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Request for Proposal

Criminal Background Checks

May, 2013

1. **Overview**

The Minnesota Judicial Branch (MJB) employs roughly 3, 000 people in its courts within Minnesota with a small percentage of employees telecommuting around the state of MN and neighboring States to include WI. The MJB wishes to ensure both the safety of our employees and customers the integrity of our employees by conducting criminal background checks on all applicants who have received an offer of employment with Minnesota Judicial Branch.

**(a) The Minnesota Judicial Branch**

The MJB consists of Ten Judicial Districts, with 87 counties within the State of MN. The MJB serves the public by providing access to justice and court services in the most efficient and timely manner.

 **(b) Current Need for Services**

In order to provide the best possible environment for our employees and court customers, the MJB will conduct criminal background checks on all applicants who have received an offer of employment with Minnesota Judicial Branch.

**(c) Authority for Criminal Background checks**

Pursuant to State Court Administration Procedure 300 (b) Recruitment and Selection which authorizes Criminal Background Checks (policy language below)

The Criminal background checks shall be conducted **after** the applicant has received

an offer of employment by the Minnesota Judicial Branch, including part-time, intermittent and temporary positions. Non-employees will undergo the Criminal Background Check Process after having received approval to begin their assignment within an MJB office or courthouse. Employees who have not previously undergone a criminal background check will be subject to a criminal background check upon promotion, reclassification, or transfer from a represented position to an unrepresented position.

Intermittent employees and temporary employees may be permitted to forego the Criminal Background Check Process upon rehire if they have been through the Criminal Background Check Process within the past three years. Employees who are permitted to forego the Criminal Background Check Process must agree to abide by the “Duty to Report” in Article VI of the Court Employee Code of Ethics and attest that they have not been convicted of a crime during their hiatus from the Minnesota Judicial Branch.

1. **Scope of Services**

It is the objective of MJB to contract with a provider for the following services:

* + - Pre-employment for candidates and current employee screening per the policy noted in the above overview (c )., record searches and reports to include:
		- Identity Development (Social Security)
		- Investigative
			* County Criminal Search
			* State-wide Criminal Searches
			* Federal Criminal Record Searches
			* National Criminal Database Searches
		- Guaranteed response time of five working days unless the employers request is outside the vendors span of control for requested services.
1. **Necessary Proposal Content**

The Responders must submit the following information:

* An explanation of how they conduct a search process including what kind of databases are used, what sources are used for information and any other background information that will show the breadth and depth of their search methods.
* How will the MJB receive the requested information/reports?
* Describe any options for on-line (web-based) reports and information, including samples of web tools and/or existing URL’s where the evaluation committee can test available resources.
* What type of security does/will your company have in place to assure that only authorized MJB users are accessing your services and receiving data on behalf of the MJB?
* Does your company offer a guaranteed accuracy level for information provided to us?
* How is requested information stored and secured by your company?
* What is your in-house retention period for any reports you provide to the MJB?
* How does your company verify credentials, such as education, past employment, publications, certifications, etc.?
* Describe any training provided to MJB staff upon contract implementation and/or on an ad hoc basis.
* Describe your process for handling an applicant who disputes the information you provide.
* How will the MJB be billed for requested services?
1. **Services Examples**

Provide at least one sample of each of the documents below:

* + A description of your company’s full range of services, associated fees, and turnaround time for each service.
	+ Background Report
	+ Customizable report
	+ Services and Fees
	+ Invoice

 **(b) Proposal Requirements**

Proposals must include the following information:

1. A statement of qualifications concisely describing Respondent’s capabilities and experience, who will be involved in the project and their roles and responsibilities; a completed and successful criminal background check report on all parties involved in the proposed project.
2. An example of pre-employment and/or employment related background report.
3. A cost proposal.
4. A timeline and separate costs for various components of the background check process. (if there are cost tier levels based on agency use, provide the additional cost schedule)
5. A summary work plan describing the Respondent’s approach to designing, managing and coordinating the project. The description should include all primary tasks listed in the scope of work for all aspects of the project and a tentative schedule.
6. A signed statement by an authorized agent of your company guaranteeing the validity of your work, that the prices quoted are valid and binding on the submitting party for 30 days from the date of submission and that your company is not in any way prohibited from doing business with an agency of the State of Minnesota.

