

REQUEST FOR PROPOSALS

Minnesota Department of Transportation

Note: This document is available in alternative formats for persons with disabilities by calling Paul Huston at (651) 284-3605, or for persons who are hearing or speech impaired by calling the Minnesota Relay Service at 1-800-627-3529.

Responses to this Request for Proposals (RFP) will be public information under the Minnesota Data Practices Act, Minnesota Statutes Chapter 13.

This RFP does not obligate the State to award a contract, and the State reserves the right to cancel the solicitation if it is considered to be in its best interest.

1 Program Information

1.1 Overview

The State of Minnesota, through its Department of Transportation (“State”, “Department”, and “Mn/DOT”), requests proposals for general engineering consultant (“GEC”) services that would support the Department’s evolving design-build initiative. The selected GEC, together with the design-build program management group, would form an integrated team to manage the program and support Districts and the Metro Division with delivering design-build projects. These services would include work at both the program and project levels. Work throughout the life of the agreement may include partial or full responsibility for project delivery and organizational strategy development, project management, preliminary engineering, design and construction management and oversight, technical and management staff support, and other services as needed. Additional assignments may be added as the overall program and the Department’s design-build philosophy evolve.

1.2 Department Philosophy

The Department has so far developed four design-build projects on an individual basis, but is now interested in developing a long-term programmatic approach that would potentially identify three or more transportation projects per year over the next several years. Mn/DOT’s Program Director and Program Manager – the Department’s program management group – will manage the direction and implementation of the design-build program. Rather than expanding its own internal staff to support this management group, the Department intends to

establish a long-term relationship (three years plus the potential of one 2-year extension, for a total of up to five years) with the selected GEC to provide collaborative management support. The contract resulting from this request for proposals would serve as a master agreement for the period.

During the months of May and June, the Program Director and Program Manager will be meeting with each District and the Metro Division to begin identifying potential design-build projects in the Department's 10-year work plans. Once the selected GEC is brought on board, their Program Manager and possibly other key staff will be brought into the programming discussions to refine the list of design-build project recommendations that would be forwarded on to the Department's Transportation Program Investment Committee and senior management for final decision. For projects approved as design-build, the District and Metro Division project managers, together with the program management group and the selected GEC, will identify who is best able to complete the project-related activities. From project to project, the responsible party(ies) may vary from District/Metro Division staff, a separate engineering consultant procured by a District/Metro Division, or the selected GEC.

As specific design-build project or program support tasks are identified as responsibilities of the selected GEC, the Department would write work order agreements to clearly define tasks, schedules, deliverables, staffing, and costs necessary to deliver the specific tasks. At the time of writing this RFP, the Department has identified two projects and several program support activities on which the selected GEC would be asked to begin work immediately.

The Department has learned and identified several principles that will be fundamental to managing and implementing a successful design-build program:

- Department will have a role in project development
- Program team must be flexible and innovative
- Assign responsibilities to those best able to succeed
- Small Department staff with strong GEC support
- Use the design-build contract delivery method where appropriate

1.3 Goal

The goal of this contract is for the selected GEC to function as an extension of the Department's staff by providing the necessary range of services required to support and deliver the Department's design-build program. The Department desires to retain a GEC to gain the benefit of experience and expertise in design-build program management, as well as to augment Department staffing to deliver projects.

1.4 Scope of Work

The scope of work for work orders to be issued under this agreement could include specific tasks within any or all of these broad categories:

- 1) Pre-award project development for design-build projects.
- 2) Contract documents and procurement process for design-build projects.
- 3) Post-award contract administration of design-build projects.
- 4) Support of the Department's program management.

The intent of this RFP is to seek responders that would be interested in performing these services in the future. Attachments A and B identify the potential range of services from which work orders will be written.

1.5 Scope of Services

The selected GEC would be providing engineering support to the Department's design-build program and/or specific design-build projects.

At the time of issuing this RFP, the Department has identified two design-build projects and a variety of program support services that would be assigned to the selected GEC:

- **T.H. 169 in Bloomington and Eden Prairie** (converting signalized intersections at Pioneer Trail and Anderson Lake Parkway to interchanges); and
- **T.H. 494 in Minnetonka and Eden Prairie** (adding a third lane to each direction of I-494 plus associated interchange modifications, between I-394 and T.H. 5).
- **Program support**
 - Refine design-build project selection criteria and process
 - Enhance and maintain the Department's design-build website
 - Identify and develop design-build training for Department's project development staff
 - Develop methods for measuring design-build project performance and effectiveness

Other transportation projects and program support activities would be identified during the term of the master agreement. Attachment A provides a summary matrix of potential services for T.H. 169, T.H. 494, and program support. Attachment B provides a template scope of services for all identified and potential work orders.

Once a work order is established for a project or set of tasks, the selected GEC may be asked to provide additional engineering services to develop that project that were not originally foreseen in the work order. This addition of tasks would be accomplished by contract amendment.

1.6 Procurement Schedule

The Department has established the following schedule for advertising, evaluating, and selecting a GEC for services identified in this RFP. This schedule is subject to change by Addendum.

Design-Build Program GEC Procurement Schedule	
Issue draft RFP on Department's design-build website (www.dot.state.mn.us/designbuild < http://www.dot.state.mn.us/designbuild >) for industry review and comment	Monday, April 29, 2002
Publish notice in the <i>State Register</i> Issue RFP	Monday, May 20, 2002
Deadline for submitting questions about the RFP	12:00 noon, Wednesday, June 5, 2002
Technical proposals due	12:00 noon, Monday, June 10, 2002
Technical review committee (TRC) evaluates proposals	Monday, June 10 – Wednesday, June 19, 2002
TRC interviews short-listed responders	Wednesday, June 19, 2002
TRC develops final recommendation to Senior Management	Wednesday, June 19, 2002

1.7 Program Organizational Structure

The Department has assigned two internal staff people to manage the design-build program. Mr. Patrick Hughes, Assistant Commissioner, is Director of the design-build program. Mr. Hughes is responsible for the overall program direction, policy, implementation, and liaison with the Department's Senior Management Team. Mr. Paul Huston, as Design-Build Program Manager, serves as a project coordinator and liaison between the corporate office and the District/Metro Division project teams. Mr. Huston also assists with program direction, policy, and implementation.

At the program level, the selected GEC would report directly to Mr. Huston. For specific projects in the Districts and Metro Division, the selected GEC would report directly to the Department's project manager, who would be defined in the

project work order.

1.8 Conflict of Interest

The responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances that could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, a vendor is unable or potentially unable to render impartial assistance or advice to the State, or the vendor's objectivity in performing the contract work is or might be otherwise impaired, or the vendor has an unfair 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 State that must include a description of the action that the GEC has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the contract. In the event the responder was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to the contracting officer, the State may terminate the contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms "contract," "contractor," and "contracting officer" modified appropriately to preserve the State's rights.

The Department has established several principles to prevent conflict of interest or unfair project knowledge situations for the selected GEC. These principles are intended to guide potential responders as they make business decisions on whether or not to pursue this contract and potential future design-build contracts; however, the burden of assessing risk and proof of no conflict of interest or unfair advantage will be on the selected GEC and any of its subconsultants.

- Selected GEC can participate in separate Department preliminary engineering contracts for specific design-build projects;
- Selected GEC can participate in the Department's design-build contracts and/or design-build project development contracts that were executed before this master agreement is executed. These contracts specifically include: Hiawatha LRT, T.H. 14 near Owatonna, T.H. 100 in Golden Valley, T.H. 52 in Rochester, and T.H. 212 in Chaska and Eden Prairie. Participation in any of those contracts does not exclude any of the participants from submitting proposals to this GEC RFP.
- Selected GEC cannot participate in any Department design-build contract that includes any work performed by the selected GEC under this master agreement;

- Subconsultants to the selected GEC can participate in separate Department preliminary engineering contracts for specific design-build projects.
- Subconsultants to the selected GEC can participate in design-build contracts only if their work for the selected GEC does not provide them project knowledge that could provide an unfair advantage to a design-build team, and only if all relevant project information obtained during performance of the subcontract with the selected GEC is also made available to other potential design-build teams that might be interested in the design-build project, and only if the subcontract and all relevant deliverables are completed before the design-build RFP is issued. For example, while performing its subcontract with the GEC, a subconsultant to the GEC that obtains special knowledge or insight that is not represented in a work product would be excluded.
- Parent and subsidiary companies of the selected GEC cannot participate in any Department design-build contract that includes any work performed by the selected GEC under this master agreement.
- Parent and subsidiary companies of the selected GEC participating in preliminary engineering teams or joint ventures cannot participate in any design-build contract that includes any work performed by the selected GEC under this master agreement.

