name/Title:
Address:
Telephone:
Fax:
E-Mail:
State’s Project Manager, or his/her successor, has the responsibility to monitor Contractor’s performance and progress. State’s Project Manager will sign progress reports, review billing statements, make recommendations to State’s Authorized Representative for acceptance of Contractor’s good or services and make recommendations to State’s Authorized Representative for certification for payment of each invoice submitted for payment.

6.3 Contractor’s Authorized Representative. Contractor’s Authorized Representative will be:
Name/Title:
Address:
Telephone:
Fax:
E-Mail:
If Contractor’s Authorized Representative changes at any time during this Contract, Contractor must immediately notify State.

7 Assignment, Amendments, Waiver and Contract Complete

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

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

7.3 Waiver. If State fails to enforce any provision of this Contract, that failure does not waive the provision or State’s right to subsequently enforce it.

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

8 Indemnification

8.1 In the performance of this contract by Contractor, or Contractor’s agents or employees, Contractor must indemnify, save and hold harmless State, its agents, and employees, from any claims or causes of action, including attorney’s fees incurred by State, to the extent caused by Contractor’s: 1) intentional, willful, or negligent acts or omissions; or 2) actions that give rise to strict liability; or 3) breach of Contract or warranty. The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of State’s sole negligence. This clause will not be construed to bar any legal remedies Contractor may have for State’s failure to fulfill its obligation under this Contract.
9 State Audits
9.1 Under Minnesota Statutes §16C.05, subdivision 5, Contractor’s books, records, documents and accounting procedures and practices relevant to this Contract are subject to examination by State, State’s Auditor or the Legislative Auditor, as appropriate, for a minimum of six years from the expiration date of this Contract.

10 Government Data Practices and Intellectual Property
10.1 Government Data Practices. Contractor and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Contractor under this Contract. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either Contractor or State. If Contractor receives a request to release the data referred to in this Clause, Contractor must immediately notify State and consult with State as to how Contractor should respond to the request. Contractor’s response to the request must comply with applicable law.

10.2 Intellectual Property Rights
10.2.1 Intellectual Property Rights. State owns all rights, title and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks and service marks in the Works and Documents created and paid for under this Contract. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes and disks conceived, reduced to practice, created or originated by Contractor, its employees, agents and subcontractors, either individually or jointly with others in the performance of this Contract. 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 Contractor, its employees, agents or subcontractors, in the performance of this Contract. The Documents will be the exclusive property of State, and Contractor upon completion or cancellation of this Contract must immediately return all such Documents to State.

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.” Contractor assigns all right, title and interest it may have in the Works and Documents to State. Contractor must, at the request of State, execute all papers and perform all other acts necessary to transfer or record the State’s ownership interest in the Works and Documents.

10.2.2 Obligations
10.2.2.1 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, Contractor, including its employees and subcontractors, in the performance of this Contract, will immediately give State’s Authorized Representative written notice thereof and must promptly furnish State’s Authorized Representative with complete information and/or disclosure thereon.

10.2.2.2 Representation. 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 State and that neither Contractor nor its employees, agents or subcontractors retain any interest in and to the Works and Documents. Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless State, at Contractor’s expense, from any action or claim brought against 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. 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 Contractor’s or State’s opinion is likely to arise, Contractor must, at State’s discretion, either procure for 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 State will be in addition to and not exclusive of other remedies provided by law.
11 Workers’ Compensation
11.1 Contractor certifies that it is in compliance with Minnesota Statutes §176.181, subdivision 2, pertaining to workers’ compensation insurance coverage. Contractor’s employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers’ Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way State’s obligation or responsibility.

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

13 Governing Law, Jurisdiction and Venue
13.1 Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

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

15 Subcontractors
15.1 Subcontracts
15.1.1 If Contractor is authorized by State to use, or uses, any subcontractors, Contractor will be responsible for coordinating and managing the work of such subcontractors. The use of subcontractors does not relieve Contractor from its obligation to perform the services specified in this Contract.
15.1.2 Contractor’s subcontracts must contain all appropriate terms and conditions of this Contract, including Articles 1, 2, 4, 5, 6 and 9 of this Contract as they apply to the subcontractor.
15.1.3 Contractor must, in accordance with Minnesota Statutes §16A.1245, pay subcontractors within 10 days of receiving payment from the state for undisputed services provided by subcontractors. Contractor must also pay interest, at the rate of 1.5% per month or any part of a month, to subcontractors on any undisputed amount not paid on time. The minimum monthly interest payment on a balance of $100.00 or less is $10.00.
15.1.4 Contractor must require subcontractors’ invoices to follow the same format and contain the same information as set forth in Article 4.
15.1.5 Contractor must submit a copy of all subcontracts exceeding $10,000.00 to State’s Authorized Representative no later than 30 calendar days after executing the subcontract and prior to beginning work under the subcontract. Upon request by State, a copy of any executed subcontract under $10,000.00 must be sent to State’s Authorized Representative.

15.2 Payment to Subcontractors
15.2.1 (If applicable) As required by Minnesota Statutes §16A.1245, the prime Contractor must pay all subcontractors, less any retainage, within 10 days of the prime Contractor’s receipt of payment from State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).
16  Termination; Suspension

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

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

16.3 Suspension. State may immediately suspend this Contract in the event of a total or partial government shutdown due to failure to have an approved budget by the legal deadline. Work performed by Contractor during a period of suspension will be deemed unauthorized and undertaken at risk of non-payment.

