

**MINNESOTA**  
**DEPARTMENT OF HUMAN SERVICES**  
**HEALTH CARE ADMINISTRATION, PURCHASING & SERVICE DELIVERY DIVISION**

**REQUEST FOR PROPOSALS**



**FOR A QUALIFIED CONTRACTOR TO EVALUATE THE VALUE OF MANAGED CARE FOR STATE  
PUBLIC HEALTH CARE PROGRAMS**

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

**October 1, 2012**

## TABLE OF CONTENTS

<b>RFP Summary</b>	2
<b>I. INTRODUCTION</b>	3
A. Purpose of Request	3
B. Objective of this RFP	3
C. Background	
<b>II. SCOPE OF WORK</b>	4
A. Overview	4
B. Tasks/Deliverables	5
<b>III. PROPOSAL FORMAT</b>	6
A. Required Proposal Contents	6
B. Technical Requirements	7
C. Required Statements	12
D. Cost Proposal	15
<b>IV. RFP PROCESS</b>	16
A. Responders' Questions	16
B. Proposal Submission	16
<b>V. PROPOSAL EVALUATION AND SELECTION</b>	17
A. Overview of Evaluation Methodology	17
B. Evaluation Team	18
C. Evaluation Phases	18
D. Contract Negotiations and Unsuccessful Responder Notice	21
<b>VI. REQUIRED CONTRACT TERMS AND CONDITIONS</b>	21
<b>VII. STATE'S RIGHTS RESERVED</b>	26
<b>VIII. STATE'S RESPONSIBILITIES</b>	27
<b>APPENDIX A</b> Legislation	29
<b>APPENDIX B</b> Responder Information and Declarations	30
<b>APPENDIX C</b> Exceptions to Terms and Conditions	32
<b>APPENDIX D</b> Affidavit of Noncollusion	33
<b>APPENDIX E</b> Trade Secret/Confidential Data Notification	34
<b>APPENDIX F</b> Affirmative Action Data Page	35
<b>APPENDIX G</b> Certification and Restrictions on Lobbying	37
<b>APPENDIX H</b> Cost Proposal	38
<b>APPENDIX I</b> Veteran-Owned Preference Form	39
<b>APPENDIX J</b> Sample State Professional Services Contract	40

## RFP Summary

### **Important Dates:**

RFP Published: **October 1, 2012**

Questions Due: **October 15, 2012**

Proposals Due: **October 29, 2012**

Anticipated Selection of Successful Responder: **November 5, 2012**

Anticipated Start of Contract: **December 3, 2012**

Anticipated End of Contract: **June 30, 2013**

Anticipated Extensions: **None.**

**Number of Copies:** **Technical Proposal: One (1) original and six (6) hard copies plus one electronic copy (CD format)**  
**Cost Proposal: One (1) original and six (6) hard copies plus one electronic copy (CD format)**

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## I. INTRODUCTION

### A. PURPOSE OF REQUEST

The Minnesota Department of Human Services, through its Health Care Administration, Purchasing & Service Delivery Division (STATE), is seeking Proposals from Qualified Vendors to evaluate the value of managed care for state public health care programs. The evaluation must also examine whether Minnesota's statutory requirement for health maintenance organizations to participate in these programs as a condition of state licensure continues to be necessary to assure the continued stability and access to services for these programs' enrollees.

A "Qualified Vendor" is a vendor with demonstrated expertise in evaluating Medicaid managed care programs.

### B. OBJECTIVE OF THIS RFP

The objective of this RFP is to contract with a qualified Responder to perform the tasks and services set forth in this RFP. The term of any resulting contract is anticipated to be for approximately seven months, from December 3, 2012 until June 30, 2013. The preliminary report of the evaluation must be approved by the STATE by February 15, 2013. The final product must be approved by the STATE by July 1, 2013.

*The value of any ensuing contract must not exceed \$200,000.00.* Price will be a factor in the evaluation of the Proposals.

**If sent by U.S. mail, Proposals must be received by October 29, 2012. If hand delivered or sent by carrier (e.g. UPS, FedEx, DHL), Proposals must be physically received by 4:00 p.m. Central Time on that date.** This RFP does not obligate the State to award a contract or complete the project, and the State reserves the right to cancel the solicitation if it is considered to be in its best interest. All costs incurred in responding to this RFP will be borne by the Responder.

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

### C. BACKGROUND

**Public health care programs.** Minnesota's public health care programs, Medical Assistance (Medicaid) and MinnesotaCare, are collectively known as "Minnesota Health Care Programs," (MHCP). These programs currently serve approximately 814,000 Minnesotans. Services to approximately 25% of these recipients are provided on a fee-for-service (FFS) basis, while the remaining 75% of recipients are enrolled in managed care plans. Additional information about the MHCP programs can be accessed at the DHS web site, [www.dhs.state.mn.us](http://www.dhs.state.mn.us)

**Required participation by health maintenance organizations.** Two state statutes, commonly known as “Rule 101”, require Minnesota health maintenance organizations to participate in serving MHCP recipients.

- Minnesota Statutes, Section 62D.04, subdivision 5, ties receiving and retaining the certificate of authority that allows an entity to operate as a health maintenance organization in the state of Minnesota to participation in MHCP.
- Minnesota Statutes, Section 256B.0644, ties MHCP participation to participation as a contractor for the state employees’ health insurance program; for the health insurance program that covers certain school district employees and most state university and community college employees; for the health insurance program that covers local statutory or home rule charter city, county, and school district employees; for those covered under the state’s workers’ compensation program, and for those covered through the Minnesota Comprehensive Health Association.

**Legislation.** During the 2012 legislative session, the value of the state’s health care purchasing strategies was discussed extensively. The bill requiring this evaluation was introduced in that session, and was signed into law by Governor Mark Dayton in May 2012<sup>1</sup>. See Appendix A for the language.

## II. SCOPE OF WORK

### A. OVERVIEW

The selected Contractor will evaluate the value of managed care for MHCP, in comparison with fee-for-service (FFS) delivery. This includes services provided by the Medical Assistance Prepaid Health Plans<sup>2</sup>, by the County-based Purchasing health plans<sup>3</sup>, and by MinnesotaCare Managed Care<sup>4</sup>. The evaluation must compare the value obtained from these managed care products with the value obtained under the FFS delivery system. The Legislation specifies several qualitative measures to be included in the evaluation.

The evaluation must also consider the need to continue the statutory requirement for Minnesota’s health maintenance organizations to participate in MHCP as a condition of licensure<sup>5</sup>, in terms of continued stability and access to services for the enrollees of these programs.

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<sup>1</sup> Minnesota Session Laws – 2012, Regular Session, Chapter 247--H.F.No. 2294, Article 1, Health Care

<sup>2</sup> Minnesota Statutes, Section 256B.69

<sup>3</sup> Minnesota Statutes, Section 256B.692

<sup>4</sup> Minnesota Statutes, Section 256L.12

<sup>5</sup> Minnesota Statutes Section 62D.04, subdivision 5, and Minnesota Statutes, Section 256B.0644.

## **B. TASKS AND DELIVERABLES**

**1. Tasks.** The selected Contractor will be expected to complete the following tasks:

- a. Determine the value of managed care for MHCP as compared to a FFS program. The determination must include but is not limited to, the following considerations:
  - i. The satisfaction of state public health care program recipients and providers.
  - ii. The ability to measure and improve health outcomes of recipients.
  - iii. The access to health services for recipients.
  - iv. The availability of additional services such as care coordination, case management, navigation assistance, coordination and or integration with Medicare services and coordination of home and community based services, and disease management.
  - v. Actual and potential cost savings to the state.
  - vi. The level of alignment with state and federal health reform policies, including a health benefit exchange for individuals not enrolled in state public health care programs.
  - vii. The ability to use different provider payment models that provide incentives for cost-effective health care.
- b. Determine the need to continue the requirement for health maintenance organizations to participate in the medical assistance and MinnesotaCare programs as a condition of licensure under Minnesota Statutes, section 62D.04, subdivision 5, and under Minnesota Statutes, section 256B.0644, in terms of continued stability and access to services for enrollees of these programs.