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 is contemplated in this RFP. The list should indicate the name of the entity, the relationship, and a discussion of the conflict.

2 Technical Proposals

2.1 Technical Proposal Philosophy

Responders will need to demonstrate capacity, capability, and understanding of project management, design-build delivery, strategic project environmental planning, project development (including preliminary engineering and environmental documentation), construction administration and inspection, design-build quality management and oversight, as well as providing qualified project support and specialty services personnel to supplement Department forces.

Qualified, dedicated, and committed people will be critical to successfully managing the Department's design-build program. Responders should identify a core group of people with an appropriate mix of management skills, technical expertise, and project experience. Given the flexibility of this anticipated contract, and the potential to have one or several design-build projects underway

at the same time, responders should address availability and scalability of staff. Key personnel will need to be flexible to meet the changing nature of the program and funding environments. Some of the key personnel will initially work on Department tasks part time, becoming full time as the needs and program dictate.

2.2 Technical Proposal Content

The following will be considered minimum contents of the proposal; responders are expected to organize their proposals in the order listed below:

1. **Project Understanding.** A statement of the objectives, goals, and tasks to show or demonstrate the responder's view and understanding of the nature of the contract. Consider if the Scope of Services attached to this RFP is sufficient to attain the Department's goals and objectives.
2. **Project Management.** Show how the GEC Program Manager and Project Managers would bring experience, expertise, innovation, and "not business as usual" skills in leadership and technical ability. Describe the administrative and operational structure that would be used to perform the proposed work, including:
 - A. Management plan to attain the necessary staff required.
 - B. Communicating, involving, and coordinating between the Department and the design-builder, and between the Department's design-build program group and the District/Metro Division project managers.
 - C. Organizational structure or chain of command in organizational chart form, clearly identifying the GEC Program Manager, GEC Project Manager(s), and staff people who will be assigned to the various tasks identified in this RFP.
 - D. Presentation of existing design and/or construction quality management plan(s) that the responder may have already developed, and how it (they) will be implemented into work performed.
 - E. How the range of potential services would be delivered (e.g., whether the responder is already a full service provider, or would develop project specific teams, or would make use of existing teaming arrangements).
 - F. Approach to managing costs under this agreement while fulfilling required tasks and assuring quality of work.

3. **GEC Team.** Identify specific individuals, and address the experience, expertise, innovation, and “not business as usual” skills that each of them would bring to the program management team, as outlined below:

- *Program Manager*
- *Project Manager(s)*
- *Design Engineering Manager*
- *Bridges/Structures Engineering Manager*
- *Construction Engineering Manager*
- *Environmental Manager*
- *Traffic Engineering and Construction Traffic Manager*
- *Public Relations Manager*
- *Contract and Agreement Manager*
- *Real Estate Acquisition Manager*
- *Utilities Manager*

Note: Personnel identified in proposals will not be permitted to change without the Department’s written approval.

These people encompass a core group of key personnel who may be needed at various times to perform the work. The GEC Program Manager must be the GEC’s primary manager and point of contact for the Department. Project Managers and other personnel shown would be called upon to implement specific project or program activities.

Demonstrate all relevant expertise and experience in as many of the following areas as possible:

- A. Management of multiple projects;
- B. Preliminary and/or final design of Minnesota Trunk Highway roadway and/or bridge projects;
- C. Transportation design-build projects;
- D. Developing and writing transportation design-bid-build contract documents and design-build contract documents;
- E. Managing, administering, and providing oversight for design and construction contracts as an owner representative;
- F. Communicating, involving, and coordinating with many different groups;
- G. Developing, forming, and administering strategies for design-build, design-bid-build, and other alternative contracting methods;
- H. Organizational development, including project management, planning, budget management, identifying procurement methods and procedures;
- I. Quality management and other project controls, including scheduling, quality compliance, cost estimating, document control, general accounting, cost accounting, and budgeting;
- J. Understanding and applying NEPA and MEQB requirements and

- applicable permits;
 - K. Familiarity with Department, AASHTO, FHWA, and other relevant public works standards, methods, and procedures;
 - L. Initiating interagency coordination and agreements that have involved the Department; and
 - M. Real estate acquisition processes.
4. **Company Background and Experience.** An outline of the responder's background and experience with examples of design-build work and/or relevant work done by the responder for the Department.
5. **Innovation.** Responders are encouraged to propose innovations, additional tasks, and/or activities that could substantially improve the management of the design-build program and/or specific design-build projects, beyond what is described or required within this RFP.
6. **DBE Performance.** Responders must discuss their past performance satisfying DBE goals on other projects. Because there is a potential that future work orders issued under the master agreement would be federally funded, thereby triggering DBE goal requirements, responders must also discuss what their approach would be to satisfy DBE goals during the life of this contract.
7. **Quality of Proposal.** **Responders do not specifically address this criterion.** Committee members will rate this criterion based on their perception of the clarity, completeness and presentation of the submittal and how it addresses the items required by the RFP. This criterion is not used to evaluate color, graphics or other visual techniques except as they may detract from the legibility.

2.3 Technical Proposal Questions

Prospective responders who have any questions regarding this request for proposal may only contact the following individual, only in writing:

Paul R. Huston, P.E.
Design-Build Program Manager

Mail: 395 John Ireland Blvd., MS 670
St. Paul, MN 55155-1899

Fax: (651) 296-1805

E-mail: paul.huston@dot.state.mn.us

Other department personnel are **NOT** allowed to discuss the request for proposal, before the proposal submission deadline. Contact regarding this RFP with anyone not listed above could result in disqualification. Information received from anyone not listed above could be incorrect.

Questions will be accepted until the time and date shown in Section 1.6, Procurement Schedule. Responses will be issued, in writing to all who have requested an RFP, within three business days of receiving questions.

2.4 Technical Proposal Format

Responders must use a minimum 12-point font for the basic text of the entire technical proposal. All charts, graphs, tables, graphic displays, etc., must be of readable size.

Technical proposal submittals must not exceed fifty (50) sheets, submitted only on single-sided, typed, 8.5" x 11" paper. Only three of the 50 sheets may be submitted on paper other than 8.5" x 11" size. The page count limitation applies to ALL sheets in the submittal that contain text information about the responder's qualifications. These specific parts of a responder's proposal do not count towards the page number limitation, as long as they do not contain information about the responder's qualifications:

- Front or back cover pages
- Separator or tab pages that mark sections within the technical proposal
- Forms that the responder is required by other sections of this RFP to submit with the technical proposal
- Cost proposal
- Table of contents

The TRC will not read any sheets that exceed the page count limitation.

2.5 Technical Proposal Submittal

All proposals must be sent to:

Department of Transportation
Paul R. Huston, P.E.
Design-Build Program Manager
395 John Ireland Blvd., MS 670
St. Paul, MN 55155-1899

All proposals must be received not later than the time and date shown in Section 1.6, Procurement Schedule. Please note that Mn/DOT Central Office has implemented new security measures. All visitors to the building, including

couriers, must check in at the first floor information desk. Please allow sufficient time in your delivery schedule to comply with security procedures.

Late proposals will not be considered.

All costs incurred in responding to this RFP will be borne by the responder.

Fax and e-mail responses will not be considered.

Responders must adhere to all terms of this Request for Proposals.

Submit 1 original and 10 copies of the technical proposal. Proposals are to be sealed in one mailing envelope or package with the responder's name and address written on the outside. An authorized representative of the responder must sign the original and each copy of the proposal in blue ink.

Submittals that do not follow the directions of Sections 2.2 and 2.4 of this RFP will be deemed non-responsive and will not be considered by the TRC.

3 Cost Proposal Requirements

3.1 Cost Proposal Philosophy

In compliance with State Statutes for selection of professional/technical contracts, the Department must evaluate a responder's costs as part of an overall best value selection. The nature of this master agreement is such that the Department cannot accurately predict how many projects the selected responder may be asked to support, or the level of effort that will be needed on any particular project. Responders would have a difficult time preparing any meaningful, detailed cost proposals that could be factored into a numerical scoring. Therefore, the Department will evaluate the reasonableness of costs for the individuals listed in Section 2.2, paragraph 3, "GEC Team".

