

# **Request for Proposal**

**Minnesota Board of Law Examiners**

**September 2008**

**REQUEST FOR PROPOSAL  
For  
Requirements and Design for Board  
System Replacement**

**I. REQUEST FOR PROPOSAL.**

- A. **DEFINED.** The Minnesota State Board of Law Examiners (BLE) is using a competitive selection process to select a vendor for the detailed design, development, and implementation of software that will replace the current BLE software systems (referenced in Section II, below) with a single, cost-effective application (referred to herein as "AIS v1.0") that will require minimal maintenance. This is not a bid but a request for a proposal that could become the basis for negotiations leading to a contract with a designated vendor to provide system analysis, design, and implementation services as described in this document.
- B. **RIGHT TO CANCEL.** BLE IS NOT OBLIGATED TO RESPOND TO ANY PROPOSAL SUBMITTED NOR IS IT LEGALLY BOUND IN ANY MANNER WHATSOEVER BY THE SUBMISSION OF A PROPOSAL. BLE RESERVES THE RIGHT TO CANCEL OR WITHDRAW THE REQUEST FOR PROPOSAL AT ANY TIME IF IT IS CONSIDERED TO BE IN ITS BEST INTEREST. IN THE EVENT THE REQUEST FOR PROPOSAL IS CANCELLED OR WITHDRAWN FOR ANY REASON, BLE SHALL NOT HAVE ANY LIABILITY TO ANY PROPOSER FOR ANY COSTS OR EXPENSES INCURRED IN CONNECTION WITH THIS REQUEST FOR PROPOSAL OR OTHERWISE. BLE ALSO RESERVES THE RIGHT TO REJECT ANY OR ALL PROPOSALS, OR PARTS OF PROPOSALS, TO WAIVE ANY INFORMALITIES THEREIN, AND TO EXTEND PROPOSAL DUE DATES.

**II. PROJECT BACKGROUND.**

BLE is responsible for administering and grading the Minnesota bar examination, conducting background investigations on applicants to the bar, making recommendations either for or against admission, and conducting administrative hearings for applicants who appeal BLE decisions.

Applicants are admitted to the bar of Minnesota only after BLE verifies the following:

- graduation from an ABA accredited law school;
- approval of good character and fitness after the BLE conducts a background investigation involving contacts with third parties.

- achievement of a successful score on the Minnesota bar exam; or achievement of a sufficient exam score in another state under specified circumstances; or proof of having practiced law in another state for a minimum number of years.

BLE is currently utilizing software systems that incorporate multiple databases with limited communication among the systems. The following systems are in use:

- 1) The “BI system” is a DOS-based custom design system written in Business Basic. It calculates the bar exam scores; converts raw essay exam scores to scaled scores; scales the essay scores to the range of Multistate Bar Exam (MBE) scores using an algorithm; and combines test sub-part scores for a final pass/fail determination. In each semi-annual exam cycle (February & July) a new exam file for the scoring process is created in the BI system.
- 2) A Microsoft Access 97 database (*mirror database*) is used to capture *exam applicant* demographic information; link applicant and exam score information; and generate reports from the information stored in the BI system. In each exam cycle the existing data is archived and a new Access database is created.
- 3) A Microsoft Access 97 database (*non-exam applicant database*) tracks data on those applicants who seek admission to the bar by means other than by taking the bar examination. This database stores Outlook reminders, demographic information and generates mail merge reports.
- 4) Excel spreadsheet of historical records.

When applicants are found to have fulfilled all requirements for admission and are ready to be admitted by the Minnesota Supreme Court, BLE sends their names and addresses in hard copy to the Court’s Lawyer Registration office, which collects a lawyer registration fee from each applicant. Lawyer Registration re-keys applicant information into the Minnesota Attorney Registration System (MARS)<sup>1</sup> to create a permanent record of each lawyer admitted to practice law in Minnesota. The MARS record is then used by several court entities to track the lawyer’s status, fulfillment of professional obligations, and annual payment of fees during the lawyer’s period of licensure.

BLE is an entity created by the Supreme Court whose information systems and network are separate from the Court’s systems, network, and IT department. BLE maintains its own LAN, firewall, servers, software and desktop computers and other hardware. BLE systems are on a Microsoft platform (Windows Server 2000 or 2003; Windows XP, Microsoft Exchange; Microsoft SQL Version 8). Some of these systems are shared with two other offices of the Court (CLE and BLC) which are co-located with BLE. The BLE/CLE/BLC office employs 16 people.