**2 Deliverables:** The selected Contractor must submit the following to the STATE:

- a. A Project Work Plan that includes activities, milestones and dates, written in a manner understandable to a disinterested reader.
  - i. Work Plan progress reports shall be submitted to the STATE monthly.
- b. A Preliminary Report of the evaluation findings.
  - i. This report must be approved by the STATE in time for the STATE's submission of it to the chairs and ranking minority members of the health and human services legislative committees by February 15, 2013.
- c. A Final Report of the evaluation findings.
  - i. This report must be approved by the STATE in time for the STATE's submission of it to the chairs and ranking minority members of the health and human services legislative committees by July 1, 2013.

**3 Reports and Information.** The STATE will make available to the selected Contractor three years of relevant current and historical reports and information, including:

- a. Grievance system results that include grievance rates and rates of managed care denied, reduced or terminated health care services;
- b. CAHPS satisfaction survey results;
- c. Managed care disenrollment summary reports;
- d. ACSC and HEDIS performance measures, calculated by the STATE based on submitted managed care encounters and FFS claims data;
- e. The STATE's managed care quality strategy;
- f. EQRO annual technical and other available PMQI reports, and
- g. Care system and county care system reviews, care plan audit protocols, and care plan audit reports.

Specific examples of items a through f are available on the Grants and RFP page of the Minnesota Department of Human Services' web site: <http://mn.gov/dhs>.

### **III. PROPOSAL FORMAT**

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

#### **A. REQUIRED PROPOSAL CONTENTS**

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

1. Table of Contents
2. Technical Requirements
  - a. Statement of Understanding
  - b. Proposed Work Plan
  - c. Relevant Responder Experience/Resumes of Lead Responder Staff
  - d. Financial Stability and Professional Responsibility of Responder
4. Required Statements
  - a. Responder Information and Declarations (Appendix B)
  - b. Exceptions to Terms and Conditions (Appendix C)
  - c. Affidavit of Noncollusion (Appendix D)
  - d. Trade Secret/Confidential Data Notification (Appendix E)
  - e. Preference to Targeted Group and Economically Disadvantaged Business and

- Individuals
- f. Affirmative Action Data Page (Appendix F)
- g. Certification and Restriction on Lobbying (Appendix G)
- h. Veteran-Owned Preference Form (Appendix I)

5. Appendix (*If Applicable*)

Any additional information thought to be relevant, but not applicable to the prescribed format, may be included in the appendix of your Proposal.

6. Cost Proposal (separate from 1 – 5)

**B. TECHNICAL REQUIREMENTS PROPOSAL**

Responders must use the following outline in submitting the Technical Requirements Proposal. This outline contains the *minimum* requirements of the Technical part of the Proposal. Emphasis should be on completeness and clarity of content.

**1. Statement of Understanding**

This component of the Proposal must demonstrate the Responder's understanding of the services requested in this RFP, the nature of the contract, and any problems anticipated in accomplishing the work. Specifically, the Proposal must demonstrate the Responder's familiarity with the project elements, a summary of its solution(s) to the problems presented and knowledge of the requested services and/or deliverables.

**2. Proposed Work Plan**

The Responder must provide a description of the deliverables to be provided along with a detailed Work Plan that identifies how the major tasks are to be accomplished. The Work Plan must provide sufficient information to be used as a scheduling and managing tool. The Work Plan must show the Responder's overall design of the project in response to achieving the deliverables as defined in this RFP and should include proposed staffing for the project.

The proposed Work Plan must adhere to the following outline. It must address each of the following points. Respondents are invited to add additional points that would enhance the project in keeping with the tasks listed above in Section II.B.1.

- a. Describe how the “value” of managed care services provided to Minnesota Health Care Program (MHCP) enrollees as compared to FFS for MHCP enrollees would be assessed.
  - 1) Clearly define the meaning of “value” in a managed care and FFS purchasing environment and how it will be determined for each.
  - 2) Propose a plan for conducting a systematic search of appropriate local and national methods of determining value, and how comparison of services offered to public managed care and FFS program enrollees will be achieved.

- 3) Describe the proposed approach to determining whether the money spent in managed care contracts has effectively and efficiently purchased services in comparison to the FFS service program.
  - 4) Initially, the analysis should focus only on the non-Medicare, non-disabled populations. The STATE and Contractor may expand to other population groups depending on preliminary results.
    - a) Recommend any other analysis of subpopulations including race/ethnicity, program enrollment and geographic location that would enhance this project.
- b. Describe how the satisfaction of state public health care program recipients and providers would be assessed.
  - c. Describe and discuss feasible methods of measuring and improving the health outcomes of MHCP recipients.
  - d. Describe how the recipients' access to health services would be evaluated.
    - 1) Consider the availability and impact of transportation and after-hours nurse lines.
    - 2) For managed care enrollees, consider both state and federal requirements. Propose an approach to developing a comparable analysis of access for FFS recipients.
    - 3) Consider the process for maintaining and monitoring a network of providers to ensure adequacy and sufficiency to provide the covered services.
    - 4) Consider anticipated enrollment, including review of geographic location of providers and enrollees/recipients.
    - 5) Consider expected utilization of services, given the characteristics and health care needs of the Medicaid population.
    - 6) Consider numbers and types of providers needed (training, experience and specialization) to provide the services.
    - 7) Consider providers who are not accepting Medicaid enrollees / recipients.
    - 8) Consider availability of transportation, including review of distance, travel time, and means of transportation.
    - 9) Consider the needs of persons with disabilities regarding physical access to locations and transportation.
    - 10) Consider efforts to identify and promote delivery of services in a culturally competent manner, including those with limited English proficiency and populations with special needs. Consider state access standards, such as timely access to services (hospitals, emergency care, primary care, specialty care, and pharmacy), availability of medically necessary services such as around-the-clock access to medical emergency services, post-stabilization care services and urgent care, and the process to monitor providers' compliance with access standards and the state's ability to take appropriate action when there is a failure to comply.

- 11) Consider availability of direct access to services, e.g. women's health specialists.
  - 12) Propose how recommendations to improve access would be made.
- e. Describe how the impact of the availability of additional services such as care coordination, case management, navigation assistance, coordination and / or integration with Medicare services and coordination of home and community based services, disease management would be assessed.
- 1) Consider the availability of and access to individual care coordination, case management and/or navigation assistance in seniors and disability programs, including the alignment / integration of such care coordination with Medicare for people with dual eligibility, mechanisms for access and coordination with home and community based services and Part D pharmacy benefits
  - 2) Consider the availability of and access to care coordination, disease management and case management assistance within the families and children's programs.
  - 3) Describe an approach to an analysis of the value of oversight and member assistance infrastructures provided for managed care enrollees as compared to FFS enrollees. Consider, (but not be limited to) addressing the following areas:
    - a) Provider oversight and monitoring including credentialing and delegation.
    - b) Member services.
    - c) Member communications and member materials.
    - d) Provider payments and claims processing
- f. Describe how actual and potential cost savings to the state would be measured.
- 1) Propose how a determination would be made of whether the STATE is paying "too much" for managed care or "too little".
  - 2) Propose an approach to an analysis of whether the discontinuance of managed care (and exclusive payment under FFS) would be more cost-effective, taking onto account any identified non-cost advantages of FFS over managed care.
  - 3) Propose how Minnesota's managed care rates could be reliably compared to FFS rates.
  - 4) Propose how a benchmark could be identified or developed that would enable the STATE to compare Minnesota's managed care and FFS rates with other payors, including both other states public programs and commercial.
- g. Describe how the level of alignment with state and federal health reform policies, including a health benefit exchange for individuals not enrolled in state public health care programs, would be analyzed.
- 1) Describe how the level of alignment with recent state and federal health reform initiative would be assessed between the current managed care and FFS programs, including:

