

**REQUEST FOR PROPOSAL  
FOR  
BUSINESS CONTINUITY MANAGEMENT CONSULTANT  
FOR THE STATE OF MINNESOTA, STATE COURT  
ADMINISTRATOR'S OFFICE**

**I. REQUEST FOR PROPOSAL**

- A. **DEFINED.** The State of Minnesota, State Court Administrator's Office ("STATE") is using a competitive selection process to select a contractor to serve as a business continuity management consultant responsible for providing project management and business continuity management expertise to the Minnesota Judicial Branch in its development of emergency response and business continuity management plans for a period of 12 months. 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 services as described in this document.
- B. **RIGHT TO CANCEL.** THE STATE IS NOT OBLIGATED TO RESPOND TO ANY PROPOSAL SUBMITTED NOR IS IT LEGALLY BOUND IN ANY MANNER WHATSOEVER BY THE SUBMISSION OF A PROPOSAL. THE STATE 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 IN THE EVENT THE REQUEST FOR PROPOSALS IS CANCELLED OR WITHDRAWN FOR ANY REASON, THE STATE SHALL NOT HAVE ANY LIABILITY TO ANY PROPOSER FOR ANY COSTS OR EXPENSES INCURRED IN CONNECTION WITH THIS REQUEST FOR PROPOSALS OR OTHERWISE. THE STATE 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**

It is essential that courts be open and accessible during, or as soon as possible after, an emergency in order to uphold the fundamental mission of the courts and to be responsive to the legal needs arising from an emergency. Developing, testing and maintaining viable emergency response and business continuity management plans are essential to assure that courts continue to operate, perform mandated functions, and serve the public in emergency situations. Therefore, the Minnesota Judicial Branch is in the process of developing all hazards, business continuity management and emergency response plans.

The Minnesota Judicial Branch is comprised of the Supreme Court, Court of Appeals, 87 District (trial) Courts, 10 Judicial Districts, the State Court Administrator's Office, the State Law Library and multiple boards. The State Court Administrator's Office is comprised of 6 divisions, providing support services to the Supreme Court, Court of

Appeals, District Courts, including the Court Information Office, Court Services, Education and Organizational Development, Finance, Human Resources, and Information Technology. Each District Office provides administrative and operational support to the county or counties within the district in coordination with State Court Administration. There are 3,204 full-time permanent positions (including judges) located in over 100 court facilities throughout the state of Minnesota. The Supreme Court, Court of Appeals, State Court Administration, and State Law Library are located in the Minnesota Judicial Center, at the Capitol Complex in St. Paul, Minnesota. District courts and judicial district offices are located in court houses and other facilities generally owned by counties.

Our basic objectives are to: 1) ensure the continuous performance or quick resumption of essential court operations during an emergency; 2) reduce or mitigate disruption of service; and 3) protect, prevent loss, and minimize damage to life, property and other assets. To accomplish these objectives it is necessary that:

- the Minnesota Judicial Branch and all of its component parts have practical, comprehensive business continuity management plans ready for implementation in the event of various types of emergencies, and emergency response plans ready for implementation in the event of a pandemic influenza or similar public health emergencies;
- the plans be tested, exercised and maintained;
- judges and staff receive periodic training; and
- we communicate and coordinate efforts with other state and local governmental entities.

District (trial) court operations are dependent upon the operations of other local, state, and federal justice partners, e.g., law enforcement, probation/corrections, human services, and Bureau of Criminal Apprehension. District court operations also are supported by services from the State Court Administrator's Office, the District Offices, and state agencies from which the Judicial Branch receives services. Plan development at all levels will require coordination with justice partners and service providers within and outside of the Judicial Branch.

Emergency response preparedness planning is intended to cover the court's role in the event of a public health emergency, such as a pandemic influenza, when isolation and quarantine procedures, and emergency powers and related issues may arise. Efforts in this area will include, among other things, the preparation of a bench book, the establishment and maintenance of a panel of attorneys for appointment in isolation and quarantine cases; the development of procedures and protocol; and the preparation of model orders and other legal documents. Emergency response plan development will require coordination with various state agencies, e.g., the Minnesota Department of Health, Homeland Security and Emergency Management.