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<sup>1</sup> MARS is a custom application (SQL database) that was redesigned and implemented in 2006.

### III. SCOPE OF EFFORT.

BLE seeks proposals from vendors to implement an application that will replace its current applications, referenced in Section II above, with a single cost-effective application that will require minimal maintenance.

- A. GENERAL. BLE is seeking proposals from vendors to complete detailed design, programming, testing, documentation and implementation for AISv1.0 and conversion of some of the information contained in existing databases. Implementation will include training for users and training for system operation. Deliverables must include:
  - 1. A complete set of design artifacts, application code, installation and operational instructions for AIS v1.0;
  - 2. Training materials for users and system operation personnel;
  - 3. AISv1.0 database that is populated with data converted from previous databases.
- B. Vendor must propose a phased development schedule including separate costs associated with each phase as outlined in the Software Requirements Specifications document attached as Appendix IV.
- C. Develop and implement a fully functioning application that meets the business and technical requirements described in Appendix IV, and constructed so that it is capable of being enhanced to meet future business requirements.
- D. Develop the ability for AIS v1.0 to publish messages to a queue for events identified in Appendix IV, and to accept and process messages for incoming and outgoing transactions from external systems as described in Appendix IV.
- E. Convert those existing databases that contain in-progress applicant data for use by AIS v1.0.
- F. Train users and systems operations personnel to use AIS v1.0.
- G. In Phase I, AIS v. 1.0 should be capable of uploading data from and downloading data to a) the National Conference of Bar Examiners (NCBE) and b) the American College of Testing (ACT). In Phase II, it should be capable of uploading data from and downloading data to a) Minnesota Attorney Registration System (MARS) via Integration Broker through Minnesota State Court's Information Technology Division (ITD);and b)the Law School Admissions Council (LSAC).;
- H. ATTACHED DESIGN MATERIALS. Design materials are attached as Appendix IV and include:

- Software Requirements Specifications (SRS) including a general description of AIS v1;
- Functional Requirements and Operational Scenarios;
- Component Diagram and Use Cases designated as Phase I and Phase II;
- Preliminary Screen examples;
- Sample Reports (Vendor should assume and quote 150 reports). Existing screen shots are available upon request.
- Glossary of Terms
- Application for Admission to the Bar

#### IV. **SUBMISSION REQUIREMENTS.**

##### A. General Requirements.

1. Certificate of Insurance. Each proposal shall contain acceptable evidence of compliance with the workers' compensation coverage requirements of § 176.181, subd. 2. Vendor's RFP response must include one of the following: (1) a certificate of insurance, or (2) a written order from the Commissioner of Insurance exempting you from insuring your liability for compensation and permitting you to self-insure the liability, or (3) an affidavit certifying that you do not have employees and therefore are exempt pursuant to Minn. Stat. §§ 176.011, subd. 10; 176.031; and 176.041.
2. Affirmative Action Certification. If the vendor's proposal exceeds \$100,000.00, the RFP response must include a completed Affirmative Action Statement and Certificate of compliance, which are attached as Appendix I.
3. Non-collusion Affirmation. Vendor must complete the Affidavit of Non-collusion (Appendix II) and include it with its RFP response.
4. Contract Terms. The Vendor's RFP response must include the Vendor's standard contract/master services agreement including licensing, nondisclosure, and billing/invoicing procedures. The State's contract terms are listed in Appendix III. No work can be started until a contract, in a form acceptable to the State, has been signed by all necessary parties in accordance with state court procurement and contract policies.
5. Financial Stability: Vendor's RFP response must provide evidence of Vendor's financial stability as an indicator of Vendor's ability to provide services irrespective of uneven cash flow.

6. Trade Secrets: Judicial Branch rules of public access permit vendors to submit trade secret information according to the following:
  - a) the evidence-of-vendor's-financial-stability must qualify as a trade secret under Minn. Stat. section 325C.01 or as defined in the common law;
  - b) the vendor submits the trade secret information on a separate document (but as part of their complete submission) and marks the document(s) containing only the trade secret information as "confidential;"
  - c) the trade secret information is not publicly available, already in the possession of the judicial branch, or known to or ascertainable by the judicial branch from third parties.

If a vendor's proposal leads to a contract, the following information will be accessible to the public: the existence of any resulting contract, the parties to the contract, and the material terms of the contract, including price, projected term and scope of work.