3.2 Cost Proposal Content

Responders must submit either specific or a range of position rates for the individuals listed in Section 2.2, paragraph 3, "GEC Team". The information must clearly break pricing into its components; e.g., basic position rate, overhead, profit, and total rate for each position.

3.3 Cost Proposal Submittal

Responders must submit one original cost proposal, in a separate, sealed envelope, in the same package as they submit their technical proposals. The envelope containing the cost proposal must be clearly marked with the responder's name and the words "Mn/DOT Design-Build Program GEC – Cost Proposal".

4 Evaluation Process

4.1 Evaluation Philosophy

A best value process will be used to evaluate the proposals and select a GEC. Once the technical proposals have been submitted, a Technical Review Committee (TRC) will be assembled to score them. The TRC will include a variety of representatives of the Department's design-build program management group, Districts, and the Metro Division, and Office of Bridges and Structures.

Responders will be short-listed according to the three highest scoring technical proposals. If three or fewer proposals are submitted, then the TRC will determine an appropriate short list after reviewing all proposals.

The short-listed responders will be asked to participate in oral interviews conducted before the TRC for additional evaluation and scoring.

The TRC will establish a technical ranking of the short-listed responders before considering the reasonableness of the top-ranked responder's cost proposal. If the independent review of cost proposals indicates that the top-ranked responder's cost proposal is not reasonable, the Department reserves the right to negotiate with the top-ranked responder to adjust the proposed rate structure. If those negotiations were not successful, the Department would disqualify the top-ranked proposal and evaluate the second-ranked responder's cost proposal in a similar manner, until reasonable rates are negotiated.

4.2 Technical Proposal Evaluation

The TRC will evaluate all responses received by the deadline. A 100-point scale will be used to evaluate the technical proposals. The factors and weighting on which technical proposals will be judged are:

Proposal Section	Points
Project Understanding	10
Project Management	30
GEC Team	30
Company Background & Experience	10
DBE Performance	5
Innovation	10
Quality of Proposal	5
<i>Maximum Possible Score for Proposal</i>	<i>100</i>

4.3 Oral Interview Evaluation

The Department will interview all short-listed responders. The oral interview, including presentation, questions, and answers, will not exceed 90 minutes, and will follow this general outline:

Short-listed responder's presentation	up to 60 minutes
TRC questions	up to 30 minutes

The responder's proposed Program Manager must lead the presentation, but is encouraged to refer to and invite input from others during the presentation and question/answer period.

Audiovisual displays may be used but are not required. The Department will furnish one overhead projector and one video projector, but short-listed responders must furnish their own computer equipment and all presentation materials. The Department will not provide any photocopying or office supplies.

The interview will focus on the team's approach to support Mn/DOT's program management. The TRC will assign a score to each short-listed responder's interview as follows:

Maximum Possible Score for Oral Interview 20 points

4.4 Technical Evaluation

The TRC will add the TRC-average score each short-listed responder received on their technical proposals to their TRC-average oral interview score to reach a combined total score. The total possible number of points is 120. The final technical ranking will be based on the responder's combined experience, capabilities, and approach:

Score for Technical Proposal	(100 points possible)
<u>Score for Oral Interview</u>	<u>(20 points possible)</u>
<i>Total Combined Score for</i>	
<i>Technical Proposal & Oral Interview</i>	(120 points possible)

4.5 Cost Proposal Evaluation

When the Department receives technical and price proposals, the price proposals will be separated and given to a representative of the Department's Audit Section. The Audit Section, or their designee, will independently and confidentially review the position rate information submitted by each responder to determine whether the proposed rate structures are reasonable or not reasonable. This opinion will be noted on each price proposal, and the full price proposal will be resealed and stored until the TRC has completed its technical evaluations.

Once the TRC has evaluated the technical proposals and conducted interviews of the short-listed responders, the Department's Program Manager will open the price proposal envelope corresponding to the top-ranked responder to reveal the independent Audit report of reasonableness. If the cost proposal has been judged reasonable, then the top-ranked responder will be considered the best value selection, and the TRC will recommend their selection to the Department's senior management. If the cost proposal has been judged not reasonable, then the Program Director and Program Manager will meet with the top-ranked responder to attempt to adjust the proposed rate structure. If those negotiations were not successful, the Department would disqualify the top-ranked proposal and evaluate the second-ranked responder's cost proposal in a similar manner, until reasonable rates are negotiated.

5 Contract Information

The selected GEC would be required to submit an annual certified financial audit to the Department.

The terms and conditions included within this RFP are subject to change in the future, based - at least in part - on future consultation and discussion with the consulting industry and the Consulting Engineers Council of Minnesota.

Responders that would propose subcontracting with other consulting engineering firms to provide services would be required to select firms from the Department's lists of prequalified consultants. These prequalified lists do not currently exist, but may be developed during the term of this master agreement.

6 Disadvantaged Business Enterprise (DBE)

6.1 DBE Policy Statement

It is the policy of the Department that DBEs, as defined in 49 CFR Part 26, and other small businesses shall have the maximum feasible opportunity to participate in contracts financed in whole or in part with public funds. Consistent with this policy, the Department will not allow any person or business to be excluded from participation in, denied the benefits of, or otherwise be discriminated against in connection with the award and performance of any U.S. Department of Transportation (DOT)-assisted contract because of sex, race, religion, or national origin. The Department has established a DBE program in accordance with regulations of the DOT, 49 CFR Part 26.

The Department may receive federal financial assistance from DOT for future work orders that would be issued under this master agreement, and as a condition of receiving this assistance, would sign an assurance that it will comply with 49 CFR Part 26. The DBE requirements of 49 CFR Part 26 would apply to any such federally funded work orders. In this regard, the selected GEC would take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform this contract.

6.2 Future DBE Goal

For federally funded work orders, the Department will determine a project specific DBE goal. The Department's updated directory of DBE contractors can be viewed at the following website:

http://www.dot.state.mn.us/eeocm/eeocmdoc/dbe_directory.pdf

6.3 Submittal of Documentation

For all future work order contracts where goals are set, regardless of contract size, the selected GEC will be (a) required to propose the participation of specific DBEs to meet the goal; or (b) demonstrate good faith efforts to meet the goal. The selected GEC must provide justification if it rejects bids, quotes, or proposals from properly certified, qualified DBE firms.

In order to fulfill a DBE goal, the firms utilized as subcontractors must be certified as a DBE by the Department's EEO Contract Management Office before submission of the project work order. The Department's DBE directory contains the names and addresses of all firms that are certified to perform the type of work that may be proposed to be subcontracted.

6.4 DBE Good Faith Efforts

If the selected GEC could not meet the established DBE goal at the major participant and/or subcontract level, then the selected GEC would be required to document of Good Faith Efforts. For federally funded work orders, the Department would provide the selected GEC with Certificate of Good Faith Efforts forms (Form CGF) to list all the DBE and non-DBE firms (including subcontractors, service providers and suppliers) from whom it solicited quotes to provide work and/or supplies for the Project.

6.5 Bidders List

The selected GEC would also be required to submit a completed Bidders List, which must include information on: (1) each firm that submitted a bid/quote for the project; and (2) the proposed firm to be used on the project as subcontractors, service providers, and suppliers. The selected GEC would also be required to submit a completed Bidders List form even if the company's list of proposed subcontractors, service providers, and suppliers included enough participation to meet the work order-specific goal.

General Information

State Not Obligated To Complete Project

This request for proposal does not obligate the state to award a contract or complete the project, and the state reserves the right to cancel the solicitation if it is considered to be in its best interest.

Disposition of Responses

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

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

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

Responses to this RFP will not be open for public review until the State decides to pursue a contract and that contract is awarded.

Soliciting proposals preference to targeted group and economically disadvantaged business and individuals

In accordance with Minnesota Rules 1230.1810, subpart B and Minnesota Rules 1230.1830, certified Targeted Group Businesses and individuals submitting proposals as prime contractors will receive up to six percent preference in the evaluation of their proposal, and certified Economically Disadvantaged Businesses and individuals submitting proposals as prime contractors will receive up to six percent preference in the evaluation of their proposals. For information regarding certification, contact the Department of Administration, Materials Management Helpline at 651.296.2600, TTY 651.282.5799.