For general information about the Minnesota Judicial Branch go to [www.courts.state.mn.us](http://www.courts.state.mn.us).

### **III. SCOPE OF EFFORT**

The STATE is seeking proposals from contractors for emergency response and business continuity management development and planning services. The contractor will be expected to manage the project in coordination with a designated Judicial Branch representative overseeing the project, and to provide business continuity management subject matter expertise necessary to achieve the objectives of the overall project. Services will include:

- Conducting an all-hazards threat analysis and a business impact analysis, and making recommendations to an advisory board.
- Assisting in identifying an appropriate project advisory board and establishing State, District and local emergency operation centers.
- Developing a detailed project work plan covering all levels of court and administrative operations, including scope of work, priorities, tasks, assignments and timelines.
- Adapting existing plan guides and resources, as appropriate for the Minnesota Judicial Branch, to create a model template and process for use by Judicial Branch personnel in the development of business continuity management plans at all levels of court and administrative operations.
- Developing and providing training, in coordination with the Education and Organizational Development division, to designated Judicial Branch personnel in how to effectively use the model template and process to develop business continuity management plans at each level of court and administrative operations.
- Overseeing emergency response and business continuity management plan development for all levels of court and administrative operations, and providing assistance as needed.
- Facilitating planning interaction at various levels of the Judicial Branch and with other government entities to assure coordination of efforts and effectiveness of all plans.

### **IV. PROJECT APPROACH**

The Contractor:

- Will report to the designated Judicial Branch project leader.
- Will be expected to make periodic progress reports, recommendations, and provide other information as necessary to a designated advisory board, the Judicial Council and any of its workgroups, and/or the State Court Administrator and any of her workgroups.
- Will be expected to work with assigned court representatives from the State, District and county levels, who will be responsible for carrying out tasks in accordance with the project work plan

- Will be provided on-sight office accommodations at Minnesota Judicial Center in St. Paul, MN and generally expected to be available during regular court business hours.
- Will have access to various means of communication, including conference phones and ITV, for purposes of communicating with and training designated court personnel, but may need to travel by car to one or more judicial districts if necessary.
- Will be expected to draw on resources of Office of Enterprise Technology and other State resources to the extent possible and appropriate.

## V. PROJECT SCHEDULE

The desired completion date for the emergency response and business continuity management plans development is on or before **December 31, 2007**.

## VII. SUBMISSION REQUIREMENTS

### A. GENERAL REQUIREMENTS.

1. Certificate of Insurance. Each proposal shall contain acceptable evidence of compliance with the workers' compensation coverage requirements of Minn. Stat. § 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 him 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 State of Minnesota Affirmative Action Certification on the form approved by the Minnesota Department of Human Rights (current revision is dated 8/04) and is attached as a separate electronic file and document.
3. Non-collusion Affirmation. Vendor must complete the Affidavit of Non-collusion (Appendix I) 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 II. 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 must provide evidence of Vendor's financial stability as an indicator of Vendor's ability to provide services

irrespective of uneven cash flow. Financial stability information can be submitted as trade secret according to the following:

- a. the evidence-of-vendor's-financial-stability must qualify as a trade secret under Minn. Stat. § 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.
- d. 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. PROJECT RELATED SUBMISSION REQUIREMENTS. VENDOR'S proposal MUST:**

1. Describe your experience with development of business continuity management, including but not limited to court operations.
2. Describe any experience you have working for or with courts.
3. Provide professional references who may be contacted with respect to previous project management and business continuity management experience. Provide name, address and telephone number for each reference.
4. Describe the deliverables that will be produced and provide examples, including samples of user and technical documentation.
5. Provide a timeline for the project.
6. Provide a resume for you or your staff likely to be assigned to the project with a particular focus on the experience noted above.
7. Provide a not-to-exceed estimate for the cost of the project including identification of the assumptions made and the rationale used to prepare the estimate.