17  Affirmative Action Requirements for Contracts in Excess of $100,000.00 and Contractor has More than 40 Full-time Employees in Minnesota or its Principal Place of Business

INTENTIONALLY OMITTED

18  Insurance Requirements

18.1 Insurance Certificates and Continuity of Coverage Required. Contractor must provide a certificate of insurance showing that Contractor has each type of coverage and limits required under this Contract. Contractor must file the certificate with State’s Authorized Representative within 30 days after execution of this Contract and prior to commencing any work under this Contract. Each policy and Certificate of Insurance must contain a 30 day notice of cancellation, nonrenewal or changes in coverage or limits to all named and additional insured. Contractor must maintain such insurance in full force and effect throughout the term of this Contract.

18.2 Required Insurance. Contractor must maintain and furnish satisfactory evidence of the following insurance policies:

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

- $100,000.00 – Bodily Injury by Disease per employee
- $500,000.00 – Bodily Injury by Disease aggregate
- $100,000.00 – Bodily Injury by Accident

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

18.2.2 Commercial General Liability Insurance: Contractor must 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 this Contract whether the operations are by Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor pursuant to this Contract. Insurance minimum amounts are as follows:

- $2,000,000.00 – per occurrence
- $2,000,000.00 – annual aggregate
- $2,000,000.00 – annual aggregate – Products/Completed Operations

The following coverages must be included:

- Premises and Operations Bodily Injury and Property Damage

(CSS/CM Reviewed 5/10/2012)
18.2.3 Commercial Automobile Liability Insurance: Contractor is required to maintain insurance protecting Contractor from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired and non-owned autos which may arise from operations under this Contract and in case any work is subcontracted the Contractor will require the subcontractor to provide Commercial Automobile Liability. Insurance minimum amounts are as follows:

$2,000,000.00 – 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

18.2.4 Professional/Technical, Errors and Omissions and/or Miscellaneous Liability Insurance: Contractor must maintain insurance providing coverage for all claims Contractor is legally obligated to pay resulting from any actual or alleged negligent act, error or omission related to Contractor’s professional services performed under this Contract. Unless otherwise specified within this Contract, Contractor’s professional liability insurance minimum limits are as follows:

- $2,000,000.00 – per claim
- $2,000,000.00 – annual aggregate

On request, Contractor must allow State to view reviewed or audited financial statements signed by a Certified Public Accountant which provides evidence that Contractor has adequate assets to cover any deductible in excess of $50,000.00 that applies to this policy. State will treat such financial statements as non-public data to the extent permitted by the Minnesota Government Data Practices Act. The retroactive or prior acts date of coverage must not be later than the effective date of this Contract and Contractor must maintain such coverage for a period of at least three years following the completion of work. If such insurance is discontinued, then extended reporting period coverage must be purchased to fulfill this requirement.

18.2.5 Additional Insurance Conditions:

18.2.5.1 Contractor’s policies will be primary insurance to any other valid and collectible insurance available to State with respect to any claim arising out of Contractor’s performance under this Contract;

18.2.5.2 If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State of Minnesota within five 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 30 days advance written notice to the State of Minnesota.

18.2.5.3 Contractor’s policies and Certificates of Insurance will contain a provision that coverage afforded under the policies will not be canceled without at least 30 advance written notice to State;

18.2.5.4 Contractor is responsible for payment of Contract related insurance premiums and deductibles;

18.2.5.5 If Contractor is self-insured, a Certificate of Self-Insurance must be attached;

18.2.5.6 Contractor’s policies will include legal defense fees in addition to its liability policy limits, with the exception of Article 18.2.4 above;

18.2.5.7 Contractor will obtain insurance policies from insurance companies having an “AM BEST” rating of “A minus”, a Financial Size Category VII, or better, and authorized to do business in the State of Minnesota; and

18.2.5.8 An Umbrella or Excess Liability insurance policy may be used to supplement Contractor’s policy limits to satisfy the full policy limits required by this Contract.
18.3 Right to Terminate. State will reserve the right to immediately terminate the Contract if Contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against Contractor. All insurance policies must be open to inspection by State and copies of policies must be submitted to State’s Authorized Representative upon written request.

19 Discrimination Prohibited by Minnesota Statutes §181.59

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

20 Early Retirement Incentive Reemployment Prohibition

20.1 Laws of Minnesota 2010, Chapter 337, Subdivision 5, provided an early retirement incentive to some State of Minnesota employees. The law provides that an individual who received an early retirement incentive payment may not be hired as a consultant by any agency or entity that participates in the State Employee Group Insurance Program for a period of three years after termination of service. The Contractor certifies that it will not utilize any former state employee in the performance of this Contract who received an retirement incentive payment under Laws of Minnesota 2010, Chapter 337, unless three years have passed from the date of the employee’s separation from state service.

21 E-Verify Certification (In accordance with Minnesota Statutes §16C.075)

21.1 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 Additional Provisions

22.1 Debarment and Certification

22.1.1 Debarment by State, its Departments, Commissions, Agencies or Political Subdivisions. Contractor certifies that neither it nor its principles is presently debarred or suspended by the state, or any of its departments, commissions, agencies or political subdivisions. Contractor’s certification is a material representation upon which the contract award was based. Contractor will provide immediate written notice to State’s Authorized Representative if at any time it learns this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

22.1.2 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion. Federal money will be used (or may potentially be used) to pay for all or part of the work under this Contract; therefore, Contractor must certify that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. Contractor’s certification is a material representation upon which the contract award was based.