- B. The vendor's RFP response must include the vendor's proposal for the detailed design, construction, and implementation of the application, including but not limited to:

1. Complete the detailed design for AIS v1.0, and produce design artifacts sufficient for an experienced programmer to maintain and enhance the application;
2. Review detailed designs with BLE and the application business owners identified in Section IV above and adjust designs if necessary to meet business requirements;
3. Develop AIS v1.0 and conduct tests to ensure that MARS v2.0 functions as stated in the specifications set forth in Appendix IV;
4. Design, develop and test a process for converting the necessary existing databases to the AIS v1.0 database;
5. Collaborate with BLE to design, develop and implement capabilities in AIS v1.0 to publish messages to a queue, and to accept and process messages from external systems, per requirements in Appendix IV (phase II);
6. Document the installation and operations procedures for AIS v1.0;
7. Train users and system operations personnel to use AIS v1.0;
8. Provide project management services for this phase of the project;
9. Divide the project into at least two phases.

C. PROJECT RELATED SUBMISSION REQUIREMENTS. Vendor's RFP response must:

1. Describe completed projects that demonstrate the Vendor's experience including vendor's ability to provide the stated deliverables (including project management, planning, analysis and design, development, and implementation).
2. Describe the methodology that will be used;
3. Describe the deliverables that will be produced;
4. Provide at least 3 references of clients who can attest to vendor ability to complete work as stated;
5. Provide resumes of the members of your staff who are likely to be assigned to the project;
6. Provide a not-to-exceed cost estimate for the project including identification of the assumptions made and the rationale used to prepare the cost estimate;

7. Provide a timeline estimate for the project including identification of the assumptions made and the rationale used to prepare the time estimate.

**V. SUBMISSION OF PROPOSALS.**

- A. **SEALED PROPOSALS AND NUMBER OF COPIES.** Your proposal must be submitted in writing in a sealed envelope to:

RFP Coordinator  
Minnesota Board of Law Examiners  
180 E 5<sup>th</sup> Street, Suite 950  
St. Paul, MN 55101

Proposals sent to any other address will not be considered. The submission must include 1 paper copy and 1 electronic PDF copy. No facsimile submission will be accepted.

- B. **SIGNATURES.** Your proposal must be signed by, in the case of an individual, by that individual, and in the case of an individual employed by a firm, by the individual and an individual authorized to bind the firm.
- C. **INK.** Prices and notations must be typed or printed in ink. No erasures are permitted. Mistakes may be crossed out and corrections must be initialed in ink by the person signing the proposal.
- D. **DEADLINE.** Proposals must be received no later than 4:00 p.m. Central Day Light Savings Time on November 10, 2008. Proposals will be opened the following business day and once opened become accessible to the public. Except for financial stability information submitted in accordance with Section VII.A.5 of this RFP, do not place any information in your proposal that you do not want revealed to the public. All documentation shipped with the proposal, including the proposal, will become the property of the BLE.
- E. **LATE PROPOSALS.** Late proposals will not be accepted.
- F. **INCOMPLETE PROPOSALS.** Incomplete proposals will not be accepted.
- G. **QUESTIONS.** Questions about the RFP or the selection process must be in writing and directed to RFP Coordinator, Minnesota Board of Law Examiners, 180 E 5<sup>th</sup> Street, Suite 950, St. Paul, MN 55101 or sent to [ble.cle.blc@mbcle.state.mn.us](mailto:ble.cle.blc@mbcle.state.mn.us). Other BLE personnel are not allowed to discuss the Request for Proposal with anyone, including responders before the proposal submission deadline. The deadline to submit written questions is October 13, 2008. Questions and answers will be posted at [www.ble.state.mn.us](http://www.ble.state.mn.us).



- H. **SELECTION TIMELINE.** The tentative selection timeline is to contact finalists on December 8, 2008 and have a contract in place and work to begin on January 2, 2009, with full implementation by May 1, 2009.

**VI. PROPOSAL EVALUATION:**

- A. BLE will evaluate all complete proposals received by the deadline. In some instances, an interview or presentation may be part of the evaluation process.
- B. The evaluation of all proposals shall be based upon deriving the “Best Value” for the Judicial Branch. Best Value means achieving an appropriate balance between price and other factors that are key to a particular procurement. A procurement that obtains a low price but does not include other necessary qualities and features of the desired product or service does not meet the Best Value criterion. Factors upon which the proposals will be judged include, but are not limited to, the following:
  - 1. Previous experience in performing similar work (high weight);
  - 2. Thoroughness, quality, specificity, robustness, flexibility of Vendor’s approach/ methodology (high weight);
  - 3. Cost estimate (high weight);
  - 4. Financial stability of the organization (high weight).