- a) Coverage of birth center services and licensed midwife services;
  - b) Coverage of care coordination services provided by certified Health Care Homes<sup>6</sup>;
  - c) Coverage of dental services provided by Dental Therapists and Advanced Dental Therapists<sup>7</sup>;
  - d) Coverage of hospice services for children;
  - e) Coverage of treatment for autism spectrum disorder;
  - f) Initiatives to improve access to dental care, including implementation of the Critical Access Dental program<sup>8</sup>;
  - g) Initiatives to reduce elective inductions of labor prior to 38 weeks gestation<sup>9</sup>;
  - h) Initiatives related to provider screening and background checks, and
  - i) Initiatives for dual eligibles that integrate/align service delivery with Medicare.
- h. Describe how the STATE's ability to use different provider payment models that provide incentives for cost-effective health care would be analyzed to identify new value-based payment models, including those which coordinate with long term care and Medicare.
- 1) Consider: The STATE pays almost exclusively on a FFS basis for services provided outside of managed care. This payment model offers a perverse incentive to providers to increase revenue by providing more services. However, while efforts designed to reduce avoidable or unnecessary services can result in savings for the STATE, they can offer little financial incentive for the provider. An ideal approach would involve collaboration between the STATE and other payors to implement a model that better compensates provider efforts and rewards high quality care.
- i. Describe how an assessment could be conducted on the need to continue the requirement for health maintenance organizations to participate in the medical assistance and MinnesotaCare programs as a condition of licensure under Minnesota Statutes, section 62D.04, subdivision 5, and under Minnesota Statutes, section 256B.0644, in terms of continued stability and access to services for enrollees of these programs.
- 1) Consider, if Minnesota didn't have these requirements, what would the impact be?
  - 2) Compare Minnesota's situation with comparable states with no such requirements. If a difference is found, to what is it attributed?
- j. *(Optional)* Suggest additional strategies for assessing managed care purchasing, and outline those strategies in this section of the Work Plan.

<sup>6</sup> Minnesota Statutes, Section 256B.0751

<sup>7</sup> Minnesota Statutes, Section 150A.105 and 150A.106

<sup>8</sup> Minnesota Statutes, Sections 256B.76, subdivision 4, and 256L.11, subdivision 7

<sup>9</sup> Minnesota Statutes, Section 256B.025, subdivision 3g

- k. Identify any other data or information necessary for the implementation of the Work Plan not listed in Section II.B.3, above.

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

- a. Demonstrate the Responder's and any proposed subcontractor's expertise and experience in the development, design, and execution of the evaluation of Medicaid managed care programs:
  - 1) Document the length, depth, and applicability of prior experience in providing the requested services by including previous experiences in evaluating Medicaid managed care programs.
  - 2) Identify entities for which Responder has supplied similar services to those requested in the RFP, including each identified organization's name and address, and the name, title and telephone number of a contact of each organization.
  - 3) Provide a narrative description of the actual services provided to the organization(s) named.
  - 4) Describe what role, if any, staff proposed for this project had in the referenced service. Letters of reference may be included.
- b. Demonstrate any working knowledge of:
  - 1) Medicaid regulations;
  - 2) publicly funded managed care populations;
  - 3) MHCP programs;
  - 4) MCO duties;
  - 5) Minnesota MCO licensing rules and regulations;
  - 6) federal (Medicaid and Medicare) managed care and EQRO regulations, and
  - 7) DHS managed care contract requirements.
- c. Demonstrate the skill and experience of proposed lead staff.
  - 1) Resumes must be provided for employees who would be assigned lead responsibilities on this Project.
  - 2) Resumes should describe the education, professional affiliations, and other relevant background of the lead staff to be assigned to this project.

Responders should note that, upon execution of a Contract, no change in the stated personnel assigned to this project will be permitted without the prior approval of the State Program Manager.

### **4. Financial Stability and Professional Responsibility of the Responder**

It is crucial that the STATE locate reliable vendors to serve our clients. Therefore, Responders must include in their Proposals both sufficient financial documentation to establish their financial stability and satisfactory information regarding their professional responsibility.

Financial information may include:

- a. A current Financial Statement, a copy of an independent audit conducted within the last year, documentations of cash reserves, and/or other documents sufficient to substantiate responsible fiscal management.
- b. In the event a Responder is either substantially or wholly owned by another corporate entity, include the most recent detailed financial report of the parent organization, and a written guarantee by the parent organization that it will unconditionally guarantee performance by the Responder in each and every term, covenant, and condition of such contract as may be executed by the parties.
- c. Include information about any pending major accusations that could affect the Responder's financial stability.

Professional responsibility information includes:

- a. Information concerning any complaints filed with or by professional and/or state or federal licensing/regulatory organizations within the past six years against the organization or its employees relating to the provision of services. If such complaints exist, include the date of the complaint(s), the nature of the complaint(s), and the resolution/status of the complaint(s), including any disciplinary actions taken.
- b. Information about pending litigation and/or litigation resolved within the past two years that relates to the provision of services by the organization and/or its employees. If such litigation exists, please include the date of the lawsuit, nature of the lawsuit, and the dollar amount being requested as damages, and if resolved, what the resolution was (e.g. settled, dismissed, withdrawn by plaintiff, verdict for plaintiff with \$x damages awarded, verdict for Responder, etc.).
- c. Information which demonstrates recognition of Responder's professional responsibility. This may include awards, certifications, and/or professional memberships.

The information collected from these inquiries will be used in the STATE's determination of the award of the contract. It may be shared with other persons within DHS who may be involved in the decision-making process, and/or with other persons as authorized by law. Responders are not required to provide any of the above information. However, Responders choosing not to provide the requested information may have their Response found nonresponsive and given no further consideration. The STATE reserves the right to request any additional information to assure itself of a Responder's financial and professional status.

## **C. REQUIRED STATEMENTS**

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

### *1. Responder Information and Declarations(Appendix B)*

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

### *2. Exceptions to RFP Terms (Appendix C)*

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

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

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

3. *Affidavit of Noncollusion (Appendix D)*

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

4. *Trade Secret/Confidential Data Notification (Appendix E)*

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

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

- a. clearly mark every page of trade secret materials in its Proposal at the time the Proposal is submitted with the words “**TRADE SECRET**” or

**“CONFIDENTIAL”** in capitalized, underlined and bolded type that is at least 20 pt.; the State does not assume liability for the use or disclosure of unmarked or unclearly marked trade secret/confidential data;

- b. fill out and submit the attached “*Trade Secret/Confidential Information Notification Form*”, specifying the pages of the Proposal which are to be restricted and justifying the trade secret designation for each item. If no material is being designated as protected, a statement of “None” should be listed on the form;
- c. satisfy the burden to justify any claim of trade secret/confidential information. Use of generic trade secret/confidential language encompassing substantial portions of the Proposal or simple assertions of trade secret interest without substantive explanation of the basis therefore will be regarded as nonresponsive requests for trade secret/confidential exception and will not be considered by the STATE in the event of a data request is received for Proposal information; and
- d. defend any action seeking release of the materials it believes to be trade secret and/or confidential, and indemnify and hold harmless the STATE, its agents and employees, from any judgments awarded against the STATE in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the STATE’s award of a contract. In submitting a response to this RFP, the Responder agrees that this indemnification survives as long as the trade secret materials are in the possession of the STATE. The STATE is required to keep all the basic documents related to its contracts, including selected responses to RFPs, for a minimum of six years after the end of the contract. Non-selected RFP Proposals will be kept by the STATE for a minimum of one year after the award of a contract, and could potentially be kept for much longer.