**IV. Proposal Terms and Conditions**

1. **Right to Change RFP and Process**

The MJB reserves the right to reject any and all proposals, in whole or in part, to advertise for new proposals, to abandon the need for services, and to cancel or amend this RFP at any time prior the execution of the written contact. The MJB reserves the right to waive any formalities in the RFP process.

1. **Additional Terms**

By submitting a proposal, the Respondent agrees that:

1. The MJB may copy the proposal for purposes of facilitating the evaluation of the proposal and represents that the copying will not violate the rights of any third party.
2. It will not bring any claim or have any cause of action against the MJB based on any misunderstanding concerning the information provided or concerning the MJB’s failure, neglect or otherwise, to provide the Respondent with pertinent information as intended by this RFP.
3. The proposal is predicated upon the acceptance of all terms and conditions stated in the attached DRAFT contract. If the Respondent objects to any terms or conditions, it shall make specific reference to the RFP page and section at issue. The MJB reserves the right to accept or reject any exception taken by Respondent to the terms and conditions of this RFP.
4. The MJB will not be responsible for any costs incurred by the Respondent in preparing a response to this RFP.
5. All responses, inquiries, or correspondence relating to or in reference to this RFP, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by the Respondent will become the property of the MJB.

This is a firm fixed price RFP. Please state all costs clearly and completely; the MJB will not accept hidden costs or costs not disclosed in response to the RFP.

 The term of this contract is anticipated to run from July 1, 2013 to June 30, 2015, with the option to extend an additional 2 years in increments as determined by the MJB.

**V. Timeline for submitting response**

**(a) Deadline for Submission**

Interested parties must submit their proposal no later than 5:00p.m. June 14, 2013. The proposal must be submitted in writing, with one signed original, three copies to:

 Minnesota Judicial Center

25 Rev. Martin Luther King Jr. Blvd.

St. Paul, MN 55155

 Attn: Lisa Schoeder

Proposals delivered in person to the Minnesota Judicial Center should be presented to the First Floor receptionist.

Late proposals will not be considered.

**(b) Evaluation and Award Process**

The MJB will review and evaluate all proposals using its sole judgment and discretion, and make take into account the content of the responses and any other factors in its judgment.

Potential respondents should submit all questions or inquires relating to this Request for Proposal in writing to the designated representative(s):

Lisa Schoeder, by email at lisa.schoeder@courts.state.mn.us or Minnesota Judicial Center 25 Rev. Martin Luther King Jr. Blvd. St. Paul, MN 55155.

All questions must be submitted by May 29, 2013 and will be posted by June 10, 2013 along with responses on the MJB public website [www.mncourts.gov](http://www.mncourts.gov).

**APPENDIX I**

**Affirmative Action Statement and**

**Certification of Compliance**

**(Must be submitted with Response)**

STATE OF MINNESOTA - AFFIRMATIVE ACTION STATEMENT

If your response to the RFP is estimated to exceed $100,000, you must complete the information requested:

**BOX A:**

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

 YES [ ]  NO [ ]

If your answer is **“NO**,” proceed to BOX B. If your answer is **“YES,” your response will be rejected unless your firm or business has a Certificate of Compliance issued by the State of Minnesota, Commissioner of Human Rights, or has submitted an affirmative action plan** to the Commissioner of Human Rights for approval **by the time the responses are due** for any proposal estimated to exceed $100,000.

2. Please check one of the following statements:

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

**[ ]  N**O, we **do not have** a Certificate of Compliance; however, **we submitted an affirmative Action plan** to the Commissioner of Human Rights for approval on . The plan must be approved by the Commissioner of Human Rights before any designation or agreement can be executed.

**[ ]  N**O, we **have not submitted** a plan. If your plan is not submitted by the time the responses are due, your response will be rejected.

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

**BOX B:**

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

YES [ ]  NO [ ]

If your answer is **“NO**,” proceed to BOX C. If your answer is **“YES**,” **the state cannot execute a designation with your firm or business unless it is in compliance with the Minnesota Human Rights certification requirements. It is the sole responsibility of the firm or business to apply for and obtain a human rights certification prior to execution of a designation as applicable.** You may achieve compliance with the Human Rights Act by having either a current Certificate of Compliance issued by the State of Minnesota, Commissioner of Human Rights, or by certifying that you are in compliance with federal Affirmative Action requirements.