APPENDIX I

**Affirmative Action Statement  
and  
Certification of Compliance**

**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:

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

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

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

**NOTE:** Minnesota designations 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:

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

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

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

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

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

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

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

## **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 NONCOLLUSION**

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: \_\_\_\_\_

## APPENDIX III

### STATE CONTRACT TERMS

- I. TIME REQUIREMENTS. The successful vendor (“CONTRACTOR”) shall comply with all of the time requirements described in the contract.
- II. CONDITIONS OF PAYMENT. All services provided by CONTRACTOR pursuant to this contract shall be performed to the satisfaction of the Minnesota Board of Law Examiners (BLE), 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 BLE to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation.
- III. CANCELLATION.
  - A. BLE may cancel this contract at any time, with or without cause, upon thirty (30) days' written notice to CONTRACTOR. If the contract is canceled under this clause, CONTRACTOR shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed.
  - B. BLE 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. BLE 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. BLE 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. BLE must provide CONTRACTOR notice of the lack of funding within a reasonable time of BLE’s receiving that notice.
- IV. ASSIGNMENT AND BINDING EFFECT. CONTRACTOR shall neither assign nor transfer any rights or obligations under this contract without the prior written consent of BLE. This contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, including any corporation or other legal entity into, by or with which CONTRACTOR may be merged, acquired or consolidated or which may purchase all or substantially all of the business assets of CONTRACTOR.
- V. 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.

- VI. **LIABILITY.** CONTRACTOR shall indemnify, save, and hold BLE, its representatives and employees harmless from any and all claims or causes of action, including all attorney's fees incurred by BLE, 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 BLE's failure to fulfill its obligations pursuant to this contract.
- A. **Intellectual Property Indemnity.** Without limiting the foregoing, CONTRACTOR shall indemnify BLE and hold it harmless against any claim that the work performed or material provided hereunder infringes or violates the patent, copyright, or trade secret rights of any third party. CONTRACTOR shall pay any and all resulting costs, expenses (including attorney's fees), damages and/or liabilities associated with or resulting from any such claim.
- B. **Nondisclosure Indemnity.** Without limiting the foregoing, CONTRACTOR agrees to indemnify, defend and save harmless BLE and its agents, officers and employees from and against any and all claims by Third Parties that are determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted directly and proximately from CONTRACTOR'S violation of the non-disclosure provisions hereof. BLE shall provide CONTRACTOR with prompt notice of any claim for which indemnification may be sought hereunder and shall cooperate in all reasonable respects with CONTRACTOR in connection with any such claim. CONTRACTOR shall be entitled to control the handling of any such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing.
- VII. **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 years from the termination of this contract. Records shall be sufficient to reflect all costs incurred in performance of this Contract.
- VIII. **CONFIDENTIALITY, DISCLOSURE AND USE.**
- A. **General.** CONTRACTOR shall not disclose to any third party any information that is both: (1) made available by BLE to CONTRACTOR in order to permit CONTRACTOR to perform hereunder or is created, gathered, generated or acquired in accordance with this contract; and (2) inaccessible to the public pursuant to the Rules of Public Access to Records of the Judicial Branch, and/or the Rules for Admission to the Bar, 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 BLE. BLE will give the CONTRACTOR instructions concerning the release of the information to the requesting party before the information is released.