Affidavit of Noncollusion

Each responder must complete the attached Affidavit of Noncollusion and include it with the response.

Workers' Compensation

The successful responder will be required to submit acceptable evidence of compliance with workers' compensation insurance coverage requirements prior to execution of the contract. Successful bidders will be required to submit pre-award audit information and comply with audit standards.

Certification Regarding Lobbying

Federal money may be used to pay for all or part of future work orders; therefore, the responder must complete the attached Certification Regarding Lobbying and submit it as part of its proposal.

Work Being Publicized to State Employees

In compliance with Minnesota Statutes § 16C.07, the availability of this work is being offered to state employees. The State will evaluate the responses of any state employee, along with other responses to this Request for Proposals.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.

The agency cannot, at this time, determine whether or not any federal funds might be used to pay for any part of the proposed contract, therefore prospective responders must certify the following, as required by the Compliance Supplement to OMB Circular A-133, Compliance Supplement (found at: http://www.whitehouse.gov/omb/circulars/a133_compliance/a133_compliance.html)

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

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled A Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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

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

Affirmative Action Data

For all contracts estimated to be in excess of \$100,000, responders are required to complete the attached Affirmative Action Data page and return it with the response.

Contract Terms

Contract format is enclosed for information purposes. If responder has any issue with the terms of the contract, those issues are to be identified in the proposal.

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CERTIFICATION REGARDING LOBBYING

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

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, A Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Organization Name

Name and Title of Official Signing for Organization

By: _____
Signature of Official

Date

STATE OF MINNESOTA - AFFIRMATIVE ACTION DATA PAGE

If your response to the RFP is in excess of \$100,000, please complete the information requested:

BOX A:

1. Have you employed more than 40 full-time employees within Minnesota on a single working day during the previous 12 months?

YES _____ NO _____

If your answer is NO, proceed to BOX B.

If your answer is YES, **your response will be rejected unless your firm or business has a Certificate of Compliance issued by the State of Minnesota, Commissioner of Human Rights, or has submitted an affirmative action plan to the Commissioner of Human Rights for approval by the time the responses are due for any solicitation in excess of \$100,000.**

2. Please check one of the following statements

_____ **YES**, we have a **current** Certificate of Compliance that has been issued by the State of Minnesota, Commissioner of Human Rights. (Include a copy of your certificate with your response.)

_____ **NO**, we **do not have** a Certificate of Compliance; however, **we submitted an Affirmative Action plan** to the Commissioner of Human Rights for approval on _____. The plan must be approved by the Commissioner of Human Rights before any contract or agreement can be executed.

_____ **NO**, we **have not submitted** a plan. If your plan is not submitted by the time the responses are due, your response will be rejected.

NOTE: Minnesota vendors must have a certificate issued by the Minnesota Department of Human Rights. Affirmative Action plans approved by the federal government, a county, or a municipality must still be reviewed and approved by the Minnesota Department of Human Rights for a certificate to be issued.

BOX B:

1. Have you employed more than 40 full-time employees on a single working day during the previous 12 months in a state in which you have your primary place of business and that primary place of business is outside of the State of Minnesota, but inside the United States?

YES _____ NO _____

If your answer is **NO** proceed to BOX C.

If your answer is **YES** **the state cannot execute a contract with your firm or business unless it is in compliance with the Minnesota Human Rights certification requirements. It is the sole responsibility of the vendor to apply for and obtain a human rights certification prior to contract award or execution as applicable. You may achieve compliance with the Human Rights Act by having either a current Certificate of Compliance issued by the State of Minnesota, Commissioner of Human Rights, or by certifying that you are in compliance with federal Affirmative Action requirements.**

Please check one of the following statements:

☐ **YES**, we have a current Certificate of Compliance issued by the Minnesota Department of Human Rights. (Include a copy of your certificate with your response.)

☐ **YES**, we are in compliance with federal Affirmative Action requirements.

☐ **NO**, we do not have a current Certificate of Compliance and we cannot certify that we are in compliance with federal Affirmative Action requirements.

BOX C:

If your answers to BOX A (Question 1) and Box B (Question 1) were NO, you are not subject to the Minnesota Human Rights Act certification requirement. Please, however, check one of the following:

☐ **NO**, we have not employed more than 40 full-time employees within Minnesota on a single working day during the previous 12 months and we have not employed more than 40 full-time employees on a single working day during the previous 12 months in the state in which our primary place of business is located.

☐ We are a business with our primary place of business outside of the United States that has not employed more than 40 full-time employees within Minnesota on a single working day during the previous 12 months.

For further information regarding Minnesota Human Rights requirements, contact the Department of Human Rights, Compliance Services, 190 East 5th Street, Suite 700, St. Paul, MN 55101; Voice: 651.296.5663; Toll Free: 800.657.3704; or TTY: 651.296.1283. For further information regarding federal Affirmative Action requirements, call 800.669.4000 or visit its web site at

<http://www.eeoc.gov/>. **By signing this statement, the vendor certifies that the information provided is accurate.**

NAME OF FIRM	
AUTHORIZED SIGNATURE	
TITLE	
DATE	

(See next page)

NOTICE TO CONTRACTORS

AFFIRMATIVE ACTION CERTIFICATION OF COMPLIANCE

The Minnesota Human Rights Act (Minn. Stat. ' 363.073) divides the contract compliance program into two categories. Both categories apply to any contracts for goods or services in excess of \$100,000.

The first category applies to businesses that have had more than 40 full-time employees within Minnesota on a single working day during the previous 12 months. The businesses in this category must have submitted an Affirmative Action plan to the Commissioner of the Department of Human Rights prior to the due date of the response and must have received a Certificate of Compliance prior to the execution of the contract.

The second category applies to businesses that have had more than 40 full-time employees on a single working day in the previous 12 months in the state in which they have their primary place of business. The businesses in this category must have either a current Certificate of Compliance previously issued by the Department of Human Rights or certify to the contracting state agency that they are in compliance with federal Affirmative Action requirements before execution of the contract. For further information, contact the Department of Human Rights, 190 East 5th Street, Suite 700, St. Paul, MN 55101; Voice: 651-296-5663; Toll Free: 800-657-3704; or TTY: 651-296-1283.

Minnesota vendors must have a current Certificate of Compliance or submitted an affirmative action plan by the time proposals are due, or their proposal will be rejected.

State agencies are under no obligation to delay the award or the execution of a contract until a vendor has completed the Human Rights certification process. It is the sole responsibility of the vendor to apply for and obtain a Human Rights certificate prior to contract award or execution as applicable.

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STATE OF MINNESOTA

AFFIDAVIT OF NONCOLLUSION

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

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

Responder's Firm Name: _____

Authorized Signature: _____

Date: _____

Subscribed and sworn to me this _____ day of _____

Notary Public

My commission expires: _____

STATE OF MINNESOTA
PROFESSIONAL AND TECHNICAL SERVICES CONTRACT

SAMPLE CONTRACT LANGUAGE

Project:

This Contract is between the State of Minnesota acting through its Commissioner of Transportation (State) and

_____ Address:
[Corporation, Partnership, or Sole Proprietorship] (Contractor).

Recitals

3. Under Minnesota Statutes 15.061 and 16C.08, the Commissioner of Transportation is empowered to engage such assistance as deemed necessary.
4. The State does not have available necessary and qualified personnel to conduct the services as described.
5. The Contractor represents that it is duly qualified and agrees to perform all services described in this contract to the satisfaction of the State.
6. The State is in need of [Provide an introduction on services being performed.]

Contract Special Terms

Article 1 Term of Contract:

- 1.1_Effective date: the date that all required signatures are obtained by the State, pursuant to Minnesota Statutes Section 16C.05, subdivision 2.
- 1.2_Work completion date: [Insert Date]
- 1.3_Expiration date: [Insert Date], or until all obligations have been approved, which ever occurs first.
- 1.4_Survival terms: The following clauses survive the expiration or termination of this contract: 11. Governing Law, Jurisdiction, and Venue; 22. Audits and Inspections; 23. Government Data Practices and Intellectual Property; 24. Liability; 29. Publicity and Endorsement; and 36. Data Disclosure.
- 1.5_ Exhibits: Exhibits A through ___ are attached and incorporated into this Contract.