2. Please check one of the following statements:

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

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

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

**BOX C:**

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

**[ ]  N**O, we have not employed more than 40 full-time employees within Minnesota on a single working day during the previous 12 months and we have not employed more than 40 full-time employees on a single working day during the previous 12 months in the state in which our primary place of business is located.

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

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

**By signing this statement, the Proposer certifies that the information provided is accurate.**

**NAME OF FIRM:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**AUTHORIZED SIGNATURE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**TITLE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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STATE OF MINNESOTA - AFFIRMATIVE ACTION CERTIFICATION OF COMPLIANCE

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

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

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

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

The STATE is under no obligation to delay the execution of a designation until a business has completed the Human Rights certification process. It is the sole responsibility of the business to apply for and obtain a Human Rights certificate prior to execution of a designation, as applicable.

**APPENDIX II**

STATE OF MINNESOTA

AFFIDAVIT OF NON-COLLUSION

**(Must be submitted with Response)**

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

1. That I am the Proposer (if the Proposer is an individual), a partner in the company (if the Proposer is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Proposer is a corporation);
2. That the attached proposal submitted in response to the\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Request for Proposals has been arrived at by the Proposer independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Proposer 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 Proposer or its employees or agents to any person not an employee or agent (including a partner) of the Proposer 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.

Proposer’s Firm Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SAMPLE CONTRACT FOR SERVICES (non technology related)**

THIS CONTRACT, and amendments and supplements thereto, is between State of Minnesota, acting through its State Court Administrator, address 25 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, MN. 55155 (hereinafter "STATE") and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ an independent contractor, not an employee of the State of Minnesota, address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hereinafter "CONTRACTOR"),

##### WHEREAS, the STATE, pursuant to 300 (b) MN Judicial Branch Recruitment and Selection Procedure regarding Criminal Background Checks and WHEREAS, CONTRACTOR represents that it is duly qualified and willing to perform the services set forth herein. NOW, THEREFORE, it is agreed:

I. DUTIES.

A. CONTRACTOR, who is not a STATE employee, shall provide criminal background check services set forth in this section. In addition, it is understood that CONTRACTOR'S assigned personnel may be handling confidential records but will not be responsible for communicating the contents of such records to any third party and shall as further provided in section XII of this contract direct all inquiries for access to such confidential records to third parties to the STATE.

B. The STATE shall have the right to reject before or after starting the project, for any reason or for no reason, any personnel assigned by CONTRACTOR to perform service hereunder. Upon such rejection, CONTRACTOR shall promptly assign another of its personnel.

C. Prior to assigning any individual to perform services hereunder, CONTRACTOR shall take reasonable steps to determine whether the individual (or his or her immediate family members has an interest in any pending or threatened litigation or proceedings in any Minnesota state court. Such steps shall include, without limitation, requiring all individuals assigned to perform services here under to complete Part II of the Confidentiality and Disclosure of Interest Agreement set forth in Exhibit A which is attached to and made a part of this contract. CONTRACTOR acknowledges that, without limiting section I.B. above, the STATE may immediately disqualify any such individual from performing services hereunder, and CONTRACTOR shall ensure that no such disqualified individual shall have any further access to the confidential information of the STATE. If
CONTRACTOR becomes aware of any individual's interest (or that of his or her immediate family members) in any threatened or pending litigation or proceeding in any Minnesota state court, CONTRACTOR shall immediately notify the STATE of such interest.

11. CONSIDERATION AND TERMS OF PAYMENT.

A. Consideration for all services performed and goods or materials supplied by CONTRACTOR pursuant to this contract shall be paid by the STATE within 30 days of receipt.