## **IX. PROPOSAL EVALUATION**

- A. The STATE will evaluate all complete proposals received by the deadline. Incomplete proposals, late proposals, or proposals sent to any other address will not be considered. 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 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. Demonstrated ability to provide requested services including project management, analysis, development, and implementation (high weight);
  - 2. Thoroughness, quality, specificity, robustness, flexibility of Vendor’s approach/methodology (high weight);
  - 3. Cost estimate (high weight);

## **X. SUBMISSION OF PROPOSALS**

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

State Court Administrator’s Office  
Court Services Division  
Attention: Emergency Management Consultant RFP  
Minnesota Judicial Center, Suite 105  
25 Rev. Dr. Martin Luther King Jr. Boulevard  
St. Paul, MN 55155

The submission must include four (4) paper copies and one (1) electronic (PDF) copy. No facsimile submissions will be accepted.

- B. **SIGNATURES.** Your proposal must be signed, 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. local (i.e. St. Paul, Minnesota) time on **Tuesday, January 2, 2007**. Proposals will be opened the following day after the deadline 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 STATE.
- E. **LATE PROPOSALS.** Late proposals will not be accepted.
- F. **QUESTIONS.** Questions about the RFP, the selection process, or information about the current application and its components must be directed in writing by email to [Deborah.Blees@courts.state.mn.us](mailto:Deborah.Blees@courts.state.mn.us).
- G. **SELECTION TIMELINE.** The tentative selection timeline is to select a vendor to begin contract negotiations by January 9, 2006 and have a contract completed by January 16, 2007.

**APPENDIX I**

**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 II

### 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 State of Minnesota, State Court Administrator’s Office (“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.
- III. CANCELLATION.
  - A. The STATE 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. 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.
- IV. ASSIGNMENT AND BINDING EFFECT. CONTRACTOR shall neither assign nor transfer any rights or obligations under this contract without the prior written consent of the STATE. 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 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.
- A. Intellectual Property Indemnity. Without limiting the foregoing, CONTRACTOR shall indemnify the STATE 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 the STATE 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. The STATE 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 (6) 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 the STATE 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 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.

- B. Inspection and Return of STATE Property. All documents, encoded media, and other tangible items made available to CONTRACTOR by the STATE, or prepared, generated or created by CONTRACTOR in the performance of its obligations hereunder, are and will be exclusively the property of the STATE and will be available for inspection by the STATE upon request. Upon completion of CONTRACTOR'S performance of services hereunder, CONTRACTOR will, upon the STATE'S request, promptly deliver to the STATE 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 the STATE acknowledge that all computer operating systems software programs and other third party software licensed by the STATE, and related documentation, made available by the STATE 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.
- C. Injunctive Relief. CONTRACTOR acknowledges that the STATE will be irreparably harmed if CONTRACTOR'S obligations under sections VIII and IX 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.

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 the STATE 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 the STATE:

- A. All right, title, and interest in and to any trade secret information of the STATE (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 the STATE and are by this contract irrevocably transferred, assigned, and conveyed to the STATE 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 the STATE 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 the STATE, 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 the STATE and are by this contract irrevocably transferred, assigned, and conveyed to the STATE 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 the STATE. This paragraph shall not apply to any invention for which no equipment, supplies, facility or trade secret information of the STATE (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 the STATE or ii) to the STATE'S actual or demonstrably anticipated research or development, or b) which does not result from any work performed or materials provided by CONTRACTOR for the STATE.
- D. CONTRACTOR will execute all documents and perform all other acts that the STATE may reasonably request in order to assist the STATE in perfecting its rights in and to the trade secret information of the STATE 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 forty (40) full-time employees on a single working day during the previous twelve (12) 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.

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 the STATE 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 the STATE 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 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.
- 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 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.
- XVI. 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.

- XVII. Endorsement. CONTRACTOR must not claim that the STATE 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 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 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.