



Public Employees Retirement Association

REQUEST FOR PROPOSAL FOR Technology Assessment

Minnesota's Commitment to Diversity and Inclusion

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

To further this commitment, the Department of Administration operates a program for Minnesota-based small businesses owned by minorities, women, veterans, and those with substantial physical disabilities. For additional information on this program, or to determine eligibility, please call 651-296-2600 or go to www.mn.gov/admin/oep.

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I. Introduction

Public Employees Retirement Association of Minnesota (PERA or State) wishes to retain a consulting firm (the Vendor) to assess its technology infrastructure and procedures in order to provide a prioritized menu of options for PERA to modernize its benefit administration and delivery system and processes.

PERA's primary focus is on the technology it uses to carry out its business. PERA does not wish to completely revise its existing business processes. However, PERA recognizes that there is a symbiotic relationship between how it does its work and the tools and technology it uses to get the work done. Therefore, while PERA's primary focus is on assessing its technology, it also seeks to assess its current business processes particularly those that require staff, members, or employers to interact with our IT resources. Additionally, PERA also seeks an assessment of the development practices of its information technology (IT) division in its support of other PERA business functions.

This request for proposals (RFP) is for the technology assessment only. Once the technology assessment is complete, PERA may publish a separate competitive solicitation to select a contractor to complete the work of updating PERA's technology infrastructure and system. In order to minimize potential future organizational conflicts of interest, the selected responder may be asked to follow a mitigation plan. The State reserves the right to make determinations about whether an organizational conflict of interest exists and may choose to avoid or mitigate any identified organizational conflicts of interest.

II. Description of PERA

Established by the Minnesota Legislature in 1931, PERA is a medium size agency that administers a defined benefit retirement fund intended to provide retirement, disability, and survivor benefits to Minnesota's public employees employed in cities, counties and school districts located throughout the State. The plan is administered under Minnesota Statutes, Chapters 353, 353D, 353E, 353G, 356 and 356A.

As of June 30, 2017, PERA had over 2,000 reporting units in PERA's General Plan, 500 units in the Police and Fire plan, 80 counties in the Correctional Plan, 1,000 units in the Defined Contribution Plan, 166,000 active members, 57,700 inactive members, and 114,000 retirees, survivors, beneficiaries, and disabilitants receiving monthly benefits. PERA has assets totaling \$ 30 billion, and processes a monthly benefit payroll of nearly \$170 million. For additional information concerning PERA, please refer to PERA's Comprehensive Annual Financial Report (CAFR) posted on the PERA website: <https://www.mnpera.org/home/about/financial/cafr/>

PERA's information infrastructure consists of an HP Blade system configured with HP Virtual Connect technology. Network servers are almost completely virtualized using VMWare virtualization products. Similarly, the PERA's desktop infrastructure has been virtualized using VMWare (Horizon View) supporting MS Windows. The majority of staff use non-persistent, linked clones with zero clients to access PERA Pension Administration and other applications and data.

PERA is in the midst of upgrading its network infrastructure. It is installing redundant Cisco core switches, eliminating separate blade and storage systems and moving its virtualized servers and VDI to HPE SimpliVity hyper-converged appliances.

The heart of PERA's information systems is its locally developed and maintained pension administration Client/Server application known as CAMI (Collect and Manage Information). CAMI was originally rolled-out in 1999 and is continuously refined, revised, and upgraded by PERA's staff of in-house developers. CAMI has several modules that provide the Agency's core pension functionality including but, not limited to:

- Allowing employers to transfer membership, earnings, and contribution data to PERA;
- Providing lifecycle accounting for each member's account;
- Provide an Interface with PERA document management system;
- Enabling PERA to calculate member benefits;
- Allowing PERA to generate payment files to be transmitted to our bank and the State's accounting system.

Virtually every pension-specific function performed for a member or an employer of a member is processed through CAMI.

CAMI data are maintained locally in a SQL Server database.

Members can access their data (on a limited basis) from the CAMI database through a CAMI-integrated web application known as MYPERA.