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

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

5. *Preference to Targeted Group and Economically Disadvantaged Business and Individuals*

In accordance with Minnesota Rules, part 1230.1810, subpart B and Minnesota Rules, part 1230.1830, certified Targeted Group Businesses and individuals submitting proposals as prime contractors will receive a six percent preference in the evaluation of their proposal, and certified Economically Disadvantaged Businesses and individuals submitting proposals as prime contractors will receive a six percent preference in the evaluation of their proposal. Eligible TG businesses must be currently certified by the Materials Management Division prior to the solicitation opening date and time. For information regarding certification, contact the Materials Management Helpline at [REDACTED] or you may reach the Helpline by email [REDACTED]. For TTY/TDD communications, contact the Helpline through the Minnesota Relay Services at [REDACTED].

6. *Human Rights Compliance (Appendix F)*

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

7. *Certification Regarding Lobbying (Appendix G)*

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

8. *Veteran-Owned Preference (Appendix I)*

In accordance with Minnesota Statute §16C.16, subd. 6a, veteran-owned businesses with their principal place of business in Minnesota and verified as eligible by the United States Department of Veterans Affairs’ Center for Veteran Enterprises (CVE Verified) will receive up to a 6 percent preference in the evaluation of its proposal.

Eligible veteran-owned small businesses include CVE verified small businesses that are majority-owned and operated by either recently separated veterans, veterans with service-connected disabilities, and any other veteran-owned small businesses (pursuant to Minnesota Statute §16C.16, subd. 6a).

Information regarding CVE verification may be found at <http://www.vetbiz.gov>.

Eligible veteran-owned small businesses should complete and **sign** the **Veteran-Owned Preference Form** in this solicitation. Only eligible, CVE verified, veteran-owned small businesses that provide the required documentation, per the form, will be given the preference.

## D. COST PROPOSAL

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

*Note that the value of any ensuing contract must not exceed \$200,000.00.* The rate(s) identified in the Cost Proposal must reflect all costs, including but not limited to: mass mailings, fees, commissions, compensation, equipment and other charges by the Responder for the service and/or deliverable. For purposes of completing the Cost Proposal, Responder should know that the STATE does not make regular payments based solely upon the passage of time; it only pays for services performed or work delivered after it is accomplished. The contract will contain no cost-of-living adjustment provision.

## IV. RFP PROCESS

### A. RESPONDERS’ QUESTIONS

Responders’ questions regarding this RFP must be submitted **in writing prior to 4:00 p.m. Central Time on October 15, 2012.** All questions must be addressed to:

Request for Proposal Response  
Attention: Tom Fields  
Minnesota Department of Human Services  
Purchasing and Service Delivery Division  
P.O. Box 64984  
St. Paul, MN 55164-0984

Questions may also be e-mailed to 

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

All questions submitted by the due date will be addressed in writing and posted at the Department of Human Services’ web site RFP page<sup>10</sup>. Every attempt will be made to provide answers in a timely fashion, with the intent that they are posted by **October 19, 2012.**

### B. PROPOSAL SUBMISSION

**If sending by U.S. mail, Proposals must be physically received (not postmarked) by October 29, 2012 to be considered. If hand delivering or using a carrier service (e.g.**

<sup>10</sup> [http://www.dhs.state.mn.us/main/id\\_000102](http://www.dhs.state.mn.us/main/id_000102)

**UPS, FedEx, DHL) Proposals must be physically received by 4:00 p.m. on that date.** Late Proposals will not be considered and will be returned unopened to the submitting party.  
**Faxed or e-mailed Proposals will not be accepted.**

Proposals should be submitted in three-ring binders or spiral bound binders with each section indexed with label tabs. The main body of the Proposal pages must be numbered and submitted in 12-point font on 8 ½ X 11 inch paper, single spaced. The size and/or style of pictures, graphics, tabs, attachments, margin notes/highlights, etc. are not restricted by this RFP and their use and style are at the Responder's discretion. All Proposals must contain the following:

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

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

Attention: Thomas Fields  
Health Care Administration, Purchasing & Service Delivery Division  
Minnesota Department of Human Services  
444 Lafayette Rd. N.  
St. Paul, MN 55155  
Phone [REDACTED]

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

## **V. PROPOSAL EVALUATION AND SELECTION**

### **A. OVERVIEW OF EVALUATION METHODOLOGY**

1. All responsive Proposals received by the deadline will be evaluated by the STATE. Proposals will be evaluated on "best value" as specified below, using a **100** point scale (**70** possible technical points plus **30** possible cost points). The evaluation will be conducted in four phases:
  - a. Phase I Required Statements Review

- b. Phase II Evaluation of Technical Proposal
  - c. Phase III Evaluation of Cost Proposals
  - d. Phase IV Selection of the Successful Responder
2. During the evaluation process, all information concerning the Proposals submitted, except identity of Responders, will remain non-public.
  3. Non-selection of any Proposals will mean that either another Proposal(s) was determined to be more advantageous to the STATE or that the STATE exercised its right to reject any or all Proposals. At its discretion, the STATE may perform an appropriate cost and pricing analysis of a Responder's Proposal, including an audit of the reasonableness of any Proposal.

**B. EVALUATION TEAM**

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

**C. EVALUATION PHASES**

At any time during the evaluation phases, the STATE may, at the STATE's discretion, contact a Responder to: (1) provide further or missing information or clarification of their Proposal, (2) provide an oral presentation of their Proposal, or (3) obtain the opportunity to interview the proposed key personnel. Reference checks may also be made at this time. However, there is no guarantee that the STATE will look for information or clarification outside of the submitted written Proposal. Therefore, it is important that the Responder ensure that all sections of the Proposal have been completed to avoid the possibility of failing an evaluation phase or having their score reduced for lack of information.

1. Phase I – Required Statements Review

The Required Statements will be evaluated on a pass or fail basis. Responders must "pass" each of the requirements identified in these sections to move to Phase II. The Required Statements will also be reviewed for submission by the Responder of the optional Preference to Targeted Group and Economically Disadvantaged Business and Individuals or the Veteran-Owned Preference Form. If proper proof of these certifications are submitted, the eligible preference points will be awarded to the Responder at this time.

2. Phase II - Evaluation of Technical Proposals

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

	<u>Component</u>	<u>Total Possible Points</u>
Revised 04/2012		Page 18

i. Statement of Understanding	10
ii. Proposed Work Plan	35
iii. Relevant Responder Experience	15
iv. Financial Stability and Professional Responsibility	<u>10</u>
Total:	<b>70</b>

- b. The evaluation team will review the components of each responsive Proposal submitted. Each component will be evaluated on the team’s evaluation of the Responder's understanding and the quality and completeness of the Responder's approach and solution to the problems or issues presented.
- c. After reviewing the Proposals, the members of the evaluation team will rate each Proposal component using the following formula:
- d. After reviewing the Proposals, the members of the evaluation team will rate each Proposal component using the following formula:

<u>Component Rating</u>	<u>Point Factor</u>
Excellent	1.0
Very Good	0.75
Satisfactory	0.5
Poor	0.25
Unacceptable	0.0

Upon determining which of the above Ratings best describes the component being rated, the total possible points available for the component (previous paragraph) will be multiplied by the corresponding point factor.

EXAMPLE: A “Very Good” rating (0.75) of the Component “Relevant Responder Experience” (worth a maximum of 15 points) would receive a score of 11.25 (15 x 0.75 = 11.25).

3. Phase III - Evaluation of Cost Proposals

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

- e. Points for Cost Proposals will be awarded as follows:

Lowest cost will be determined by the Cost Proposal rate submitted by the Responders. The Proposal with the lowest cost will receive 100% of the available points. The other Proposals will receive points using the following formula:

$$\frac{\text{Lowest Proposal Rate}}{\text{Rate of Other Proposal}} \times \text{Max. Pts.}(30)$$

EXAMPLE: If Responder A submitted the lowest rate of \$11,500, and Responder B submitted a rate of \$12,000, Responder A would receive 30 points and Responder B would receive 28.75 points ( $11,500 \div 12,000 \times 30 = 28.75$ ).