Article 2 Scope of Work:

- 2.1 The services to be provided for under this Contract by the Contractor are:
[Give a brief description of the services.]

See Exhibit A entitled "Detailed Scope of Work and Deliverables" for additional information.

- 2.2 Deliverables to be provided for under this Contract by the Contractor are:
[Give a brief description of deliverables along with due dates. The list should specify in what format the State wants the deliverables (i.e., disk, hard copy, and number of copies).]

- 2.3 Deliverables are defined as the work product created or supplied by the Contractor pursuant to the terms of this Contract.

- 2.4 Deliverables are the work products created or supplied by Contractor pursuant to the terms of this contract. The brief summary of the deliverables of this Contract are as follows:

Items	Date Due
-------	----------

[A detailed list should specify in which format State wants the deliverables (i.e. disk, hard copy, number of copies, etc).]

See Exhibit A entitled "Detailed Scope of Work and Deliverables" for the details on the deliverables to be provided by the Contractor.

[Give a full, detailed description of the deliverables to be completed by the Contractor, including dates due, in Exhibit A.]

- 2.5 State's Project Manager has the authority to update and adjust all project schedules when necessary at progress meetings within the terms of the Contract.

Article 3 Items Provided and Completed by State:

- 3.1 The following will be provided and/or completed by the State:
[Give a brief description of the items.]

- 3.2 See Exhibit A entitled "Detailed Scope of Work and Deliverables" for a detailed listing of responsibilities to be completed by the State.
[Give a full, detailed description of the responsibilities of the State in outline form in Exhibit A.]

Article 4 Consideration of Payment:

(Costs Plus Agreement)

- 4.1 Consideration for all services performed and goods or materials supplied by the Contractor will be paid by the State on a cost plus fixed fee (profit) basis as follows:

1. Labor:	\$
2. Overhead:	\$
3. Fixed Fee:	\$
4. Direct Expenses:	\$
5. Subcontractor(s) Costs:	\$
	\$
	\$
Total Contract Amount:	\$

[If Federally funded, insert:]

Federal funding applies to this Contract; see the General Terms for applicable controls.

- 4.2 The overhead rate of _____% of direct Salary Costs will be used on a provisional basis determined by the State's Audit Section.
- 4.3 Allowable direct costs include project specific costs listed in Exhibit B entitled "Budget Table." Any other direct costs not listed in Exhibit B entitled "Budget Table" must be approved, in writing, by the State's Authorized Agent prior to expenditure.
- 4.4 See Exhibit B entitled "Budget Table" for Budget Details on the Contractor and its subcontractor(s).
- 4.5 See Exhibit C entitled "Travel Regulations" for a list of approved travel expenses.
- 4.6 The total obligation of the State for all compensation and reimbursements to the Contractor will not exceed the Total Contract Amount of \$_____ (Unit Rate)
- 4.7 Consideration for all services performed and goods or materials supplied by Contractor will be paid by State on a Unit Rate basis as follows:

1. Contractor's Unit Costs:	\$ _____
2. Direct Expenses	\$ _____
3. Subcontractor Unit Costs:	\$ _____
Total Contract Amount	\$ _____

[If Federally funded, insert:]

Federal funding applies to this Contract, see the General Conditions for

applicable controls.

- 4.8 Allowable direct costs include project specific costs listed in Exhibit B entitled "Budget Table." Any other direct costs not listed in Exhibit B entitled "Budget Table" must be approved, in writing, by the State's Authorized Agent prior to incurring costs.
- 4.9 See Exhibit B entitled "Budget Table" for Budget Details on the Contractor and its subcontractor(s).
- 4.10 See Exhibit C entitled "Travel Regulations" for a list of approved travel expenses.
- 4.11 total obligation of the State for all compensation and reimbursements to the Contractor will not exceed the Total Contract Amount of \$_____ (Fixed hourly rate).
- 4.12 Consideration for all services performed and goods or materials supplied by Contractor will be paid by State on a Fixed Hour Rate basis as follows:
- | | |
|------------------------------|-----------------|
| 1. Labor Rate * | \$ _____ |
| 2. Direct Expenses | \$ _____ |
| 3. Sub Contractor | \$ _____ |
| TOTAL CONTRACT AMOUNT | \$ _____ |
- * Labor Rate includes direct labor, overhead, and profit
- [If Federally funded, insert:]
Federal funding applies to this Contract, see the General Conditions for applicable controls.
- 4.13 Allowable direct costs include project specific costs listed in Exhibit B entitled "Budget Table". Any other direct costs not listed in Exhibit B entitled "Budget Table" must be approved, in writing, by State's Authorized Agent prior to expenditure.
- 4.14. See Exhibit B entitled "Budget Table" for Budget Details on the Contractor and its subcontractor(s).
- 4.15 See Exhibit C entitled "Travel Regulations" for a list of approved travel expenses
- 4.16 The total obligation of State for all compensation and reimbursements to Contractor will not exceed the Total Contract Amount of \$_____ Lump Sum)

- 4.17 Consideration for all services performed and goods or materials supplied by Contractor will be paid by State on a Lump Sum basis as follows:

Total Contract Amount: \$_____.

[If Federally funded, insert:]

Federal funding applies to this Contract, see the General Conditions for applicable controls.

Article 5 Terms of Payment:

- 5.1 The Contractor will use the format set forth in Exhibit D entitled "Invoice" when submitting Invoices.
- 5.2 The Contractor will submit to the State monthly progress report set forth in Exhibit E entitled "Progress Report Form" showing the progress of work in work hours according to the tasks listed in Article 2 Scope of Work.
(For Lump Sum)
- 5.3 Payment Liquidation: Contractor will submit invoices for payment in accordance with the following schedule (Choose the appropriate method of payment liquidation 1. One-Time Payment upon acceptance of final deliverable, or 2. Deliverable Schedule Payments.)

Article 6 Contractor's Authorized Agent and Project Team:

- 6.1 The Contractor's Authorized Agent will be:

Name:

Title:

Address:

Phone:

If the Contractor's Authorized Agent or Program Manager changes at any time during this Contract, the Contractor will be responsible to follow conditions laid out within Article 16 of the General Terms.

- 6.2 See Exhibit F entitled "Project Team" for a full listing of key personnel as defined in Article 16 of the General Terms.

Article 7 State's Authorized Agent and Project Manager:

7.1 State's Authorized Agent will be, or his/her successor:

Name:
Title:
Address:
Phone:

The State's Authorized Agent has the responsibility to monitor the Contractor's performance and the authority to accept the services provided under this contract. If the services are satisfactory, the State's Authorized Agent will certify acceptance on each invoice submitted for payment.

7.2 The State's Project Manager for this Contract will be, or his/her successor:

Name:
Title:
Address:
Phone:

The State's Project Manager has the responsibility to monitor the Contractor's performance and progress, the Project Manager will sign progress reports, review billing statements, make recommendations to the State's Authorized Agent for acceptance of the Contractor's good or services, and make recommendations to the State's Authorized Agent for certification for payment of each Invoice submitted for payment.

Article 8 Modification of the General Terms:

[Never modify the General Terms document. Make all modifications under this Article. If no modifications are made to the general conditions indicate "None."]

Optional: If contract is with an entity which falls under the classification as defined in Minnesota Statutes Sections 326.02 to 326.15 add the following Modification.

8.1 Delete Article 15.3 "Retainage" pursuant to Minnesota Statutes Sections 16C.08, subdivision 5, which states that the retainage paragraph does not apply to contacts for professional services as defined in Minnesota Statutes Sections 326.02 to 326.15.

Article 9 Additional Provisions:

[Add any additional contract information here. If there are no additional requirements indicate "None."]

The balance of this page is intentionally left blank.

General Terms

Article 10 Term of Contract

- 10.1 This Contract will be effective upon the date set in the Special Terms and will remain in effect until the Expiration Date set in the Special Terms, or until all obligations set forth in this Contract have been fulfilled to the satisfaction of State, or until terminated under Article 31, whichever event occurs first.
- 10.2 For delays encountered that are beyond Contractor's control, and upon written request from Contractor, State's Authorized Agent may extend the Work Completion Date, as set forth in the Special Terms of this Contract. The length of such time extension will be determined by State's Authorized Agent and will not exceed the Expiration Date of the Contract.
- 10.3 It will be Contractor's responsibility to notify State's Project Manager and State's Authorized Agent, in writing, if the project will not be completed as scheduled. State's Project Manager will have the authority to adjust the schedule, in writing, within the term of the Contract.