Employers also can access their data from the CAMI database through a web application know as ERIS.

As an agency of the State of Minnesota, PERA uses the State's Payroll system and some of the functions of the State's accounting system (PeopleSoft). However, for General Accounting, PERA uses Microsoft Dynamics (Great Plains) software for its general purpose reporting. Financial reporting requires data be uploaded from CAMI and State systems.

III. Services Required

PERA is seeking a firm to provide an IT assessment. The assessment covers the following categories:

- Assess and provide recommendations to improve PERA applications (CAMI, ERIS, MYPERA, Great Plains) in the following areas:
 - Review and summarize the suitability of existing technology supporting PERA's business processes.
 - Measure outputs of processes against appropriate benchmarks and efficiency ratios based upon PERA's peer group of similarly situated pension funds to determine current operational efficiency and effectiveness.
 - Risk (Current state analysis and future state recommendations)

- Reliability (How does PERA minimize application outages/downtime?)
i.e. Server and Applications compatibility
- Dependability/Performance (Is there adequate response time and limited downtime?)
- Options/Functionality (Ideas for improvement and enhancing future offerings i.e. online application, mobile app., etc.)
- IT Infrastructure Risk Assessment (Hardware/Software)
 - Analyze current state
 - Call out vulnerabilities
 - Make recommendations for future state
 - Data Storage (Current State versus Cloud Based - Pros and Cons)
- Program Application Development
 - Assess current state business process and structure (With goal of maximizing output)
 - Assess application development tools used for developing Enterprise and Online applications. (Should we explore other Writing languages that are more compatible and easier to code?)
 - What are industry trends and recommendations? (Within the Public Pension Space)
- Staffing
 - Review and summarize current IT staffing levels and workloads.
 - Forecast potential changes in workloads that could impact processing and staffing needs.
 - Identify whether staffing is appropriate to meet current and future organizational demands and provide recommendations.

IV. Deliverables

The vendor will provide:

A written report including at a minimum:

- A description of the current state of PERA’s technology and practices with a comparison to the Vendor’s understanding of the “best practices”.
- The Vendor’s recommended changes to PERA’s technology and practices including a proposed implementation strategy and timeline.
- Alternatives to the recommended changes.
- Estimated costs (financial and opportunity) and staffing needs for both the Vendor’s recommendation and identified alternatives.

V. Schedule of Events

EVENT	DATE
RFP published	09/04/2018
Responder Questions Due	9/14/2018
PERA Publishes Answers to Questions	9/21/2018
Proposal Submittals Due	9/28/2018

Evaluation Complete	10/10/2018
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The contract services are needed beginning 11/01/2018. The term of the contract is for eight (8) months. In no event may the contract be extended past 06/30/2019.

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

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

VI. Receiving the RFP & Questions Regarding the RFP

PERA will be receiving vendor questions until **Friday, 09/14/2018 at noon CT**. Answers to vendor questions will be sent as an addendum by email on or around **09/21/2018** to all vendors who requested the RFP.

To receive the RFP or to submit questions regarding this RFP contact:

Dean Millam
Public Employees Retirement Association
60 Empire Drive, Suite 200
St. Paul, MN 55103

Email: Dean.Millam@mnpera.org

Other personnel are **NOT authorized** to discuss this request for proposal with Responders before the proposal submission deadline. Contact regarding this RFP with any personnel not listed above could result in disqualification.

PERA will not pay for expenses incurred by consulting actuaries in preparing and submitting proposals, or any travel-related expenses incurred in the interview of finalists prior to the contract award.

VII. Minimum Qualifications

Responder's key professionals and/or organization must not have material conflicts with the PERA Board.

As of December 31, 2017, Responder must have a minimum of five (5) years of experience conducting IT assessments for a variety of entities, ideally including government agencies, non-profits and/or public pension funds, and must be familiar with the general operations of a public pension system. Individuals and entities that have specific experience and knowledge of public pension systems are strongly encouraged to respond.