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

## **D. CONTRACT NEGOTIATIONS AND UNSUCCESSFUL RESPONDER NOTICE**

If a Responder(s) is selected, the STATE will notify the Successful Responder(s) in writing of their selection and the STATE's desire to enter into contract negotiations. Until the STATE successfully completes negotiations with the selected Responder(s), all submitted Proposals remain eligible for selection by the STATE.

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

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

## **VI. REQUIRED TERMS AND CONDITIONS**

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

- F. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.**  
Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore the Proposer must certify the following, as required by the regulations implementing Executive Order 12549.

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

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to 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 "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and

## Nonprocurement Programs

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

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

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

### **G. Insurance Requirements**

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

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

\$500,000 – Bodily Injury by Disease aggregate

\$100,000 – Bodily Injury by Accident

If Minnesota Statute, section 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized

representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements.

If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the State of Minnesota with a certificate of insurance.

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

\$2,000,000 – per occurrence

\$2,000,000 – annual aggregate

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

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage

Personal and Advertising Injury

Blanket Contractual Liability

Products and Completed Operations Liability

State of Minnesota named as an Additional Insured

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

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

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile

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

The retroactive or prior acts date of such coverage shall not be after the effective date of this contract and Contractor shall maintain such insurance for a period of at least

three (3) years, following completion of the work. If Contractor discontinues such insurance, then extended reporting period coverage must be purchased to fulfill this requirement.

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

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

\$2,000,000 – per claim or event  
\$2,000,000 – annual aggregate

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

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

- Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contractor's performance under this contract;
- If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota;
- Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
- Contractor's policy(ies) shall include legal defense fees in addition to its liability policy limits, with the exception of G.2.d. above;

- Contractor shall obtain insurance policy(ies) from insurance company(ies) having an “AM BEST” rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
  - An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor’s policy limits to satisfy the full policy limits required by the Contract.
3. The STATE reserves the right to immediately terminate the contract if the contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the contractor. All insurance policies must be open to inspection by the STATE, and copies of policies must be submitted to the STATE’s authorized representative upon written request.
  4. The successful responder is required to submit acceptable evidence of insurance coverage requirements prior to commencing work under the contract.

**H.. E-Verify Certification (In accordance with Minn. Stat. §16C.075)**

By submission of a proposal for services in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the STATE, contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the STATE. In the event of contract award, Contractor shall be responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc> All subcontractor certifications must be kept on file with Contractor and made available to the STATE upon request.

**VII. STATE'S RIGHTS RESERVED**

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

- A. Reject any and all Proposals received in response to this RFP;
- B. Disqualify any Responder whose conduct or Proposal fails to conform to the requirements of this RFP;
- C. Have unlimited rights to duplicate all materials submitted for purposes of RFP evaluation, and duplicate all public information in response to data requests regarding the Proposal;
- D. At its sole discretion, reserve the right to waive any non-material deviations from the requirements and procedures of this RFP;
- E. Negotiate as to any aspect of the Proposal with any Responder and negotiate with more than one Responder at the same time, including asking for Responders’ “Best and Final” offers as to price, technical provisions, or both;

- F. Extend the contract, in increments determined by the STATE, not to exceed a total contract term of five years; and
- G. Cancel the Request for Proposal at any time and for any reason with no cost or penalty to the STATE.
- H. Correct or amend the RFP at any time with no cost or penalty to the STATE. If the STATE should correct or amend any segment of the RFP after submission of Proposals and prior to announcement of the Successful Responder, all Responders will be afforded ample opportunity to revise their Proposal to accommodate the RFP amendment and the dates for submission of revised Proposals announced at that time. The STATE will not be liable for any errors in the RFP or other responses related to the RFP.
- I. Alter the composition of the evaluation team and their specific responsibilities.

### **VIII. STATE'S RESPONSIBILITIES**

The STATE will have the responsibilities specified below in connection with this Project:

- A. Provide all available reports, data and other information required by the selected Contractor to complete their duties within the Work Plan agreed upon by the STATE and the Contractor.

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**APPENDICES TO FOLLOW**

## **APPENDICES**

**APPENDIX A. Minnesota Session Laws – 2012, Regular Session, Chapter 247-  
-H.F.No. 2294, Article 1 Health Care**

**Sec. 31. Study of managed care.**

(a) The commissioner of human services must contract with an independent vendor with demonstrated expertise in evaluating Medicaid managed care programs to evaluate the value of managed care for state public health care programs provided under Minnesota Statutes, sections 256B.69, 256B.692, and 256L.12. Determination of the value of managed care must include consideration of the following, as compared to a fee-for-service program:

- (1) the satisfaction of state public health care program recipients and providers;
- (2) the ability to measure and improve health outcomes of recipients;
- (3) the access to health services for recipients;
- (4) the availability of additional services such as care coordination, case management, disease management, transportation, and after-hours nurse lines;
- (5) actual and potential cost savings to the state;
- (6) the level of alignment with state and federal health reform policies, including a health benefit exchange for individuals not enrolled in state public health care programs; and
- (7) the ability to use different provider payment models that provide incentives for cost-effective health care.

(b) The evaluation described in paragraph (a) must also consider the need to continue the requirement for health maintenance organizations to participate in the medical assistance and MinnesotaCare programs as a condition of licensure under Minnesota Statutes, section 62D.04, subdivision 5, and under Minnesota Statutes, section 256B.0644, in terms of continued stability and access to services for enrollees of these programs.

(c) A preliminary report of the evaluation must be submitted to the chairs and ranking minority members of the health and human services legislative committees by February 15, 2013, and the final report must be submitted by July 1, 2013.

## Appendix B – Responder Information/Declarations

### RESPONDER INFORMATION

**Responder Name:**

**Website:**

**Address:**

**Telephone Number:**

### CONTACT INFORMATION

**Contact Name:**

**Title:**

**Telephone Number:**

**Fax Number:**

**E-mail:**

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

**The above-named Responder submits the attached Proposal in response to the following Minnesota Department of Human Services Request for Proposals:**

**RFP for a Qualified Contractor to Evaluate the Value of Managed Care for State Public Health Care Programs, issued October 8, 2012**

**RFP for a Qualified Contractor to Evaluate the Value of Managed Care for State Public Health Care Programs, issued August 13, 2012**

**By submission of this Proposal, Responder warrants that:**

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

full disclosure in writing will be made to the Assistant Director of the Department of Administration's Materials Management Division ("MMD") which will include a description of the action which Responder has taken or proposes to take to avoid or mitigate such conflicts. If an organization conflict of interest is determined to exist, the State may, at its discretion, cancel the contract. In the event the Responder was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to MMD, the State may terminate the contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms "contract," "contractor," and "contracting officer" modified appropriately to preserve the State's rights.

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

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

Authorized Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ Telephone Number: \_\_\_\_\_



**Appendix D**

**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 RFP for a Qualified Contractor to Evaluate the Value of Managed Care for State Public Health Care Programs, issued August 13, 2012, 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:** \_\_\_\_\_

## Appendix E -- Trade Secret/Confidential Data Notice

Responder/Company Name: \_\_\_\_\_

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

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

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

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

Responder agrees to defend any action seeking release of the materials it believes to be trade secret or confidential, and indemnify and hold harmless the STATE, its agents and employees, from any judgments awarded against the STATE in favor of the party requesting the materials, and any and all reasonable costs connected with that defense. This indemnification survives the STATE's award of a contract and remains as long as the trade secret and/or confidential materials are in the possession of the STATE.