Article 11 Governing Law, Jurisdiction, and Venue

This Contract will be interpreted pursuant to Minnesota law. Any citation to federal or state law incorporates the language of that law into this Contract as if fully set forth herein. Venue for all legal proceedings arising out of this Contract, or its breach, will be in the applicable state or federal court with competent jurisdiction in Ramsey County, Minnesota.

Article 12 Terms of General Terms

- 12.1 Any and all provisions of these General Terms will remain in force unless they are specifically modified, in writing, by the Special Terms of this Contract.
- 12.2 To the extent of any inconsistencies between the Special Terms and these General Terms, the Special Terms will control. Minnesota law supersedes any of the Special Terms or General Terms set forth in this Contract.

Article 13 Terms of Payment

- 13.1 Subject to the provisions of the Special and General Terms, all services performed and/or goods satisfactorily supplied by Contractor pursuant to this Contract will be paid by State. Compensation will be in accordance with the Special Terms, Article 4 Consideration of Payment.
- 13.2 If it appears at any time that Contractor will exceed the Total Contract Amount stated in the Special Terms of this Contract, Contractor must notify State's Authorized Agent in writing in a timely manner. Contractor will not be compensated for work performed in excess of the Total Contract Amount without a written, and fully executed, amendment to this Contract. Any work performed beyond that which is provided for in this Contract without a prior written amendment signed by State, will be deemed voluntary and Contractor will not be entitled to compensation for the extra work.
- 13.3 If Contractor claims any instructions, latent conditions, or conditions exist that cause extra cost under this Contract, Contractor must make a written notice for any extra cost incurred within 10 days after such instruction or observance of conditions. Latent conditions are conditions not anticipated by the Special Terms of this Contract. Any claims made without a written notice will be refused and no claim will be valid unless so made. Any work performed under an amendment to this Contract that has not been properly approved and executed by the parties will be performed at Contractor's own risk. State's Authorized Agent will have the sole authority to determine whether any claimed extra costs are reasonable under the circumstances and whether State will approve the extra costs.
- 13.4 State will not pay overtime rates for any overtime work or services performed by Contractor or a subcontractor unless State's Authorized Agent has specifically requested Contractor to do so in writing. When specifically authorized by State's Authorized Agent, overtime premium pay will be reimbursed as a direct cost for the overtime portion of the hourly rate and is not eligible for overhead costs or profit.
- 13.5 Reimbursement for travel and subsistence expenses actually and necessarily incurred by Contractor as a result of performance of this Contract will not exceed the amount defined in the Special Terms. 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."

- 13.6 The final payment due Contractor will be based on actual acceptable costs as determined by an audit conducted by State. The audit will be conducted using the Cost Principles and Procedures set forth in the Federal Acquisition Regulations, 48 Code of Federal Regulations Section 31, or as modified by state policies and procedures. Based upon final audit, the final payment to Contractor may exceed the Total Contract Amount without amending this Contract.

Article 14 Procedure for Payment

- 14.1 Payments will be made by State within 30 days of Contractor's presentation of invoices and progress reports for services performed and the acceptance of such services by State's Authorized Agent as identified in Minnesota Statutes Section 16A.124.
- 14.2 Invoices for payment must be submitted by Contractor monthly to State's Authorized Agent in the form prescribed by State. Invoices must identify the cost for the services performed and/or goods delivered for the billing period and must satisfy the requirements listed below:
- 14.21 Each invoice must contain the following information: Mn/DOT Agreement Number, Mn/DOT contract invoice number (sequentially numbered), billing address if different from business address, and Contractor's original signature attesting that the invoiced services and costs are new and that no previous charge for those services and/or goods has been included in any prior invoice.
- 14.22 Direct nonsalary costs allocable to the work under this Contract, and defined in the Special Terms of 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.
- 14.23 The original of each invoice and progress report must be sent to State's Authorized Agent for review and payment.
- 14.24 Contractor must provide, upon request of State's Authorized Agent, the following supporting documentation:
- a. 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
 - b. 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.
- 14.3 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.
- 14.4 Contractor must require subcontractors' invoices to follow the same form and contain the same information as set forth in this Article 14.

Article 15 Conditions of Payment

- 15.1 All services and/or goods provided by Contractor pursuant to this Contract must be performed to the satisfaction of State, and in accordance with the following:
 - 15.11 Applicable federal, state, and local laws, ordinances, rules, and regulations.
 - 15.12 Applicable state standards, policies, and practices.
- 15.2 Contractor will not receive payment for work determined by State's Authorized Agent to be unsatisfactory, or performed in violation of federal, state, or local laws, ordinances, rules, or regulations.
- 15.3 Retainage: Pursuant to Minnesota Statutes Section 16C.08, subdivision 5(b), as enacted, no more than 90 percent of the compensation due under this Contract may be paid until the final product(s) of this Contract have been reviewed by the head of the Minnesota Department of Transportation (Mn/DOT). The balance due and owing will be paid at the time that the head of Mn/DOT determines that Contractor has satisfactorily fulfilled all the terms of this Contract.
- 15.4 All services and/or goods covered by progress payments made by State will become the sole property of State. This provision must not be construed as relieving Contractor from sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work or as waiving the right of State to require the fulfillment of all of the terms of this Contract.

- 15.5 Nothing in this Contract must be construed in any way to operate to relieve Contractor from its obligation to complete the services and/or deliver any goods described in this Contract for a sum not to exceed that set forth in the Special Terms.

Article 16 Contractor's Key Personnel

- 16.1 Contractor's key personnel specified by name and title in the Special Terms will be considered essential to the work being performed.
- 16.2 If, for any reason, substitution of a key person becomes necessary, Contractor must provide two weeks' advance written notification of the substitution to State's Authorized Agent. The written notification must include the proposed successor's name and a resume of his/her qualifications. State's Authorized Agent will have the right to reject the proposed successor based upon reasonable grounds.

Article 17 Assignment

Contractor may neither assign nor transfer any rights or obligations under this Contract without authorization from State's Authorized Agent and a fully executed assignment agreement. The written authority will in no way relieve Contractor from the primary responsibility for performance of the services and/or delivery of the goods specified in this Contract.

Article 18 Subcontracts

- 18.1 Contractor must require all subcontractor contracts to contain all appropriate terms and conditions of this Contract, including Articles 10, 11, 13, 14, 16, 18 through 34 and 36, as they apply to the sub contractor. The use of subcontractors does not relieve Contractor from performing and delivering the work stated in this Contract.
- 18.2 State's Authorized Agent must review, and accept for compliance with the General and Special Terms of this Contract, all subcontractor contracts exceeding \$10,000.00 prior to the execution of any such subcontractor contract. State's Authorized Agent has the authority to reject any subcontractor contract that does not comply with the General and Special Terms of this Contract.
- 18.3 A copy of any and all subcontractor contracts must be sent to State's Authorized Agent after execution of the subcontractor contract and prior to work starting under the subcontractor contract.

Article 19 Amendments, Change Orders, Merger, and Waiver

- 19.1 Amendments to this Contract will be considered only for unforeseen work or services that were excluded in the Scope of Work of the Special Terms and that are considered essential to the work. Any written claim made by Contractor for extra work or costs under this Contract that has been approved by State's Authorized Agent must be evidenced by an amendment to this Contract. Amendments must be in writing and executed and approved by the same parties and officials who executed and approved the original Contract, or their successors in office. Contractor must notify State's Project Manager in writing if Contractor will be delayed in any way from completing the project under this Contract.
- 19.2 The work to be done in connection with this Contract may be changed at the request of State, with the mutual concurrence of Contractor. Any change will be clearly and fully defined in writing, and approved by both parties. Change orders must be consistent with the basic purpose of this Contract and within the general Scope of Work identified in the Special Terms. Changes in the Total Contract Amount or the Contract Expiration Date are not permitted in a change order.
- 19.3 This Contract, including all incorporated items, contains all negotiations and agreements between Contractor and State. No other understanding, whether written or oral, regarding this Contract, may be used to bind either party.
- 19.4 Failure of a party to enforce any provision of this Contract will not constitute, or be construed as, a waiver of such provision or of the right to enforce such provision.