VIII. Proposal Content

Proposals submitted in response to this RFP must contain the requested information, which is essential to understand and evaluate the proposals. The emphasis of the proposal should be on the Responder's ability to satisfy the requirements of this RFP.

Information submitted in the proposal must be current, complete, and accurate. Misrepresentations of proposal data could result in rejection of the proposal or cancellation of the contract resulting from the proposal and legal remedies may be sought.

Responders must submit the following information:

1. Cover Letter

The cover letter should include a statement about the objectives, goals, and tasks included in the RFP to demonstrate the Responder's view and understanding of the nature of the contract.

Responder must include the following information: name of organization or individual; mailing address; website address; federal employer identification number; and contact information (telephone number and email) for Responder's contact person(s).

2. Background and Experience

- a. Provide a general description and history of Responder's organization, its operations (include any history of mergers and/or acquisitions), year founded, ownership structure, biographies of the principals and percentage ownership by current employees.
- b. Briefly describe Responder's background and history of providing IT assessments of various entities including any public pension systems.
- c. Disclose any plans for a merger with another firm that could impact Responder's ability to deliver the services in this RFP. Responders must also disclose the nature and financial impact of any litigation that involves Responder's firm that could impair its ability to deliver these services to PERA if not settled in its favor.
- d. Provide three references (preferably one from a public pension fund client) from similar engagements that Responder has conducted in the last two years. By providing references, Responder authorizes PERA to contact the reference to inquire about Responder's services.
- e. Provide a list of personnel who will conduct the project, detailing their training and work experience. Resumes or other information about project personnel should not, if possible, contain personal telephone numbers, home addresses, or home email addresses. If it is necessary to include personal contact information, please clearly indicate in the proposal that personal contact information is being provided.

3. Deliverables and Work Plan

- a. A description of the deliverables to be provided by Responder along with a detailed work plan that identifies the major tasks to be accomplished and be used as a scheduling and managing tool, as well as the basis for invoicing.
- b. Provide a descriptive statement detailing evidence of Responder's ability to deliver the goods or services sought under this RFP.

4. **Cost Detail**

Provide sufficient cost detail by project phase to allow PERA to scale the project, if necessary.

5. **Required forms.** Proposals must include completed, signed copies of the following forms included as exhibits with this request as follows:
 - a. Affidavit of Non-collusion (**Exhibit A**)
 - b. Certificate Regarding Lobbying (**Exhibit B**)
 - c. Affirmative Action Certification (**Exhibit C**)
 - d. Veteran-Owned Preference Form (**Exhibit D**)
 - e. Equal Pay Certificate Form (**Exhibit E**)
 - f. Resident Vendor Form (if applicable) (**Exhibit F**)
 - g. Workforce Certification (**Exhibit G**)

See general requirements for additional information regarding these forms.

IX. **Proposal Format**

Submit six (6) paper copies of the proposal that **do not include cost detail**. Proposals are to be sealed in mailing envelopes or packages with the Responder's name and address written on the outside. At least one copy of the proposal must be signed in ink by an authorized employee of the firm. Provide one electronic copy of the proposal with the paper copies.

Separately provide one paper copy of the cost detail in a separately sealed envelope clearly marked on the outside "Cost Detail" along with the firm's name. Proposals will be evaluated on "best value" basis according to the evaluation factors (below). The Cost Detail will not be opened by the PERA selection committee until after the qualifications points are awarded.

For other services needed under the contract, provide the hourly billing rate associated with each task, and the individuals likely to perform the work.

Proposal Package Submission

Send the proposal package to:

Gladys Rodriguez, Executive Assistant
Public Employees Retirement Association
60 Empire Drive, Suite 200
St. Paul, MN 55103

The proposal package must be received not later than **Friday, 09/28/2018 at 3:00 CT** as indicated by a notation made by the Receptionist, 2nd Floor, 60 Empire Drive. Suite 200, St. Paul, Minnesota, 55103.

Late proposals will not be accepted or considered.