B. Terms of Payment. Payments shall be made by the STATE promptly after CONTRACTOR'S presentation of invoices for services performed and acceptance of such services by the STATE'S authorized agent pursuant to Section VII. An invoice shall be submitted for tollable costs incurred by the CONTRACTOR during the immediately preceding week ,

1. TIME REQUIREMENTS. CONTRACTOR shall comply with all of the time requirements described in this contract.
2. CONDITIONS OF PAYMENT. All services provided by CONTRACTOR pursuant to this contract shall be performed to the satisfaction of the STATE, as determined at the sole discretion of its authorized representative, and in accord with the CONTRACTOR'S duties set forth in section I of this contract and all applicable federal, state, and local laws, ordinances, rules and regulations. CONTRACTOR shall not receive payment for work found by the STATE to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation.
3. TERMS OF CONTRACT. This contract shall be effective on DATE and shall remain in effect until DATE or until all obligations set forth in this contract have been satisfactorily fulfilled, whichever occurs first.
4. CANCELLATION.

A. This contract may be cancelled by the STATE at any time, with or without cause. In the event of such a cancellation, CONTRACTOR shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed.

B. The STATE may immediately cancel 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. Cancellation must be by written or facsimile
transmission notice to CONTRACTOR. The STATE is not obligated to pay for any services that are provided after notice and effective date of termination. However, CONTRACTOR will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The STATE will not be assessed any penalty if the contract is cancelled because of a decision of the Minnesota Legislature,
or other funding source, not to appropriate funds. The STATE must provide CONTRACTOR notice of the lack of funding within a reasonable time of the STATE'S receiving that notice.

1. STATE'S AUTHORIZED REPRESENTATIVE. The STATE'S Authorized Representative for the purposes of administration of this contract is Lisa Schoeder, HRD Specialist. Such representative shall have final authority for acceptance of CONTRACTOR'S services and if such services are accepted as satisfactory, shall so certify on each invoice submitted pursuant to Section II (B).
2. ASSIGNMENT. CONTRACTOR shall neither assign nor transfer any rights or obligations under this contract without the prior written consent of the STATE.
3. AMENDMENTS. Any amendments to this contract shall be in writing and shall be executed by the same parties who executed the original contract, or their successors in office.
4. LIABILITY.  CONTRACTOR shall indemnify, save, and hold the STATE, its representatives and employees harmless from any and all claims or causes of action, including all attorneys’ fees incurred by the STATE, arising from the performance of this contract by CONTRACTOR or CONTRACTOR’S agents or employees.  This clause shall not be construed to bar any legal remedies CONTRACTOR may have for the STATE'S failure to fulfill its obligations pursuant to this contract.
5. STATE AUDITS. The books, records, documents, and accounting procedures and practices of the CONTRACTOR relevant to this contract shall be subject to examination by the contracting department and the Legislative Auditor for a minimum period of six (6) years from the termination of this contract. Records shall be sufficient to reflect all costs incurred in performance of this Contract.
6. CONFIDENTIALITY, DISCLOSURE AND USE. CONTRACTOR shall not disclose to any third party any information that is both: (A) made available by the STATE or its agents to CONTRACTOR in order to permit CONTRACTOR to perform hereunder or is created, gathered, generated or acquired in accordance with this contract; and (B) inaccessible to the public pursuant to 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. If the CONTRACTOR receives a request to release the information referred to in this Clause, the CONTRACTOR must immediately notify the STATE. The STATE will give the CONTRACTOR instructions concerning the release of the information to the requesting party before the information is released.
7. RIGHTS IN AND TO INFORMATION, INVENTIONS, AND MATERIALS.

A. The STATE shall own all rights, title and interest in all of the materials conceived or created by the CONTRACTOR, or its employees or subcontractors either individually or jointly with others and which arise out of the performance of this contract, including any report, study, computer software, database, model, invention, photograph, negative, audio or video recording, or other item or documents (hereafter "MATERIALS"). CONTRACTOR hereby assigns to the STATE all rights, title and interest to the MATERIALS. CONTRACTOR shall, upon request of the STATE, execute all papers and perform all other acts necessary to assist the STATE to obtain and register copyrights, patents or other forms of protection provided by law for the MATERIALS. The MATERIALS created by CONTRACTOR, its employees or subcontractors, individually or jointly with others shall be considered "works made for hire" as defined by the United States Copyright Act. CONTRACTOR shall remit all of the MATERIALS to the STATE upon completion, termination or cancellation of this contract. CONTRACTOR, its employees and subcontractors shall not copy, reproduce, allow or cause to have the MATERIALS copied or reproduced or used for any purpose other than the performance of the CONTRACTOR'S obligations under this contract without the written permission of the STATE'S authorized representative. Nothing in this Article shall be construed to limit the CONTRACTOR'S obligation to comply with Article XI of this contract.