Article 20 Affirmative Action

- 20.1 For contracts in excess of \$100,000.00, Contractor certifies that it is in compliance with Minnesota Statutes Section 363.073.
- 20.2 Contractor certifies that it is an equal opportunity employer and complies with Title VI of the Civil Rights Act of 1964, and the President's Executive Order Number 11246 as amended by Executive Order Number 11375. Accordingly, 49 Code of Federal Regulations Section 21 through Appendix C and 23 Code of Federal Regulations Section 710.405(b) will be applicable.
- 20.3 If the Contractor has more than 40 full-time employees within the State of Minnesota on a single working day during the previous twelve months the Contractor must comply with the following Affirmative Action requirements

for disabled workers:

- 20.31 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.
- 20.32 The Contractor will comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- 20.33 In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363.073, and the rules of relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- 20.34 The Contractor will post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
- 20.35 The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Minnesota Statutes Section 363.073, or the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

Article 21 Compliance with Licenses, Permits, and Other Regulations

Contractor must procure all licenses, permits, or other rights necessary to fulfill its obligations under this Contract in compliance with all applicable federal and state laws.

Article 22 Audits and Inspections

- 22.1 The books, records, documents, and accounting procedures and practices of Contractor relevant to this Contract are subject to examination by the State, Minnesota Department of Transportation, and/or Legislative Auditors, as appropriate, for a minimum of six years from the end of the project.
- 22.2 Duly authorized representatives of State (and the Federal Highway Administration, if federal funds are involved) have the right to inspect the work of Contractor under this Contract, during regular working hours, whenever it is deemed necessary to do so.
- 22.3 Work Effort Audits:
- 22.31 State may conduct work effort audits for the various work tasks described in the Special Terms. Audits will be randomly selected for completed work tasks. Audits will include work effort reviews and effort level analysis to determine the reasonableness of the hours charged.
- 22.32 Contractor must maintain work effort progress reports showing work tasks, hours worked on the task by the various personnel assigned to this work, and work effort performed by subcontractors assigned to the tasks. The progress report must be in the format as described in the Special Terms of this Contract.

Article 23 Government Data Practices and Intellectual Property

- 23.1 Government Data Practices. The Contractor and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 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 Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by either the Contractor or the State.

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

- 23.2 Intellectual Property Rights.
- 23.21 *Intellectual Property Rights of the State.* The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks

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

- 23.22 *Intellectual Property of the Contractor*. The Contractor retains title and interest in all of its standard details, plans, specifications, and engineering computation documents, (Previously Created Works and Documents) whether in written or electronic form, which have been incorporated into the Works and Documents, but which were developed by the Contractor independent of this contract. The Contractor issues to the State a royalty-free, nonexclusive, and irrevocable license to use the Previously Created Works and Documents.
- 23.23 *Notification*. Whenever contractor reasonably believes it, or its employees or subcontractors, has made an invention, improvement, or discovery (whether or not patentable) in the performance of this contract, and has or actually or constructively reduced it to practice the Contractor will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon.
- 23.24 *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. 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.

- 23.25 *State's Reuse of Works and Documents.* If the Works and Documents created and paid for under this contract are engineering plans and specifications requiring the certification of a licensed professional engineer, the State acknowledges that such plans and specifications have been created solely for the specific project covered by this contract and may not be suitable for reuse on other projects. Government Data Practices. The Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, applies to this contract and all work performed under it. The act provides, inter alia, disclosure and non-disclosure requirements for all data provided to or by the State and civil remedies for failure to comply with the act.
- 23.3 The originals of reports, drawings, work sheets, plans, field notes, computations, and other project data must be relinquished to State:
- 23.31 Upon written notice of completion or termination of this Contract, or
 - 23.32 Upon written notification by State, or
 - 23.33 Upon final payment by State to Contractor for this Contract.

Article 24 Liability

Contractor must indemnify, save, and hold State, its agents, and employees harmless from any and all claims or causes of action, including attorney's fees incurred by State, arising from a negligent or otherwise wrongful act, or omission in the performance of this Contract by Contractor or Contractor's agents or employees. This clause will not be construed to bar any legal remedies Contractor may have for State's failure to fulfill its obligations pursuant to this

Contract.

Article 25 Workers' Compensation

Any and all employees of Contractor, including its subcontractors, or other persons while engaged in the performance of any work or services required by Contractor under this Contract, will not be considered employees of State. Any and all claims that may arise under the Workers' Compensation Act of Minnesota on behalf of said employees, or other persons while so engaged, and any and all claims made by any third party as a consequence of any act or omission on the part of Contractor's employees, or other person while so engaged on any of the work or services to be rendered, will in no way be the obligation or responsibility of State. Pursuant to Minnesota Statutes Section 176.182, acceptable evidence of compliance with Workers' Compensation insurance coverage requirements must be presented to State before State may enter into a contract with Contractor.

Article 26 Insurance

- 26.1 A certificate of insurance for each type of insurance required under this Contract must be filed with State's Authorized Agent within 30 days of execution of this Contract and prior to commencement of any work under this Contract. Each policy must contain a 30-day notice of cancellation, nonrenewal, or material change to all named and additional insured.
- 26.2 Contractor must maintain and furnish satisfactory evidence of the following insurance policies:
- 26.21 Loss by any means, of all data furnished to Contractor by State, and for partially completed data for which State has made payment.
- 26.22 Workers' Compensation Insurance: Contractor will provide Workers' Compensation insurance for all Contractor 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 state of Minnesota, including Coverage B, Employer's Liability, at limits not less than \$100,000.00 bodily injury by disease per employee; \$500,000.00 bodily injury by disease aggregate; and \$100,000.00 bodily injury by accident. Evidence of subcontractor's insurance must be filed with the Contractor.
- 26.23 Commercial General Liability: Contractor will maintain insurance protecting Contractor from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of

services as well as from claims for property damage including loss of use which may arise from operations under this Contract whether such operations be by Contractor or by a subcontractor or by anyone directly or indirectly employed under this Contract. Unless otherwise specified within this Contract, Contractor's insurance minimum amounts will be as follows:

\$1,000,000.00 - per occurrence

\$2,000,000.00 - annual aggregate

In addition, the following coverages should be included:

Bodily Injury and Property Damage

Products and Completed Operations Liability

Blanket Contractual Liability

Name State as an Additional Insured

- 26.24 Commercial Automobile Liability: Contractor will maintain insurance protecting Contractor from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services, as well as from claims for property damage including loss of use which may arise from operations under this Contract whether such operations were by Contractor or by subcontractor or by anyone directly or indirectly employed under this Contract. Unless otherwise specified within this Contract, the Contractor insurance minimum amounts will be as follows:

\$1,000,000.00 - per occurrence Combined Single limit for Bodily Injury and Property Damage.

In addition, the following coverages should be included:

Owned, Hired, and Non-owned

Name State as an Additional Insured

- 26.25 Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance: Unless otherwise specified within this Contract, Contractor insurance minimum amounts will be as follows:

\$1,000,000.00 - per claim

\$2,000,000.00 - annual aggregate

On request, Contractor must submit a financial statement signed by a Certified Public Accountant which provides evidence that Contractor has adequate assets to cover any deductible which applies to this policy.

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

- 26.26 For work on railroad property, Contractor must obtain Railroad Protective Liability Insurance in accordance with Mn/DOT Specification 1708.2 (2000 Edition) or any subsequent changes or

modifications to this specification.

- 26.3 Contractor must:
- 26.31 Include legal defense fees in addition to its liability policy limits, with the exception of 26.25 above; and
 - 26.32 Obtain insurance policies from an insurance company having an "AM BEST" rating of AVI or better.
- 26.4 State reserves the right to immediately rescind this 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 Agent upon written request.

Article 27 Deliverable Standards

- 27.1 State will have the authority to disapprove or reject services and/or goods that are defective. Contractor will be responsible for the accuracy of its work under this Contract and must make immediate, necessary revisions, repairs, or corrections without compensation resulting from errors and omissions on the part of Contractor.

Services and/or goods delivered under this Contract must be in accordance with applicable federal or state standards and/or specifications and must be of a quality that is satisfactory to State. Acceptance of the services and/or goods by State will not be considered a waiver of any provision of this Contract and will not relieve Contractor of the responsibility for subsequent correction of any such errors or omissions and the clarification of any ambiguities.