Emailed and faxed responses will not be accepted or considered.

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

X. Proposal Evaluation

Responses received by the deadline will be evaluated by representatives of PERA. Proposals will first be reviewed for responsiveness to determine if the minimum requirements have been met. Proposals that fail to meet minimum requirements will not advance to the next phase of the evaluation. A 100-point scale will be used to create the final evaluation recommendation.

PERA reserves the right, based on the scores of the proposals, to create a list of vendors to invite for an interview or to make presentations. PERA reserves the right to seek best and final offers from one or more Responders.

Mandatory Requirements (Scored as Pass/Fail)

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

1. Proposals must be received on or before the due date and time specified in this solicitation.
2. Responder's key professionals and/or organization has no material conflicts with the PERA Board.
3. As of December 31, 2017, Responder has a minimum of five (5) years of experience conducting organizational reviews for a variety of entities and is familiar with the general operations of a public pension system.

Evaluation Factors

The factors and weighting on which proposals will be judged are:

- | | |
|-------------------------------|-----|
| 1. Cover Letter | 20% |
| 2. Deliverables and work plan | 25% |
| 3. Background and experience | 25% |
| 4. Cost detail | 30% |

It is anticipated that the evaluation and selection will be completed by **Wednesday, 10/10/2018**

XI. General Requirements

Proposal Contents

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.

Affidavit of Non-collusion

Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore each Responder must complete the attached Affidavit of Non-collusion and submit it as part of its proposal. (Exhibit B)

Certification Regarding Lobbying

Each Responder must complete the attached Certification Regarding Lobbying and submit it as part of its proposal. (Exhibit C)

Work Force Certification

For all contracts estimated to be in excess of \$100,000, Responders are required to complete the attached Affirmative Action Data page (Exhibit D) and return it with the response. Minnesota Rule part 5000.3600 requires the following contract provision: "It is hereby agreed between the parties that Minnesota Statute § 363A.36 and Minnesota Rule 5000.3400 - 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. A copy of Minnesota Statutes § 363A.36 and Minnesota Rule part 5000.3400 - 5000.3600 are available upon request from the contracting agency."

Veteran-Owned Small Business Preference

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

A small business qualifies for the veteran-owned preference when it meets one of the following requirements. 1) The business has been certified by the Minnesota Department of Administration/Materials Management Division as being a veteran-owned or service-disabled veteran-owned small business. 2) The principal place of business is in Minnesota AND the United States Department of Veterans Affairs verifies the business as being a veteran-owned or service-disabled veteran-owned small business under Public Law 109-461 and 38 Code of Federal Regulations, title 38, part 74 (Supported By Documentation). See Minn. Stat. § 16C.19(d). Statutory requirements and documentation must be met by the solicitation response due date and time to be awarded the preference. (Exhibit E)

Equal Pay Certification

If the Response to this RFP could be in excess of \$500,000, the Responder must obtain an Equal Pay Certificate from the Minnesota Department of Human Rights (MDHR) or claim an exemption prior to contract execution. A Responder is exempt if it has not employed more than 40 full-time employees on any single working day in one state during the previous 12 months. Please contact MDHR with questions at: 651-539-1095 (metro), 1-800-657-3704 (toll free), 711 or 1-800-627-3529 (MN Relay) or at compliance.MDHR@state.mn.us. (Exhibit F)

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.

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 Assistant Director of the Department of Administration's Office of Equity in Procurement ("OSP") 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 OSP, 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 (TG) businesses and individuals submitting proposals as prime contractors will receive a six percent preference in the evaluation of their proposal, and certified Economically Disadvantaged (ED) businesses and individuals submitting proposals as prime contractors will receive a six percent preference in the evaluation of their proposal. Eligible TG businesses and ED businesses must be currently certified by the Office of Equity in Procurement (OEP) prior to the solicitation opening date and time. For information regarding certification, contact OEP at 651-201-2402 or procurement.equity@state.mn.us. For TTY/TDD communications, contact the Helpline through the Minnesota Relay Services at 1.800.627.3529.