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

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

---

Signature

Title

Date

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

State Of Minnesota – Affirmative Action Data Page --- APPENDIX F

**If your response to this solicitation is in excess of \$100,000**, complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes 363A.36) certification requirement, and to provide documentation of compliance if necessary. **It is your sole responsibility to provide this information and—if required—to apply for Human Rights certification prior to execution of the contract. The State of Minnesota is under no obligation to delay proceeding with a contract until a company receives Human Rights certification**

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

Your response will be rejected unless your business:

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

-or-

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

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

We have a current Certificate of Compliance issued by the MDHR. **Proceed to BOX C. Include a copy of your certificate with your response.**

We do not have a current Certificate of Compliance. However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on \_\_\_\_\_ (date). [If the date is the same as the response due date, indicate the time your plan was received: \_\_\_\_\_(time)]. **Proceed to BOX C.**

We do not have a Certificate of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. **We acknowledge that our response will be rejected. Proceed to BOX C. Contact the Minnesota Department of Human Rights for assistance.** (See below for contact information.)

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

**BOX B – For those companies not described in BOX A**

Check below.

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

**BOX C – For all companies**

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

Name of Company: \_\_\_\_\_ Date: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Telephone number: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

**For assistance with this form, contact:**

Minnesota Department of Human Rights, Compliance Services Section

Mail: 190 East 5<sup>th</sup> St., Suite 700 St. Paul, MN 55101

TC Metro: (651) [REDACTED]

Toll Free: [REDACTED]

Website: [www.humanrights.state.mn.us](http://www.humanrights.state.mn.us)

Fax: (651) [REDACTED]

TTY: (651) [REDACTED]

Email: [REDACTED]

## APPENDIX G

### 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

## APPENDIX H

### Cost Proposal Sheet – Proposed Rate

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

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

*Note that the value of any ensuing contract must not exceed \$200,000.00.*

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

**Responding to:**

**RFP for a Qualified Contractor to Evaluate the Value of Managed Care for State Public Health Care Programs, issued October 8, 2012**

Company Name and Address:

**Rate:**     \$ \_\_\_\_\_

**Attach a breakdown showing all cost components of this rate.**

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**APPENDIX I  
STATE OF MINNESOTA  
VETERAN-OWNED PREFERENCE FORM**

In accordance with Minnesota Statute §16C.16, subd. 6a, veteran-owned businesses with their principal place of business in Minnesota and verified as eligible by the United States Department of Veterans Affairs' Center for Veteran Enterprises (CVE Verified) will receive up to a 6 percent preference in the evaluation of its proposal.

If responding to a Request for Bid (RFB), the preference is applied only to the first \$500,000 of the response. If responding to a Request for Proposal (RFP), the preference is applied as detailed in the RFP.

Eligible veteran-owned small businesses must be CVE Verified (in accordance with Public Law 109-471 and Code of Federal Regulations, Title 38, Part 74) at the solicitation opening date and time to receive the preference.

Information regarding CVE Verification may be found at <http://www.vetbiz.gov>.

Eligible veteran-owned small businesses should complete and **sign** this form. Only eligible, CVE Verified, veteran-owned small businesses that provide this completed and signed form will be given the preference.

---

**I hereby certify that the company listed below:**

1. Is an eligible veteran-owned small business, as defined in Minnesota Statute §16C.16, subd. 6a; and
2. Has its principal place of business in the State of Minnesota; and
3. Is CVE Verified by the United States Department of Veterans Affairs' Center for Veterans Enterprise.

Name of Company: \_\_\_\_\_ Date: \_\_\_\_\_

Authorized  
Signature: \_\_\_\_\_ Telephone: \_\_\_\_\_

—

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

---

**IF YOU ARE CLAIMING THE VETERAN-OWNED PREFERENCE, SIGN AND RETURN THIS FORM WITH YOUR RESPONSE TO THE SOLICITATION.**

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

THIS CONTRACT, and amendments and supplements thereto, is between the State of Minnesota, acting through its Department of Human Services, \_\_\_\_\_ Division (the "STATE"), and \_\_\_\_\_, an independent contractor, not an employee of the State of Minnesota, (the "CONTRACTOR").

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

The STATE is in need of the following services: \_\_\_\_\_.

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

The parties therefore agree as follows:

**1. Term of Contract.**

1.1 **Effective date.** The effective date of this contract is \_\_\_(DATE)\_\_\_, or the date that the STATE obtains all required signatures under Minnesota Statutes, section 16C.05, subdivision 2, whichever is later. **The CONTRACTOR must not begin work under this contract until this contract is fully executed and CONTRACTOR has been notified by the STATE'S Authorized Representative to begin work.**

1.2 **Expiration date.** The expiration date of this contract is \_\_\_(DATE)\_\_\_, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation, or termination of this contract: 7. Information Privacy Protection; 8. Intellectual Property Rights; 10. Indemnification; 12. Publicity and Endorsement; 14. Audit Requirements and Contractor Debarment Information; 15. Data Disclosure; and 19. Governing Law, Jurisdiction and Venue.

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

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

4. **Consideration and Payment.**

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

(a) **Compensation.** The CONTRACTOR will be paid as follows:

(b) **Reimbursement.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by CONTRACTOR in performance of this contract in an amount not to exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_.00); provided, that CONTRACTOR will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than is provided in the current Commissioner's Plan (which is incorporated by reference) established by the Commissioner of Minnesota Management and Budget. CONTRACTOR will not be reimbursed for travel and subsistence expense incurred outside the State of Minnesota unless it has received prior written approval for such out of state travel from the STATE.

(c) **Total Obligation.** The total obligation of the STATE for all compensation and reimbursements to CONTRACTOR will not exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_.00).

(d) (If applicable.) For compensation payable under this contract, which is subject to withholding under state or federal law, appropriate amounts will be deducted and withheld by STATE as required.

4.2. **Payment.**

(a) **Invoices.** The STATE will promptly pay the CONTRACTOR after the CONTRACTOR presents itemized invoices for services performed and the STATE'S authorized representative accepts the invoiced services. Invoices will be submitted timely, in a form prescribed by the STATE and according to \_\_\_\_\_

(b) **Retainage.** Under Minnesota Statutes, section 16C.08, subdivision 5(b), no more than ninety (90%) percent of the compensation due under this contract may be paid until the final product(s) of the contract has been reviewed by the STATE and it has been determined that the CONTRACTOR has satisfactorily fulfilled all the terms of the contract. Accordingly, the STATE will withhold 10% of the total amount of each invoice submitted by CONTRACTOR for

payment. The balance due will be paid when the STATE determines that the CONTRACTOR has satisfactorily fulfilled all the terms of this contract.

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

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

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

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

6.1 **State.** The STATE'S authorized representative is \_\_\_\_\_ or his/her successor, who has the responsibility to monitor the CONTRACTOR'S performance and the authority to accept the services provided under this contract. If the services are satisfactory, the STATE'S Authorized Representative will certify acceptance on each invoice submitted for payment, in accordance with Clause 4.2.

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

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

## OPTION #1

7. **Information Privacy and Security.** It is expressly agreed that the CONTRACTOR will not be handling private data collected by STATE and is therefore not a member of or included within the “welfare system” for purposes of the Minnesota Government Data Practices Act (hereinafter “Data Practices Act,” Minnesota Statutes, Chapter 13, and in particular §13.46) as a result of this contract. It is also expressly agreed that CONTRACTOR will not be handling “protected health information” collected by STATE (information that identifies an individual as having applied for, being or having been eligible for, or receiving or having received health care services, as set forth in 45 CFR §160.102). CONTRACTOR is not a “business associate” of STATE, as defined in the Health Insurance Portability Accountability Act (“HIPAA”), 45 CFR §160.103. Therefore, CONTRACTOR is not required to comply with the privacy provisions of HIPAA as a result of or for purposes of performing under this contract. If CONTRACTOR has responsibilities to comply with the Data Practices Act or HIPAA for reasons other than this contract, CONTRACTOR will be responsible for its own compliance.

