

Legislative-Citizens Commission on Minnesota Resources

Request for proposals to prepare the:

Minnesota Statewide Conservation and Preservation Plan

Introduction

The Legislative-Citizen Commission is requesting proposals from qualified entities to produce a comprehensive statewide preservation and conservation plan. With a preliminary plan prepared by June 2007 and a final plan completed by June 2008.

This request is being published as a precursor to the plan required in M.L. 2006, Chp. 243, Sec. 20, Subd. 10, Statewide Conservation and Preservation Plan.

This request for proposals does not obligate the LCCMR to complete the project, and the LCCMR reserves the right to cancel the solicitation if it is considered to be in its best interest.

Goals and Objectives

Develop a statewide comprehensive plan for the conservation and preservation of Minnesota's environment and natural resources. The statewide comprehensive plan will inventory and assess the current state of Minnesota's environment and natural resources based on a variety of existing plans that currently guide the conservation of Minnesota's environment and natural resources. This includes the topic areas specified in the Environmental and Natural Resources Trust Fund Constitutional language: air, land, water, fish, wildlife and other natural resources (outdoor recreation). The plan will review and analyze the existing plans and identify inadequacies and information gaps. The plan will incorporate and integrate the valid existing information and build upon that information to develop the new comprehensive statewide conservation and preservation plan. The plan will address important current, emerging and future issues and trends affecting these resources. The plan will prioritize issues, provide implementation strategies to address the issues, provide general cost and benefit analysis of the proposed strategies, and identify bench marks to enable ongoing measurement and evaluation of progress in achieving the desired results identified in the plan.

Use of the Plan

The plan will provide both short-term and long-term guidance on the conservation and preservation of Minnesota's environment and natural resources. The plan will enable a wide variety of public and private decision makers to work together to achieve common overall environment and natural resource goals and ensure their sustainability. The plan will enable the LCCMR to be effective in strategically recommending funds to future applicants to help implement the shared vision of the plan to conserve, preserve, restore, and enhance Minnesota's environment and natural resources.

This plan will be used to help inform funding recommendations for the Environment and Natural Resources Trust Fund. The plan will provide guidance to the many partners involved in the overall management of Minnesota's natural resources.

Scope of Work

Describe your proposal's scope of work, including the process for gathering information, addressing the topics in the constitutional language, identifying current issues, identifying future issues, identifying major benchmarks and other ways to measure results, recommend implementation strategies and end products and describe the costs and benefits associated with the recommendations. This should include at a minimum the following sections and address how the issues are interrelated.

1. Describe how information will be gathered and analyzed based on the constitutional language on the Environment and Natural Resources Trust Fund which specifically identifies air, land, water, fish, wildlife and other natural resources. The plan will review, update and incorporate as appropriate, existing work on the topic areas when addressing each area. It will also identify gaps in information and planning and propose how to fill those gaps. If it is determined that significant additional efforts are needed, the plan will propose further study beyond the scope of this planning effort.
 - a. Air - including air quality, specifically greenhouse gases, and toxins.
 - b. Land - including landownership, land cover, vegetative land cover (including remaining high quality plant communities), land management, geology (geological atlas), minerals, and soils.
 - c. Water - including both surface and ground water, water quality, water supply (water appropriation), quality and biodiversity of wetlands, water recreation use, and the overall sustainability of Minnesota's water resources.
 - d. Fish - including healthy fish and aquatic habitat, commercial fishing, sport fishing, and fish consumption advisories.
 - e. Wildlife - including conditions of wildlife, wildlife habitat and wildlife corridors, address the condition of existing corridors and the potential for reconnecting and restoring additional wildlife corridors.
 - f. Other natural resources - including parks, trails and other units of the system. ("Natural resources" includes the outdoor recreation system under section [86A.04](#) and regional recreation open space systems as defined under section [473.351](#), subdivision 1.
2. Describe how current and future issues will affect Minnesota's environment and natural resources, as outlined in the constitutional language. Including but not limited to the following areas: Energy, transportation, decisions on where to grow and how to grow, changing demographics, and changing land uses/land use patterns of various land uses including agriculture, commercial/industrial, forestry, mining, public, recreation/conservation, and residential.
3. Describe how the plan will identify and evaluate the current benchmarks and other ways to measure the health of the State's environment and natural resources.
4. Describe how the plan will recommend implementation strategies to address the identified current and future impacts on Minnesota's environment and natural resources, including recommended strategies that will help to prevent degradation of resources. The environment and natural resource impacts should be considered in the context of other societal benefits of growth and development, including a sustainable and healthy economy, maintaining property values, and high livability factors.
5. Describe how costs and benefits of the recommended strategies will be determined.
6. Communications:
 - a. Public involvement process – Describe strategies for identifying target audiences and the approach for engaging those audiences. Describe the objective of the recommended outreach efforts. Include a general outline of proposed meetings/events that describes the number, type,

general location and type of invitees. The plan will be statewide in nature. The LCCMR commission members and staff will be included in the public involvement process.