B. CONTRACTOR represents and warrants that MATERIALS produced or used under this contract do not and will not infringe upon any intellectual property rights of another, including but not limited to patents, copyrights, trade secrets, trade names, and service marks and names. Without limiting section X, CONTRACTOR shall indemnify and defend the STATE at 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 MATERIALS infringe upon the intellectual property rights of another. CONTRACTOR shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including, but not limited to, reasonable attorney fees arising out of this contract, amendments and supplements thereto, which are attributable to such claims or actions.

If such a claim or action arises, or in CONTRACTOR'S or the STATE'S opinion is likely to arise, CONTRACTOR shall, at the STATE'S discretion, either procure for the STATE the right or license to continue using the MATERIALS at issue or replace or modify the allegedly infringing MATERIALS. This remedy shall be in addition to and shall not be exclusive to other remedies provided by law.

XIV AFFIRMATIVE ACTION.

A. Covered Contracts and Contractors. If this contract exceeds $100,000 and CONTRACTOR employed more than forty (40) full-time employees on a single working day during the previous twelve months in Minnesota or in the state where it has its principle place of business, then CONTRACTOR must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than forty (40) full-time employees in another state that does not have a certificate of compliance must certify that it is in compliance with federal affirmative action requirements.

B. 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.

C. Minn. R. Parts 5000.3400-5000.3600 provide:

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

a. 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.

b. 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.

**c** 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.

d. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled
employees and applicants for employment, and the rights of applicants and employees.

e. 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.

D. Consequences. The consequences for a 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.

E. Certification. CONTRACTOR hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts
5000.3400-5000.3600 and is aware of the consequences for non-compliance.

1. WORKERS' COMPENSATION. In accordance with the provisions of Minnesota Statutes, Section 176.182, as enacted, the CONTRACTOR shall provide acceptable evidence of compliance with the workers' compensation insurance coverage requirement of Minnesota Statutes, Section 176.181, subdivision 2, as enacted, prior to commencement of any duties to be performed under this contract.
2. ANTITRUST. CONTRACTOR hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.
3. OTHER PROVISIONS.

A. Warranties.

1. Original Works. In performing its obligations hereunder, CONTRACTOR will not use or incorporate any trade secret information or copyrighted works of authorship of CONTRACTOR or of any third party, and except for components already in the public domain, all software, documentation, information and other materials provided or furnished by CONTRACTOR in performing the duties under this contract will be original and will not violate or infringe upon the rights of any third party.
2. Professional Services. CONTRACTOR represents and warrants to the STATE that it has the proper training, skill and background so as to be able to perform all services required of CONTRACTOR pursuant to this contract in a competent and professional manner, and all such work shall be of professional quality.
3. Mutual Representations **and** Warranties. CONTRACTOR and the STATE each represent and warrant to the other that: a) it has the fall right, power and authority to enter into this contract and to perform fully all of its obligations hereunder; b) it is free of any obligation or restriction that would prevent it from entering into this contract or from performing **fully** any of its obligations hereunder; and c) it has not entered into and will not enter into any contract which would impede the full performance of its obligations hereunder or would in any way limit or restrict the rights of the other under this contract.

B. **Injunctive Relief.** Without limiting section X, CONTRACTOR acknowledges that the STATE will be irreparably harmed if CONTRACTOR'S obligations under sections XII and XIII of this contract are not specifically enforced and that the STATE would not have an adequate remedy at law in the event of an actual or threatened violation by CONTRACTOR of its obligations. Therefore, CONTRACTOR agrees that the STATE shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violation or breach by CONTRACTOR without the necessity of the STATE showing actual damages or that monetary damages would not afford an adequate remedy. CONTRACTOR shall be liable to the STATE for reasonable attorney's fees incurred by the STATE in obtaining any relief pursuant to this section.

C. **Relationship of the Parties.** CONTRACTOR is an independent contractor and shall not be deemed for any purpose to be an employee of the STATE. CONTRACTOR understands and agrees that the STATE is not withholding any taxes from the fees paid to CONTRACTOR pursuant to this contract and that CONTRACTOR is solely responsible for any taxes and other amounts to be paid as **a** result of the fees paid to CONTRACTOR
pursuant to this contract. Neither CONTRACTOR nor the STATE shall have the right nor the authority to assume, create or incur any liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other.