## OPTION #2

7. **Information Privacy and Security.**

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

- 7.1 **Information Covered by this Provision.** In carrying out its duties, CONTRACTOR will be handling one or more types of private information, collectively referred to as “protected information,” concerning individual STATE clients. “Protected information,” for purposes of this agreement, includes any or all of the following:
- (a) *Private data* (as defined in Minnesota Statutes §13.02, subd. 12), *confidential data* (as defined in Minn. Stat. §13.02, subd. 3), *welfare data* (as governed by Minn. Stat. §13.46), *medical data* (as governed by Minn. Stat. §13.384), and other non-public data governed elsewhere in Minnesota Government Data Practices Act (MGDPA), Minn. Stats. Chapter 13;
  - (b) *Health records* (as governed by the Minnesota Health Records Act [Minn. Stat. §§144.291-144.298]);
  - (c) *Chemical health records* (as governed by 42 U.S.C. § 290dd-2 and 42 CFR § 2.1 to § 2.67);
  - (d) *Protected health information* (“PHI”) (as defined in and governed by the Health Insurance Portability Accountability Act [“HIPAA”], 45 CFR § 164.501); and
  - (e) Electronic Health Records (as governed by Health Information Technology for Economic and Clinical Health Act (HITECH), 42 USC 201 note, 42 USC 17931); and
  - (f) Other data subject to applicable state and federal statutes, rules, and regulations affecting the collection, storage, use, or dissemination of private or confidential

information.

## 7.2 Duties Relating to Protection of Information.

- (a) **Duty to ensure proper handling of information.** CONTRACTOR shall be responsible for ensuring proper handling and safeguarding by its employees, subcontractors, and authorized agents of protected information collected, created, used, maintained, or disclosed on behalf of STATE. This responsibility includes ensuring that employees and agents comply with and are properly trained regarding, as applicable, the laws listed above in paragraph 7.1.
- (b) **Minimum necessary access to information.** CONTRACTOR shall comply with the “minimum necessary” access and disclosure rule set forth in the HIPAA and the MGDPA. The collection, creation, use, maintenance, and disclosure by CONTRACTOR shall be limited to “that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government.” *See*, respectively, 45 CFR §§ 164.502(b) and 164.514(d), and Minn. Stat. § 13.05 subd. 3.
- (c) **Information Requests.** Unless provided for otherwise in this Agreement, if CONTRACTOR receives a request to release the information referred to in this Clause, CONTRACTOR must immediately notify STATE. STATE will give CONTRACTOR instructions concerning the release of the data to the requesting party before the data is released.

## 7.3 Contractor’s Use of Information. CONTRACTOR shall:

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

confidentiality of the information maintained by it has been breached. This report must be in writing and sent to STATE not more than 7 days after learning of such non-permitted use or disclosure. Such a report will at least: (1) Identify the nature of the non-permitted use or disclosure; (2) Identify the PHI used or disclosed; (3) Identify who made the non-permitted use or disclosure and who received the non-permitted or violating disclosure; (4) Identify what corrective action was taken or will be taken to prevent further non-permitted uses or disclosures; (5) Identify what was done or will be done to mitigate any deleterious effect of the non-permitted use or disclosure; and (6) Provide such other information, including any written documentation, as STATE may reasonably request.

- (d) Consistent with this Agreement, ensure that any agents (including Contractors and subcontractors), analysts, and others to whom it provides protected information, agree in writing to be bound by the same restrictions and conditions that apply to it with respect to such information.
- (e) Document such disclosures of PHI and information related to such disclosures as would be required for STATE to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (f) Mitigate, to the extent practicable, any harmful effects known to it of a use, disclosure, or breach of security with respect to protected information by it in violation of this Agreement.

**7.4 State's Duties.** STATE shall:

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

**7.5 Disposition of Data upon Completion, Expiration, or Agreement Termination.** Upon completion, expiration, or termination of this Agreement, CONTRACTOR will return to STATE or destroy all protected information received or created on behalf of STATE for purposes associated with this Agreement. A written certification of destruction or return to Authorized Representative listed in 6.1 is required. CONTRACTOR will retain no copies of such protected information, provided that if both parties agree that such return or destruction is not feasible, or if CONTRACTOR is required by the applicable regulation, rule or statutory retention schedule to retain beyond the life of this Agreement,

CONTRACTOR will extend the protections of this Agreement to the protected information and refrain from further use or disclosure of such information, except for those purposes that make return or destruction infeasible, for as long as CONTRACTOR maintains the information. Additional information for destruction and handling is available in the DHS Information Security Policy, Policy numbers 3.7, and 2.19, found at <http://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-4683-ENG>.

- 7.6 **Sanctions.** In addition to acknowledging and accepting the terms set forth in Section 9 of this Agreement relating to indemnification, the parties acknowledge that violation of the laws and protections described above could result in limitations being placed on future access to protected information, in investigation and imposition of sanctions by the U.S. Department of Health and Human Services, Office for Civil Rights, and/or in civil and criminal penalties.
- 7.7 **Additional Business Associate Duties.** To the extent CONTRACTOR is handling protected health information in order to provide health care-related administrative services on behalf of STATE, CONTRACTOR is a “Business Associate” of STATE, as that term is defined in HIPAA. As a result, in addition to the duties already detailed in this section, CONTRACTOR shall:
- (a) Make available protected health information in accordance with 45 CFR §164.524.
  - (b) Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.526.
  - (c) Make its internal practices, books, records, policies, procedures, and documentation relating to the use, disclosure, and/or security of protected health information available to the other Party and/or the Secretary of the United States Department of Health and Human Services (HHS) for purposes of determining compliance with the Privacy Rule and Security Standards, subject to attorney-client and other applicable legal privileges.
  - (d) Comply with any and all other applicable provisions of the HIPAA Privacy Rule and Security Standards, including future amendments thereto.
  - (e) Document such disclosures of protected health information and information related to such disclosures as would be required for STATE to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.
  - (f) Provide to STATE information required to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with 45 CFR §164.528.

## **OPTION #1**

### **8. Intellectual Property Rights.**

8.1 **Definitions.** *Works* means all inventions, improvements, discoveries (whether or not

patentable or copyrightable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the CONTRACTOR, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this contract. *Works* includes "*Documents.*" *Documents* are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the CONTRACTOR, its employees, agents, or subcontractors, in the performance of this contract.

8.2 **Ownership.** The STATE owns all rights, title, and interest in all of the intellectual property, including copyrights, patents, trade secrets, trademarks, and service marks in the *Works* and *Documents created and paid for under this contract*. The *Works* and *Documents* will be the exclusive property of the STATE and all such *Works* and *Documents* must be immediately returned to the STATE by the CONTRACTOR upon completion or cancellation of this contract. To the extent possible, those *Works* eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." If using STATE data, CONTRACTOR must cite the data, or make clear by referencing that STATE is the source.

8.3 **Obligations.**

- (a) **Notification.** Whenever any *Works* or *Documents* (whether or not patentable) are made or conceived for the first time or actually or constructively reduced to practice by the CONTRACTOR, including its employees and subcontractors, and are created and paid for under this contract, the CONTRACTOR will immediately give the STATE'S Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon. The CONTRACTOR will assign all right, title, and interest it may have in the *Works* and the *Documents* to the STATE.
- (b) **Filing and recording of ownership interests.** The CONTRACTOR must, at the request of the STATE, execute all papers and perform all other acts necessary to transfer or record the STATE'S ownership interest in the *Works* and *Documents* created and paid for under this contract. The CONTRACTOR must perform all acts, and take all steps necessary to ensure that all intellectual property rights in these *Works* and *Documents* are the sole property of the STATE, and that neither CONTRACTOR nor its employees, agents, or subcontractors retain any interest in and to these *Works* and *Documents*.
- (c) **Duty not to Infringe on intellectual property rights of others.** The CONTRACTOR represents and warrants that the *Works* and *Documents* created and paid for under this contract do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 10, the CONTRACTOR will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the STATE, at the CONTRACTOR'S expense, from any action or claim brought against the STATE to the extent that it is based on a claim that all or part of these *Works* or *Documents* infringe upon the intellectual property rights of others. The CONTRACTOR will be responsible for payment of

any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the CONTRACTOR'S or the STATE'S opinion is likely to arise, the CONTRACTOR must, at the STATE'S discretion, either procure for the STATE the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the STATE will be in addition to and not exclusive of other remedies provided by law.