- b. Partnerships – Describe strategies for partnering with the wide variety of environment and natural resource interests. Include how those decision makers will be engaged and how the plan will be useful to them. Include a description of proposed partnerships to help develop the plan including federal, state, and local agencies, non-governmental organizations and private parties (if available, identify the contact person(s) of the various partners).
- c. Implementing the recommendations of the plan - describe efforts to communicate the findings of the plan and ways to engage people and organizations to be part of the vision of the plan and to motivate them to help implement the plan.
- d. Other ideas - Describe other proposed creative communication ideas to engage people and organizations to get involved in developing and promote the plan.

7. Information Systems:

- a. Data Management – Describe proposed methods for utilizing database(s) and the method for making them available to others.
- b. GIS based mapping
 - Describe methods for inventorying and assessing the Minnesota’s environment and natural resources by incorporating existing mapping efforts to better identify important natural resource areas and the connections between them. The effort will address the buffer areas surrounding these higher quality areas and include updated statewide mapping of important conservation corridors.
 - Describe how the information will be synthesized for this plan and how the information will be made available for a variety of decision makers and others to continue to use the GIS products of the plan as tools for planning, evaluating, and analyzing.
 - Describe how some of the map products could utilize 3-dimensional and other views.
- c. Web-based information – Describe how the development of the plan, the final plan, and implementation of the strategies and recommendations of the plan will creatively engage stakeholders through the web.
- d. Publication – Describe the print materials that will be included in the final written plan including specific maps. (A minimum of 50 copies of the final plan should be included in the budget.)

8. Describe how the planning effort will coordinate with other conservation research, planning efforts and how other funding will be leveraged to complete the comprehensive statewide conservation and preservation plan. Describe efforts to use peer review for technical and scientific elements of the plan. Describe any pro-bono work that will be used to develop the plan.
9. Describe the expertise of team members that will prepare the comprehensive statewide conservation and preservation plan. Include professional educational and experience and examples of similar work. Specifically describe the lead person’s previous experience in successfully leading similar planning efforts.

For more information see “Detailed Objectives” below.

Project Tasks

The following tasks are the minimum required for successful completion of the project:

1. Prepare a final, detailed work plan and submit for review, discussion and revision.
2. Prepare a final budget proposal and submit for review, discussion and revision.
3. Periodic updates to the LCCMR.
4. Provide a preliminary plan to the LCCMR by June 30, 2007, including a presentation to the LCCMR.
5. If gaps are identified in existing information or existing plans that can not be completed with this funding, make recommendations by June 30, 2007 for additional efforts.
6. Provide a final plan with recommended strategies and cost analysis by June 30, 2008, including a final presentation to the LCCMR.

Respondents may propose alternative approaches, additional tasks or activities if they will substantially improve the results of the project.

Contacts

Prospective respondents who have any questions regarding this request for proposals may call or write:

Michael McDonough
Legislative-Citizen Commission on Minnesota Resources
100 Rev. Dr. Martin Luther King Jr. Blvd.
Room 65, State Office Building
St. Paul, Minnesota 55155
651 296-2443

Please note: Mr. McDonough will inform prospective contractors about authorized contacts in the LCCMR; other personnel are not allowed to discuss the project with respondents before the deadline for submitting proposals.

Submission of Proposal

All proposals must be sent to and received by:

Michael McDonough
Legislative-Citizen Commission on Minnesota Resources
100 Rev. Dr. Martin Luther King Blvd.
Room 65, State Office Building
St. Paul, Minnesota 55155

no later than 2:00 p.m. Central Time, Friday November 17, 2006. Late proposals will not be considered. Submit five copies of the proposal sealed in mailing envelopes or packages with the respondent's name and address clearly written on the outside. Each copy of the proposal must be signed, in ink, by an authorized member of the firm or entity making the proposal. Also provide an electronic copy.

Projects Costs

The LCCMR has estimated that the cost of this project should not exceed \$300,000.

Project Completion Date

A preliminary plan is due to the LCCMR by June 30th 2007 and the final plan and deliverables are due June 30, 2008.

Proposal Contents

The following will be considered minimum contents of the proposal:

A restatement of the objectives, goals and tasks to show or demonstrate the respondent's understanding of the research needs seen by the cooperating organizations.

A listing must identify and describe the deliverables that the respondent will provide.

A section must describe the background of the overall lead person and the lead person of each of the major sections of the plan (air, land, water, fish, wildlife, other natural resources, communications, and information systems). Include information on the person's education, professional background and experience, with particular emphasis on experience in the area that they are assigned to be the lead person. This section must estimate the person-weeks that the overall lead person, and that the lead person for each section, will spend on the project. A change in personnel assigned to the project will not be permitted without the prior approval of the LCCMR.