In the event revisions, repairs, or corrections to the deliverables must be made, Contractor must invoice State for any employee's time necessary to revise, repair, or correct errors or omissions at a rate of zero dollars per hour for the number of hours necessary to perform the work.

- 27.2 The services and/or goods provided to State by Contractor must be of such quality that they are suitable for their intended purpose which meets the design requirements provided for in the Special Terms.
- 27.3 Time is of the essence with respect to this Contract. In the event Contractor fails to perform its duties by the time fixed for the completion of the work, State may elect to immediately terminate this Contract.
- 27.4 Neither party will be held responsible for delay or failure to perform when such delay or failure is due to any of the following, unless the act or occurrence could have been reasonably foreseen and reasonable action

could have been taken to prevent the delay or failure: fire, flood, epidemic, strikes, wars, acts of God, unusually severe weather, or delays or defaults caused by public carriers, provided the defaulting party gives written notice as soon as possible to the other party of its inability to perform.

Article 28 Printing, Paper Stock, and Ink Requirements

If this Contract results in reports or documents paid for by State, Contractor must comply with Minnesota Statutes Sections 16B.121 and 16B.122, for the purchase of printing, paper stock, and printing ink.

Article 29 Publicity and Endorsements

- 29.1 Any publicity given to the program, publications, or services provided resulting from this Contract, including, but not limited to, notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for Contractor or its employees individually or jointly with others, or any subcontractors must identify State as the sponsoring agency and must not be released without prior approval by the Commissioner of Transportation, unless such release is a specific part of an approved work plan included in this Contract.
- 29.2 The Contractor must not claim that State endorses its products or services.

Article 30 Officials not to Benefit

- 30.1 Without prior written consent of State, Contractor must not employ any professional or technical personnel to provide services under this agreement who are or have been at any time during the time period of this Contract in the employ of State, except retired State employees, without written consent from State.
- 30.2 Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract, and that Contractor has not paid or agreed to pay any company or person, other than a bona fide employee working for Contractor, any fee, commissions, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award of making of this Contract.

Article 31 Termination

- 31.1 This Contract may be immediately terminated by State or the Commissioner of Administration, at any time, with or without cause, upon written notice to Contractor. In the event of such termination Contractor will be entitled to payment, determined on a pro rata basis, for services and/or goods satisfactorily performed or delivered.

- 31.2 In the event State cannot or does not obtain funding from the Minnesota Legislature, or funding cannot be continued at a level sufficient to allow for the purchasing of the services and/or goods contained herein, this Contract may be immediately terminated, at State's option, by written notice of termination delivered in person, by mail, or facsimile to Contractor at the address specified in this Contract. State will not be obligated to pay for any services and/or goods provided by Contractor after such notice of termination.

Article 32 Errors and Omissions

- 32.1 Contractor will be responsible for the accuracy of the work and must promptly make necessary revisions or corrections resulting from Contractor's errors, omissions, or negligent acts without additional compensation. Acceptance of the work by State will not relieve Contractor of the responsibility for subsequent correction of any errors or omissions or for clarification of any ambiguities.

It is understood by the parties that State will rely on the professional performance and ability of Contractor. Any examination by State or the Federal Highway Administration, or any acceptance or use of the work product of the Contractor, will not be considered to be a full and comprehensive examination and will not be considered an approval of the work product of Contractor which would relieve Contractor from any liability or expense that could be connected with Contractor's sole responsibility for the propriety and integrity of the professional work to be accomplished by Contractor pursuant to this Contract.

- 32.2 At any time during construction or any phase of work performed by others based on data provided by Contractor, Contractor must confer with State when necessary for the purpose of interpreting the information secured and/or to correct any errors or omissions made by Contractor. Contractor must prepare any and all plans or data needed to correct the errors or omissions without added compensation, even though final payment may already have been received by Contractor. Contractor must give immediate attention to these changes so there will be minimal delay to the construction or other work as referenced.
- 32.3 If errors, omissions, or negligent acts are made by Contractor in any phase of the work, the correction of which may require additional field or office work, Contractor will be promptly notified by State and will be required to perform such additional work as may be necessary to correct these errors, omissions, or negligent acts without undue delay and without additional cost to State. If Contractor is aware of any errors, omissions, or

- negligent acts made in any phase of the work, the corrections of which may require any additional field or office work, Contractor must promptly perform such additional work as may be necessary to correct these errors, omissions, or negligent acts without undue delay and without additional cost to State.
- 32.4 Contractor will be responsible for any damages incurred as a result of its errors, omissions, or negligent acts and for any loss or cost to repair or remedy Contractor's errors, omissions or negligent acts. Acceptance of the work by State will not relieve Contractor of the responsibility for subsequent correction of any such errors, omissions, or negligent acts, or of liability for loss or damage resulting therefrom.
- 32.5 Contractor must respond to State's notice of any errors or omissions within 24 hours and give immediate attention to these corrections to minimize any delays to State. Notification will be by telephone, followed by Certified Mail. Contractor may be required to make a field review of the project site, as defined in the Special Terms, if directed by State's Authorized Agent and Contractor may be required to send personnel to the appropriate State district office as part of correcting any errors or omissions.

Article 33 Quality Assurance and Quality Control

Prior to approval and execution of this Contract, Contractor must have a Quality Assurance and Quality Control (QA/QC) Program. During the term of this Contract, Contractor must adhere to Contractor's QA/QC Plan, which was prepared by Contractor and accepted by State's Authorized Agent, for this Contract. Contractor's QA/QC Plan is incorporated into this Contract by reference. With each deliverable submitted to State pursuant to this Contract, Contractor must certify in writing to State's Authorized Agent that there was compliance with the QA/QC Plan. State may cancel this Contract for Contractor's failure to follow the QA/QC Plan for this Contract.

Article 34 Disputes

State's Authorized Agent will be the initial interpreter of the requirements of this Contract and will judge the acceptability of the work hereunder. Claims, disputes, and other matters relating to the acceptability of the work will be referred in writing to State's Authorized Agent, with a request for a formal decision to be rendered in writing within a reasonable time. Written notice of each such claim, dispute, or other matter must be delivered by Contractor to State's Authorized Agent within 15 working days of the occurrence of the event giving rise to the claim, dispute, or other matter. Written supporting data must be

submitted to State's Authorized Agent within 45 days of each such occurrence, unless State's Authorized Agent allows an additional period of time to ascertain more accurate data.

The rendering of a decision by State's Authorized Agent will be a condition precedent to Contractor's exercise of such rights and remedies as it may have under this Contract or at law in respect to any claim, dispute, or other matter.

Article 35 Federal Clauses

If Federal Funds are involved with this Contract, the following additional conditions apply:

35.1 Federal reimbursement will be limited to the Federal share of costs which are allowable under the Federal cost principles contained in the Federal Acquisition Regulation, Contract Cost Principles and Procedures, 48 Code of Federal Regulations Section 31.

35.2 Contractor warrants and represents that State and the Federal Highway Administration will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use for federal, state, or local government purposes, any patentable subject matter or copyrightable materials developed, or any rights of copyright to which State has purchased ownership, under this Contract.

When applicable, the patent rights provisions of 48 Code of Federal Regulations Section 27 will apply to this Contract regarding rights to inventions. Such provisions are incorporated by reference and must be incorporated in all subcontracts by reference.

35.3 Federal-Aid Contracts: Contractor acknowledges that by signing this Contract, it certifies to the best of its knowledge and belief:

35.31 That no Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any Federal 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 or the making, extension, continuation, renewal, amendment, or modification of any Federal grant, loan, or cooperative agreement

35.32 That 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 Federal 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, Contractor must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

35.33 That this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 United States Code Section 1352. Any person who fails to file the required certification will be subject to a civil penalty.

35.34 That it must require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000.00 and that all such subcontractors must certify and disclose accordingly.

35.4 Contractor must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, 42 United States Code Section 7606; Section 508 of the Clean Water Act, 33 United States Code Section 1368; Executive Order Number 11738, and all applicable regulations promulgated by the United States Environmental Protection Agency.

Article 36 Data Disclosure

Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Contractor to file state tax returns and pay delinquent state tax liabilities, if any. Minnesota Statutes Section 270.66.

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