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

The following term applies to any contract for which the value, including all extensions, is \$50,000 or more: Contractor certifies it does not engage in and has no present plans

to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

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 this RFP.

Disposition of Responses

Pursuant to Minn. Stat. § 13.591, subd. 3(a), the name of the Responder and the dollar amount specified in the bid are private or nonpublic data when submitted and become public data on the date specified in this RFP that bids are due. 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, subd. 3, after the evaluation process is completed. Pursuant to the statute, completion of the evaluation process occurs when PERA has completed its evaluation and has ranked the responses. If the Responder submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minnesota Statutes § 13.37, the Responder must:

- clearly mark all trade secret materials in its response at the time the response is submitted;
- include a statement with its response justifying the trade secret designation for each item, and;
- defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments or damages awarded against the State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the State's award of a contract. In submitting a response to this RFP, the Responder agrees that this indemnification survives as long as the trade secret materials are in possession of the State.

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

Sample Contract

Responders should be aware of the State's standard contract terms and conditions in preparing their responses. A sample State of Minnesota Professional/Technical Services Contract is attached for reference. Much of the language reflected in the contract is required by statute and will be included in the final contract awarded as a result of this RFP. If a Responder take exception to any of the terms, conditions or

language in the contract, the Responder must indicate those exceptions in its response to the RFP; certain exceptions may result in a Responder's proposal being disqualified from further review and evaluation. Only those exceptions indicated in a Responder's response to the RFP will be available for discussion or negotiation.

Reimbursements

PERA will *not* reimburse the selected Contractor for travel and subsistence expenses incurred as a result of the Contract.

PERA will pay for services performed or work delivered after it is accomplished. PERA will process payment within 30 days of receipt of an invoice, or receipt of services performed, whichever is later. PERA will withhold 10 percent of the amounts invoiced (retainage) for actuarial valuation or experience study services until PERA has received and accepted the final written report for each of these two tasks.

Insurance Requirements

- A. A successful Responder, (Contractor) shall not commence work under the contract until it has obtained all the insurance described below and PERA and the State of Minnesota have approved such insurance. Contractor shall maintain such insurance 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:

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 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.

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, to the extent permitted by law

2. Commercial Automobile Liability Insurance:

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

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

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile

3. Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance

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

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.

C. 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 B.4 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.

D. PERA 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.

E. The successful Responder is required to submit Certificates of Insurance acceptable to the PERA as evidence of insurance coverage requirements prior to commencing work under the contract.

Veteran-Owned Small Business Preference

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

A small business qualifies for the veteran-owned preference when it meets one of the following requirements. 1) The business has been certified by the Office of Equity in

Procurement as being a veteran-owned or service-disabled veteran-owned small business. 2) The principal place of business is in Minnesota AND the United States Department of Veterans Affairs verifies the business as being a veteran-owned or service-disabled veteran-owned small business under Public Law 109-461 and 38 Code of Federal Regulations, title 38, part 74 (Supported By Documentation). See Minn. Stat. § 16C.19(d).

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

Equal Pay Certification

If the Response to this RFP could be in excess of \$500,000, the Responder must obtain an Equal Pay Certificate from the Minnesota Department of Human Rights (MDHR) or claim an exemption prior to contract execution. A Responder is exempt if it has not employed more than 40 full-time employees on any single working day in one state during the previous 12 months. Please contact MDHR with questions at: 651-539-1095 (metro), 1-800-657-3704 (toll free), 711 or 1-800-627-3529 (MN Relay) or at compliance.MDHR@state.mn.us.

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

Successful Responders must certify that as of the date of services performed on behalf of PERA, 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.