Respondent will prepare a detailed cost and work plan which will identify the major tasks to be accomplished and their costs. It should be of sufficient detail to be used as a project scheduling and managing tool, as well as the basis for invoicing. For the purposes of completing the cost proposal, the state does not make regular payments based upon the passage of time; it only pays for services performed or work delivered after it is accomplished.

Evaluation of Proposals

All qualifying proposals will be evaluated by the LCCMR members, staff and/or representative of the LCCMR. At the choice of the LCCMR, an interview may be incorporated into the evaluation process.

It is anticipated that the evaluation and selection will be done in December 2006 so that the LCCMR can enter into a contract with the selected entity in January 2007.

Detailed Objectives

Gather and analyze information

- Update existing **inventory and assessment** information on the current condition of Minnesota's environment and natural resources;
- **evaluate and incorporate existing environment and natural resources plans**, identify any gaps in existing plans and available information, and make recommendation on how to fill those gaps through this funding or with other future funding if necessary;
- provide an overview of the wide variety of current **natural resource programs and the outcomes** of those programs;
- address natural resource, environmental and land use **policy and regulation** issues;
- **review and overview of current environmental legislation** - include evaluating the general effectiveness of the legislation in protecting the environmental and natural resource attributes it was intended to protect

Look at categories identified in the Trust Funds constitutional language

- address the effects of the current growth and development patterns in the state and their affects on the quality of the state's **air, water, fish and wildlife**;
- address current **land use** practices in Minnesota and their effects on the environment and natural resources;
- address the preservation, restoration, and enhancement of the **biodiversity of Minnesota's flora and fauna** and the relationship of the biodiversity to their ecological and economic functions (include the effects of converting natural lands to other uses and the effect of invasive exotic species);
- address the current and future **outdoor recreational** needs of the citizens and visitors (both passive and consumptive) as well as the role of recreational land in preservation of native fish, wildlife, plant habitat, and open space ;

Identify current and emerging issues (such as but not limited to):

- address **future demographic impacts**, including both the growth in population in some parts of the state and the decline in population in other areas;
- address the **human health** benefits of clean air, water and outdoor exercise and address the consequences of not having them;
- address implementation strategies directed at the prevention of **climate change** and the research related to potential impacts of climate change on the environment and natural resources, include the potential climatic changes to current use of the resources and to potential changes to their biological health and diversity throughout the state and address the affects of **pharmaceuticals, chemicals and other manmade substances** on the environment (e.g. endocrine disruptors)
- invasive species and their effect.

Look to the future

- guide Minnesota's **long-term (50-years plus) future of environment and natural resource management through a shared vision** which is supported by Trust Fund appropriations – The plan will be useful to state, local government, academic institutions, private sector and nonprofit sector to guide public and private efforts and expenditures for the preservation and conservation of the State's environment and natural resources.

Measure affects and outcomes

- identify **benchmarks and measurements** to evaluate future desired results for Minnesota's natural resources;

Recommend strategies

- make **recommendations on alternative implementing strategies** for conserving, restoring, and enhancing Minnesota's natural resources; and

Describe costs and benefits

- address natural resource and environment **funding issues** and provide some general **costs and benefits of recommended strategies**.

General Requirements

Affidavit of Noncollusion

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

Conflicts of Interest

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

Proposal Contents

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

Disposition of Responses

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 government entity has completed negotiating the contract with the selected vendor. If the Responder submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minn. Stat. § 13.37, the Responder must: clearly mark all trade secret materials in its response at the time the response is submitted, include a statement with its response justifying the trade secret designation for each item, and defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments or damages awarded against the State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the State's award of a contract. In submitting a response to this RFP, the Responder agrees that this indemnification survives as long as the trade secret materials are in possession of the State. The State will not consider the prices submitted by the Responder to be proprietary or trade secret materials.

Contingency Fees Prohibited

Pursuant to Minnesota Statutes Section 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.

Sample Contract

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

Reimbursements

Reimbursement for travel and subsistence expenses actually and necessarily incurred by the contractor as a result of the contract will be in no greater amount than provided in the current "Commissioner's Plan" promulgated by the commissioner of Employee Relations. Reimbursements will not be made for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

Organizational Conflicts of Interest

The responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, a vendor is unable or potentially unable to render impartial assistance or advice to the State, or the vendor’s objectivity in performing the contract work is or might be otherwise impaired, or the vendor has an unfair competitive advantage. The responder agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the Director of the Legislative Coordinating Commission (LCC) which must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. If an 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 the LCC , 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.