B. BLE Programs, Databases, Marks. Without limiting paragraph A, above, CONTRACTOR agrees to the following:

1. BLE Programs. The computer application programs made available by BLE to CONTRACTOR in order to permit CONTRACTOR to perform its obligations hereunder are referred to herein as "BLE Programs." BLE is the copyright owner of the BLE Programs. The combination of ideas, procedures, processes, systems, logic, coherence and methods of operation embodied within the BLE Programs, and all analysis and design specifications, programming specifications, source code, algorithms, and information contained in technical reference manuals pertaining to the BLE Programs, are trade secret information of BLE. The computer operating systems software programs and other third party software licensed by BLE, and related documentation, made available by BLE to CONTRACTOR in order to permit CONTRACTOR to perform its obligations hereunder, are subject to claims of trade secret and copyright ownership by the respective licensors and will be treated by CONTRACTOR in the same manner as trade secret information of BLE. In addition, CONTRACTOR will familiarize itself with and abide by the terms and conditions of the license agreements applicable to such third party software.
2. BLE Databases. The computer databases made available by BLE to CONTRACTOR in order to permit CONTRACTOR to perform its obligations hereunder are referred to herein as "BLE Databases." BLE is the copyright owner of the BLE Databases and of all copyrightable aspects and components thereof. All specifications and information pertaining to the BLE Databases and to their structure, sequence and organization are trade secret information of BLE. All information contained within the BLE Databases is sensitive, confidential information and will be treated by CONTRACTOR in the same manner as trade secret information of BLE.
3. Marks. BLE claims that the marks "Total Court Information System," "TCIS," "MNCIS," "CriMNet," "SJIS," and "MARS" are trademarks and service marks of BLE or of other agencies of the state of Minnesota. CONTRACTOR shall neither have nor claim any right, title, or interest in or use of any trademark, service mark, or tradename owned or used by BLE or other agencies of the state of Minnesota.
4. Restrictions on Duplication, Disclosure and Use. CONTRACTOR will not, except as required in the performance of its obligations hereunder, copy any part of the BLE Programs or BLE Databases, prepare any translations thereof or derivative works based thereon, use or disclose any trade



secret information of BLE, or use any trademark, service mark, or tradename of BLE or of other agencies of the state of Minnesota, in any way or for any purpose not specifically and expressly authorized by this contract. As used herein, "trade secret information of BLE" means any information or compilation of information possessed by BLE, or developed by CONTRACTOR in the performance of its obligations hereunder, which derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. "Trade secret information of BLE" does not, however, include information which was known to CONTRACTOR prior to CONTRACTOR'S receipt thereof, either directly or indirectly, from BLE, information which is independently developed by CONTRACTOR without reference to or use of information received from BLE, or information which would not qualify as trade secret information under Minnesota law. It will not be a violation of this section for CONTRACTOR to disclose any information received from BLE pursuant to the order of a court or governmental authority of competent jurisdiction if CONTRACTOR notifies BLE immediately upon receipt by CONTRACTOR of notice of the issuance of such an order.

5. Proprietary Notices. CONTRACTOR will advise its employees and permitted subcontractors who are permitted access to any of the BLE Programs, BLE Databases, or trade secret information of BLE of the restrictions upon duplication, disclosure and use contained in this contract. Without limiting the foregoing, CONTRACTOR shall include in and/or on any copy or translation of, or derivative work based upon, any of BLE Programs, the BLE Databases, or trade secret information of BLE, or any part thereof, and any documents pertaining thereto, the same copyright and other proprietary notices as appear on the copies made available to CONTRACTOR by BLE, except that copyright notices shall be updated and other proprietary notices added as may be appropriate.

- C. Inspection and Return of BLE Property. All documents, encoded media, and other tangible items made available to CONTRACTOR by BLE, or prepared, generated or created by CONTRACTOR in the performance of its obligations hereunder, are and will be exclusively the property of BLE and will be available for inspection by BLE upon request. Upon completion of CONTRACTOR'S performance of services hereunder, CONTRACTOR will, upon BLE's request, promptly deliver to BLE any or all such documents, encoded media and other items in its possession, including all complete or partial copies, recordings, abstracts, notes or reproductions of any kind made from or about such documents, media, items, or information contained therein. CONTRACTOR and BLE acknowledge that all computer operating systems software programs and other third party software licensed by BLE, and related documentation, made available by BLE to CONTRACTOR in order to permit CONTRACTOR to perform

its obligations hereunder, or any translations, compilations, or partial copies thereof are and remain the property of the respective licensors.

- D. Injunctive Relief. CONTRACTOR acknowledges that BLE will be irreparably harmed if CONTRACTOR'S obligations under sections VIII and IX of this contract are not specifically enforced and that BLE 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 BLE 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 BLE showing actual damages or that monetary damages would not afford an adequate remedy. CONTRACTOR shall be liable to BLE for reasonable attorney's fees incurred by BLE in obtaining any relief pursuant to this section.