## OPTION #2

### 8. Intellectual Property Rights.

8.1 **Definitions.** *Works* means all inventions, improvements, discoveries (whether or not patentable or copyrightable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the CONTRACTOR, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this contract. *Works* includes "*Documents.*" *Documents* are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the CONTRACTOR, its employees, agents, or subcontractors, in the performance of this contract.

8.2 **Use of Works and Documents.** CONTRACTOR owns any Works or Documents developed by the CONTRACTOR in the performance of this contract. The STATE and the U.S. Department of Health and Human Services will have royalty free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the Works or Documents for government purposes.

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

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

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

9.2 **Other Insurance.** Contractor certifies that it is in compliance with the following insurance requirements:

10. **Indemnification.**

In the performance of this contract by CONTRACTOR, or CONTRACTOR'S agents or employees, the CONTRACTOR must indemnify, save, and hold harmless the STATE, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the STATE, to the extent caused by CONTRACTOR'S:

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

The indemnification obligations of this clause do not apply in the event the claim or cause of action is the result of the STATE'S sole negligence. This clause will not be construed to bar any legal remedies the CONTRACTOR may have for the STATE'S failure to fulfill its obligation under this contract.

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

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

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

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

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

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

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

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

12. **Publicity and Endorsement.**

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

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

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

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

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

- 14.2 **Compliance with Single Audit Act.** All sub-recipients receiving \$500,000 or more of federal assistance in a fiscal year will obtain a financial and compliance audit made in accordance with the Single Audit Act, OMB Circular A-133. CONTRACTOR certifies it will comply with the Single Audit Act, OMB Circular A-133, if applicable. Failure to comply with these requirements could result in forfeiture of federal funds.
- 14.3 **Debarment by State, its Departments, Commissions, Agencies or Political Subdivisions.** CONTRACTOR certifies that neither it nor its principles is presently debarred or suspended by the STATE, or any of its departments, commissions, agencies, or political subdivisions. CONTRACTOR'S certification is a material representation upon which the contract award was based. CONTRACTOR shall provide immediate written notice to the STATE'S authorized representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.
- 14.4 **Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.** Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore CONTRACTOR certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. CONTRACTOR'S certification is a material representation upon which the contract award was based.
15. **Data Disclosure.** Under Minn. Stat. §270C.65, subd. 3, and other applicable law, the CONTRACTOR consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, to the STATE, to federal and state agencies and state personnel involved in the approval and payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the CONTRACTOR to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities. **This contract will not be approved unless these numbers are provided.**
16. **Prohibition on Weapons.** CONTRACTOR agrees to comply with all terms of the Department of Human Services' policy prohibiting carrying or possessing weapons wherever and whenever the CONTRACTOR is performing services within the scope of this contract. This policy, which is located at the business location of the STATE and is available to CONTRACTOR upon request, is incorporated by reference into this contract. Any violations of this policy by CONTRACTOR or CONTRACTOR'S employees may be grounds for immediate suspension or termination of the contract.
17. **Severability.** If any provision of this Contract is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Contract shall remain in full force and effect.

18. **Cancellation or Termination.**

18.1 **Cancellation.** This contract may be canceled by the STATE or the Minnesota Commissioner of Administration at any time, with or without cause, upon thirty (30) days written notice to the CONTRACTOR. In the event of such a cancellation, CONTRACTOR will be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed.

18.2 **Insufficient Funding.** Notwithstanding clause 18.1, the STATE may immediately terminate this contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination will be by written or fax notice to the CONTRACTOR. The STATE is not obligated to pay for any services that are provided after notice and effective date of termination. However, the CONTRACTOR will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The STATE will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The STATE must provide the CONTRACTOR notice of the lack of funding within a reasonable time of the STATE'S receiving that notice.

18.3 **Breach.** Upon clause 18.1, upon STATE's knowledge of a curable material breach of this Agreement by CONTRACTOR, STATE shall provide CONTRACTOR written notice of the breach and ten (10) days to cure the breach. If CONTRACTOR does not cure the breach within the time allowed, CONTRACTOR will be in default of this agreement and STATE may cancel the contract immediately thereafter. If CONTRACTOR has breached a material term of this Agreement and cure is not possible, STATE may immediately terminate this Agreement.

19. **Governing Law, Jurisdiction and Venue.** Minnesota law, without regard to its choice of law provisions, governs this contract, and amendments and supplements thereto. Venue for all legal proceedings arising out of this contract, or breach thereof, will be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

20. **Assignment, Amendments, Waiver, and Contract Complete.**

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

20.2 **Amendments.** Any amendment to this contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original contract, or their successors in office.

20.3 **Waiver.** If the STATE fails to enforce any provision of this contract, that failure does not waive the provision or STATE'S right to enforce it.

20.4 **Contract Complete.** This contract contains all negotiations and agreements between the STATE and the CONTRACTOR. No other understanding regarding this contract, whether written or oral, may be used to bind either party.

21. **Other Provisions.**

21.1 **Contingency Planning.** Within 90 days of the execution of this contract, CONTRACTOR and any subcontractor will have a contingency plan. The contingency plan shall:

- (a) ensure fulfillment of Priority 1 or Priority 2 obligations under this contract;
- (b) outline procedures for the activation of the contingency plan upon the occurrence of a governor or commissioner of the Minnesota Department of Health declared health emergency;
- (c) identify an individual as its Emergency Preparedness Response Coordinator (EPRC), the EPRC shall serve as the contact for the STATE with regard to emergency preparedness and response issues, the EPRC shall provide updates to the STATE as the health emergency unfolds;
- (d) outline roles, command structure, decision making processes, and emergency action procedures that will be implemented upon the occurrence of a health emergency;
- (e) provide alternative operating plans for Priority 1 or Priority 2 functions;
- (f) include a procedure for returning to normal operations; and
- (g) be available for inspection upon request.

21.2 **Criminal Background Check Required.** CONTRACTOR and employees of CONTRACTOR working on site at STATE's Central Office and accessing STATE's protected information (as defined in 7. Information Privacy and Security of this contract.) must submit to or provide evidence of a computerized criminal history system background check (hereinafter "CCH background check") performed within the last 12 months before work can begin under this contract. "CCH background check" is defined as a background check including search of the computerized criminal history system of the Minnesota Department of Public Safety's Bureau of Criminal Apprehension.

**21.3 E-Verify Certification (In accordance with Minn. Stat. §16C.075)**

For services valued in excess of \$50,000, CONTRACTOR certifies that as of the date of services performed on behalf of the STATE, CONTRACTOR and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the STATE. CONTRACTOR is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at

<http://www.mmd.admin.state.mn.us/doc/VerifySubCertForm.doc> All subcontractor certifications must be kept on file with CONTRACTOR and made available to the STATE upon request.

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(Signature Page Follows)**

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

**APPROVED:**

**1. STATE ENCUMBRANCE VERIFICATION:**

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

By:
Date:
CFMS Contract No.:

**2. CONTRACTOR:**

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

By:
Title:
Date:

By:
Title:
Date:

**3. STATE AGENCY:**

By:
Title:
Date:

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

By:
Title: Assistant Commissioner
Date:

**5. COMMISSIONER OF ADMINISTRATION:**

By:
Date:

**Distribution (One fully executed original contract each):**

- Dept. of Administration
- Appeals & Regulations Division
- Agency
- Contractor

State Authorized Representative – (copy)