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 shall receive the equivalent of a six percent preference in the evaluation of their proposal, and certified Economically Disadvantaged Businesses and individuals submitting proposals as prime contractors shall receive the equivalent of a six percent preference in the evaluation of their proposal. For information regarding certification, contact the Materials Management Helpline at 651.296.2600, or you may reach the Helpline by e-mail at mmd.help.line@state.mn.us. For TTY/TDD communications, contact the Helpline through the Minnesota Relay Services at 1.800.627.3529.

Foreign Outsourcing of Work Prohibited

All services under this contract shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision also applies to work performed by subcontractors at all tiers.

Insurance Requirements

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

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

\$100,000 – Bodily Injury by Accident

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

\$1,000,000 – per occurrence
\$2,000,000 – annual aggregate
\$2,000,000 – annual aggregate – Products/Completed Operations

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage
Personal and Advertising Injury
Blanket Contractual Liability
Products and Completed Operations Liability
Other; please list _____
State of Minnesota named as an Additional Insured

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

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

In addition, the following coverages should be included:

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

CONTRACTOR will be required to:

- Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of this contract;
- Contractor will provide the State of Minnesota with thirty (30) days advance notice of cancellation, nonrenewal, or reduction in limits of coverage or other material change;
- Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
- Include legal defense fees in addition to its liability policy limits; and

- Obtain insurance policies from an insurance company having an “AM BEST” rating of A- (minus); Financial Size Category (FSC) VII or better and must be authorized to do business in the State of Minnesota.
- C. The State will reserve the right to immediately terminate the contract if the contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State’s authorized representative upon written request.

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

**STATE OF MINNESOTA
AFFIDAVIT OF NONCOLLUSION**

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

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

Responder's Firm Name: _____

Authorized Signature: _____

Date: _____

Subscribed and sworn to me this _____ day of _____

Notary Public

My commission expires: _____

**STATE OF MINNESOTA
LOCATION OF SERVICE DISCLOSURE AND CERTIFICATION**

LOCATION OF SERVICE DISCLOSURE

Check all that apply:

- The services to be performed under the anticipated contract as specified in our proposal will be performed ENTIRELY within the State of Minnesota.

- The services to be performed under the anticipated contract as specified in our proposal entail work ENTIRELY within another state within the United States.

- The services to be performed under the anticipated contract as specified in our proposal will be performed in part within Minnesota and in part within another state within the United States.

- The services to be performed under the anticipated contract as specified in our proposal DO involve work outside the United States. Below (or attached) is a description of
 - (1) the identity of the company (identify if subcontractor) performing services outside the United States;
 - (2) the location where services under the contract will be performed; and
 - (3) the percentage of work (in dollars) as compared to the whole that will be conducted in each identified foreign location.

CERTIFICATION

By signing this statement, I certify that the information provided above is accurate and that the location where services have been indicated to be performed will not change during the course of the contract without prior, written approval from the State of Minnesota.

Name of Company: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____

Telephone

Number: _____

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; certain exceptions may result in your proposal being disqualified from further review and evaluation. Only those exceptions indicated in your response to the RFP will be available for discussion or negotiation.

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

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

Recitals

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

Contract

1 Term of Contract

- 1.1 **Effective date:** _____, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
The Contractor must not begin work under this contract until this contract is fully executed and the Contractor has been notified by the State's Authorized Representative to begin the work.
- 1.2 **Expiration date:** _____, or until all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this contract: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; and 14. Data Disclosure.

2 Contractor's Duties

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

3 Time

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

4 Consideration and Payment

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

- (A) **Compensation.** The Contractor will be paid
- (B) **Travel Expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of this contract will not exceed \$ _____ ; provided that the Contractor will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Commissioner's Plan" promulgated by the commissioner of Employee Relations and incorporated herein by reference. The Contractor will not be reimbursed for travel and

subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

- (C) **Total Obligation.** The total obligation of the State for all compensation and reimbursements to the Contractor under this contract will not exceed \$ _____.

4.2. **Payment**

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

5 **Conditions of Payment**

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

6 **Authorized Representatives**

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

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

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

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

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

8 Liability

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

9 State Audits

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

10 Government Data Practices and Intellectual Property

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

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

- 10.2. **Intellectual Property Rights.**

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

States Copyright Act will be deemed to be “works made for hire.” The Contractor assigns all right, title, and interest it may have in the Works and the Documents to the State. The Contractor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State’s ownership interest in the Works and Documents.

(B) *Obligations*

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

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

11 Workers’ Compensation

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

12 Publicity and Endorsement

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

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

13 Governing Law, Jurisdiction, and Venue

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

14 Data Disclosure

Under Minn. Stat. § 270.66, and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

15 Payment to Subcontractors

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

16 Minn. Stat. § 181.59

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

17 Termination

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

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

19 Foreign Outsourcing

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

[Signatures as required by the state.]

10/3/06