IX. RIGHTS IN AND TO INFORMATION, INVENTIONS, AND MATERIALS. In consideration of the facts that CONTRACTOR'S performance under this contract will involve access to and development of information which shall be trade secret information of BLE and may involve the development by CONTRACTOR or CONTRACTOR'S participation in the development of copyrightable and/or patentable subject matter which the parties intend be owned by BLE:

- A. All right, title, and interest in and to any trade secret information of BLE (as defined in sections VIII (A), (B), (D) above) developed by CONTRACTOR either individually or jointly with others, and which arises out of the performance of this contract, will be the property of BLE and are by this contract irrevocably transferred, assigned, and conveyed to BLE free and clear of any liens, claims, or other encumbrances.
- B. All copyrightable material which CONTRACTOR shall conceive or originate, either individually or jointly with others, and which arises out of the performance of this contract, shall conclusively be deemed "works made for hire" within the meaning and purview of section 101 of the United States Copyright Act, 17 U.S.C. § 101, to the fullest extent possible, and BLE shall be the copyright owner thereof and of all elements and components thereof in which copyright protection can subsist. To the extent that any of the foregoing does not qualify as a "work made for hire," CONTRACTOR hereby transfers, assigns and conveys the exclusive copyright ownership thereof to BLE, free and clear of any liens, claims or other encumbrances.
- C. All right, title, and interest in and to any invention which CONTRACTOR first conceives or first reduces to practice either individually or jointly, and which arises out of the performance of this contract, will be the property of BLE and are by this contract irrevocably transferred, assigned, and conveyed to BLE along with ownership of any and all patents on the inventions anywhere in the world, free and clear of any liens, claims or other encumbrances. CONTRACTOR agrees to disclose promptly any such invention to BLE. This paragraph shall not apply to any invention for which no equipment, supplies, facility or trade secret

information of BLE (as defined in Sections XI (A), (B), (D) above) was used and which was developed entirely on CONTRACTOR own time, and a) which does not relate i) directly to the business of BLE or ii) to BLE' actual or demonstrably anticipated research or development, or b) which does not result from any work performed or materials provided by CONTRACTOR for BLE.

- D. CONTRACTOR will execute all documents and perform all other acts that BLE may reasonably request in order to assist BLE in perfecting its rights in and to the trade secret information of BLE and the copyrightable and patentable subject matter identified herein, in any and all countries.

#### X. AFFIRMATIVE ACTION.

- A. Covered Contracts and Contractors. If this contract exceeds \$100,000 and CONTRACTOR employed more than 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. § 363.073 and Minn. R. Parts 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363.073 because it employed more than 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. § 363.073. Minn. Stat. § 363.073 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. § 363.073. 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. § 363.073, 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. § 363.073, 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 BLE.

- E. Certification. CONTRACTOR hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363.073 and Minn. R. Parts 5000.3400-5000.3600 and is aware of the consequences for non-compliance.
- XI. 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.
- XII. 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 that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.
- XIII. Warranties.
- A. 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.
- B. Professional Services. CONTRACTOR represents and warrants to BLE that it has the proper training, skill and background so as to be able to perform all professional services required by this contract in a competent and professional manner, and all such work will be performed in a competent and professional manner.
- C. Mutual Representations and Warranties. CONTRACTOR and BLE each represent and warrant to the other that: a) it has the full 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.
- XIV. Relationship of the Parties. CONTRACTOR is an independent contractor and shall not be deemed for any purpose to be an employee of BLE. CONTRACTOR understands and agrees that BLE 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 BLE 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.

- XV. Consent to Release of Certain Data. Under Minn. Stat. § 270.66 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 BLE, 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.
- XVI. Publicity. Any publicity regarding the subject matter of this contract must identify BLE as the sponsoring agency and must not be released without the prior written approval from BLE' 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.
- XVII. Endorsement. CONTRACTOR must not claim that BLE endorses its products or services.
- XVIII. 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 BLE 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 computer consulting and programming services or other services of any kind to any person or entity as CONTRACTOR in its sole discretion deems appropriate.
- XIX. 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) if to CONTRACTOR, the CONTRACTOR'S address (set forth in the opening paragraph herein); (2) if to the STATE, the STATE'S address set forth in the opening paragraph herein, 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.

- XX. Non-Waiver. 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.
- XXI. Governing Law. 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.
- XXII. Validity. 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.
- XXIII. Facilities and Use Conditions. Without limiting CONTRACTOR's responsibilities under any other section of this contract, to the extent that CONTRACTOR utilizes STATE provided on site facilities (including, but not limited to, computers, desks, Internet connections, etc.) to perform CONTRACTOR's duties under this contract, CONTRACTOR must comply with all policies of the STATE and the Minnesota judicial branch as they relate to the acceptable use or operation of STATE facilities, including, without limitation, the Minnesota State Court System Policy on the Use of the Internet and Other Electronic Communication Tools as the same may be amended and replaced from time to time.