D. **Consent to Release of Certain Data.** Under Minn. Stat. § 270C.65 and other applicable law, CONTRACTOR consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the STATE, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring CONTRACTOR to file state tax returns and pay delinquent state tax liabilities, if any.

E. **Publicity.** Any publicity regarding the subject matter of this contract must identify the STATE as the sponsoring agency and must not be released without the 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 CONTRACTOR individually or
jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this contract. Notwithstanding anything in this contract to the contrary, either party may disclose to the public the existence of this contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.

F. Endorsement. CONTRACTOR must not claim that the STATE endorses its products or services.

G. Notices. Any written notice hereunder shall be deemed to have been received when: (A) personally delivered; (B) sent by confirmed facsimile transmission or telegram; (C) sent by commercial overnight courier with written verification of receipt; or (D) seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at: (1) the address first set forth herein, if to CONTRACTOR; (2) at the address first set forth herein, if to the STATE, with a copy to Legal Counsel Division, 140 Minnesota Judicial Center, 25 Rev. Martin Luther King, Jr. Blvd, St. Paul, MN 55155; or (3) at such other address of which written notice has been given in accordance herewith.

H. **Non-Exclusivity.** This contract shall not preclude CONTRACTOR from developing materials outside this contract that are competitive, irrespective of their similarity to materials delivered to the STATE under this contract; provided, however, that such materials prepared by CONTRACTOR shall not violate the nondisclosure and intellectual property provisions of this contract. Nothing in this contract shall be construed as precluding or limiting in any way the right of CONTRACTOR to provide services of any kind to any person or entity as CONTRACTOR in its sole discretion deems appropriate.

1. **Miscellaneous.**

1. The provisions of sections VII, X, XI, XII, XIII, XVI, and XVII shall survive any cancellation or termination of this contract as shall any other provisions which by their nature would be intended or expected to survive such cancellation or termination.
2. The failure by either Party at any time to enforce any of the provisions of this contract or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, right, remedy or option or in any way affect the validity of this contract. The waiver of any default by either Party shall not be deemed **a** continuing waiver, but
shall apply solely to the instance to which such waiver is directed.
3. This contract shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States of America and of the State of Minnesota, without regard to Minnesota's choice of law provisions. Any action arising out of or relating to this contract, its performance, enforcement or breach will be venued in **a** state or federal court situated within the State of Minnesota. CONTRACTOR hereby irrevocably consents and submits itself to the personal jurisdiction of said courts for that purpose. Every provision of this contract shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this contract so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this contract, and all other provisions shall remain in full force and effect.
4. This contract sets forth the entire agreement and understanding between the Parties regarding the subject matter hereof and supersedes any prior representations, statements, proposals, negotiations, discussions, understandings, or agreements regarding the same subject matter; provided that all terms and conditions of all preexisting contracts or agreements between the parties shall continue in full force and effect except as supplemented or modified by this contract. In the event of any inconsistency or conflict between the terms of this contract and any other agreement between the parties, the terms of this contract shall govern.

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

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| --- | --- |
| 1. CONTRACTOR | 2. STATE |

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| CONTRACTOR certifies that the appropriate persons have executed the contract on behalf of CONTRACTOR as required by applicable articles, by-laws, resolutions or ordinances. (If a corporation with more than one individual serving as corporate officer, two corporate officers must execute) |  | Person signing certifies that applicable procurement policies have been followed. Where contract and amendments exceed $50,000, signature of State Court Administrator or her/his Deputy is also required. |
|  |  |  |
| By: |  | By: |
| Title: |  | Title: |
| Date: |  | Date: |
|  |  |  |
| By: |  | By: |
| Title: |  | Title: |
| Date: |  | Date: |
|  | 3. Funds have been encumbered as required by State Court Finance Policy by: |
| (reserved) |  | By: |
|  |  | Title: |
|  |  | Date: |
|  |  |  |
|  |  |  |
|  | 4. Approved as to form and execution for STATE by:: |
| (reserved) |  | By: |
|  |  | Title: |
|  |  | Date: |