EXHIBIT A: 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 Representative (Please Print) _____

Authorized Signature: _____

Date: _____

Subscribed and sworn to me this _____ day of _____

Notary Public Signature: _____

My commission expires: _____

EXHIBIT B: 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

EXHIBIT C: STATE OF MINNESOTA - AFFIRMATIVE ACTION CERTIFICATION

If your response to this solicitation is or could be 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 the due date of the bid or proposal and to obtain Human Rights certification prior to the 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 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). **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 contracts. 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 & Community Relations

Mail:	The Freeman Building 625 Robert Street North, Saint Paul, MN 55155	TC Metro:	(651) 296-5663	Toll Free:	800-657-3704
Web:	www.humanrights.state.mn.us	Fax:	(651) 296-9042	TTY:	(651) 296-1283

Email compliance.mdhr@state.mn.us

:

Affirmative Action Certification Page, Revised 6/11 - MDHR

EXHIBIT D: STATE OF MINNESOTA - VETERAN-OWNED PREFERENCE FORM

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

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

- 1) The business has been certified by the Department of Administration/Materials Management Division as being a veteran-owned or service-disabled veteran-owned small business.

or

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

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

Claim the Preference

By signing below I confirm that:

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

- The business has been certified by the Department of Administration/Materials Management Division as being a veteran-owned or service-disabled veteran-owned small business.

or

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

Name of Company: _____ Date: _____

Authorized Signature: _____ Phone: _____

Printed Name: _____ Title: _____

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

EXHIBIT E: STATE OF MINNESOTA - EQUAL PAY CERTIFICATE

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

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

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

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

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

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

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

Authorized Signature	Printed Name	Title
_____	_____	_____
Organization	MN/FED Tax ID#	Date
_____	_____	_____
Issuing Entity	Project # or Lease Address	
_____	_____	

EXHIBIT F: STATE OF MINNESOTA - RESIDENT VENDOR FORM

In accordance with Laws of Minnesota 2013, Chapter 142, Article 3, Section 16, amending Minn. Stat. § 16C.02, subd. 13, a "Resident Vendor" means a person, firm, or corporation that:

- (1) is authorized to conduct business in the state of Minnesota on the date a solicitation for a contract is first advertised or announced. It includes a foreign corporation duly authorized to engage in business in Minnesota;
- (2) has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid or proposal for which any preference is sought;
- (3) has a business address in the state; and
- (4) has affirmatively claimed that status in the bid or proposal submission.

To receive recognition as a Minnesota Resident Vendor ("Resident Vendor"), your company must meet each element of the statutory definition above by the solicitation opening date and time. If you wish to affirmatively claim Resident Vendor status, you should do so by submitting this form with your bid or proposal.

Resident Vendor status may be considered for purposes of resolving tied low bids or the application of a reciprocal preference.

I HEREBY CERTIFY THAT THE COMPANY LISTED BELOW:

1. Is authorized to conduct business in the State of Minnesota on the date a solicitation for a contract is first advertised or announced. *(This includes a foreign corporation duly authorized to engage in business in Minnesota.)*
___Yes ___No (must check yes or no)
2. Has paid unemployment taxes or income taxes in the State of Minnesota during the 12 calendar months immediately preceding submission of the bid or proposal for which any preference is sought.
___Yes ___No (must check yes or no)
3. Has a business address in the State of Minnesota.
___Yes ___No (must check yes or no)
4. Agrees to submit documentation, if requested, as part of the bid or proposal process, to verify compliance with the above statutory requirements.
___Yes ___No (must check yes or no)

BY SIGNING BELOW, you are certifying your compliance with the requirements set forth herein and claiming Resident Vendor status in your bid or proposal submission.

Name of Company: _____ Date: _____

Authorized Signature: _____ Phone: _____

Printed Name: _____ Title: _____

IF YOU ARE CLAIMING RESIDENT VENDOR STATUS, SIGN AND RETURN THIS FORM WITH YOUR BID OR PROPOSAL SUBMISSION.

EXHIBIT G: STATE OF MINNESOTA - WORKFORCE CERTIFICATE INFORMATION

Required by state law for ALL bids or proposals that could exceed \$100,000. Complete this form and return it with your bid or proposal. The State of Minnesota is under no obligation to delay proceeding with a contract until a company becomes compliant with the Workforce Certification requirements in Minn. Stat. §363A.36.

BOX A – MINNESOTA COMPANIES that have employed more than 40 full-time employees within this state on any single working day during the previous 12 months, check one option below:

- Attached is our current Workforce Certificate issued by the Minnesota Department of Human Rights (MDHR).
- Attached is confirmation that MDHR received our application for a Minnesota Workforce Certificate on _____ (date).

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

- Attached is our current Workforce Certificate issued by MDHR.
- We certify we are in compliance with federal affirmative action requirements. Upon notification of contract award, you must send your federal or municipal certificate to MDHR at compliance.MDHR@state.mn.us. If you are unable to send either certificate, MDHR may contact you to request evidence of federal compliance. The inability to provide sufficient documentation may prohibit contract execution.

BOX C – EXEMPT COMPANIES that have not employed more than 40 full-time employees on a single working day in any state during the previous 12 months, check option below if applicable:

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

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

Name of Company: _____ Date _____

Authorized Signature: _____ Telephone number: _____

Printed Name _____ Title: _____

For assistance with this form, contact:

Minnesota Department of Human Rights, Compliance Services

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

Email: compliance.mdhr@state.mn.us

TC Metro: 651-539-1095

Toll Free: 800-657-3704

TTY: 651-296-1283

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.

Professional and Technical Services Contract

State of Minnesota

SWIFT Contract No.:

This Contract is between the State of Minnesota, acting through its _____ (“State”) and _____ (“Contractor”).

Recitals

1. Under Minn. Stat. § 15.061 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 Minn. Stat. § 16C.05, subd. 2, whichever is later. The Contractor must not begin work under this Contract until this Contract is fully executed and the Contractor has been notified by the State’s Authorized Representative to begin 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. Indemnification; 9. State audits; 10. Government data practices and intellectual property; 14. Publicity and endorsement; 15. Governing law, jurisdiction, and venue; and 16. 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" established by the Commissioner of Minnesota Management and Budget which is incorporated in to this Contract by reference. The Contractor will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State’s prior written

approval for out-of-state travel. Minnesota will be considered the home state for determining whether travel is out of state.

- (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 Minn. Stat. § 16C.08, subd. 2(10), no more than 90 percent of the amount due under this Contract may be paid until the final product of this Contract has been reviewed by the State'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 _____. 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 including business registration requirements of the Office of the Secretary of State. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

6. Authorized Representative

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. 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:

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

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of 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.

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, (or, if the State contracting party is part of the Judicial Branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. ch. 13, by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this clause, the Contractor must immediately notify and consult with the State's Authorized Representative as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

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. The "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. The "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 State's 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 and other insurance

Contractor certifies that it is in compliance with all insurance requirements specified in the solicitation document relevant to this Contract. Contractor shall not commence work under the Contract until they have obtained all the insurance specified in the solicitation document. Contractor shall maintain such insurance in force and effect throughout the term of the Contract.

Further, 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. Debarment by State, its departments, commissions, agencies, or political subdivisions

Contractor certifies that neither it nor its principals is presently debarred or suspended by the 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.

13. 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.

14. Publicity and endorsement

14.1 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.

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

15. 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.

16. 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, 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.

17. 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).

18. Termination

18.1 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.

18.2 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. Non-discrimination (In accordance with Minn. Stat. § 181.59)

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

“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.”*

[Delete this section if your total Contract value is under \$100,000]

20. Affirmative action requirements for contracts in excess of \$100,000 and if the Contractor has more than 40 full-time employees in Minnesota or its principal place of business

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

20.1 Covered contracts and contractors. If the Contract exceeds \$100,000 and the Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 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.

20.2 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.

20.3 Minn. R. 5000.3400-5000.3600.

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

SWIFT Contract No.:

- (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. 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.

21. E-Verify certification (In accordance with Minn. Stat. § 16C.075)

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

22. Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053)

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

[Signatures as required by the State.]