



60 Empire Drive, Suite 300  
St. Paul, MN 55103

651-284-7762

## REQUEST FOR BID (RFB) ADDENDUM

Addendum No.: 1

Date of Addendum: September 25, 2019

RFB Number: 059

Agency: Minnesota State Retirement System

Due Date, Time: September 26, 2019; 3:00 p.m.

Revised Date, Time: October 9, 2019; 3:00 p.m.

Title: Liebert A/C Maintenance, Repair, and Supply Contract

### SCOPE OF ADDENDUM

See Attached, Revised RFB 059 Coversheet 9-25-2019. In this Revised RFB 059, changes to pre-existing language used ~~strike-through~~ for deletions and underlining for insertions.

This addendum shall become part of the RFB and **MAY** be returned with the RFB.

RESPONDER NAME:

SIGNATURE:

TITLE:

DATE:

For TTY/TDD communication, contact us through the Minnesota Relay Service at 1.800.627.3529.

<b>Revised REQUEST FOR BID</b>  (THIS IS NOT A PURCHASE ORDER)	STATE OF MINNESOTA AGENCY NAME: <u>Minnesota State Retirement System</u> BUYER NAME: <u>Kris Wenner</u> PHONE #: <u>651-284-7762</u>
VENDOR NAME AND ADDRESS:   PHONE #:	DIRECT ALL INQUIRIES AND RETURN BID TO: <u>Kris Wenner</u> Email: <u>kris.wenner@msrs.us</u> <u>60 Empire Drive St., Suite 300</u> <u>Paul, MN 55103</u>

BID MUST BE RECEIVED NO LATER THAN:	Dates shall be listed in the sequence of month/date/year
DATE: <u>September 26, 2019</u> <b>October 9, 2019</b> TIME: <u>3:00</u> p.m.	Times shown are based on the Central Time Zone, USA

DELIVERY REQUIRED BY DATE: <u>Service to begin no later than 10 days after award</u>
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SOLICITATION TITLE: <u>Liebert A/C Maintenance, Repair, and Supply Contract</u>
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**SOLICITATION RESPONSE INSTRUCTIONS:**

1. Read the entire solicitation including all terms, conditions, and specifications. All attached terms, conditions, and specifications apply to any subsequent award. Complete all applicable areas.
2. Solicitation responses (bids) must contain the signature of an authorized agent empowered to bind the Vendor in a contract.
3. Bids must include this form. ***Bids may be scanned and emailed to the contact provided above.***
4. All shipments shall be FOB Destination. Freight charges must be prepaid and allowed (with freight included in the price), to the ordering agency's receiving dock or warehouse unless otherwise stated in the solicitation.
5. Bids will be considered to be in strict compliance with the specifications and the Vendor will be held responsible unless the Vendor clearly indicates in the bid any deviation from the specifications.
6. The State of Minnesota reserves the right to reject any or all bids or portions thereof; to waive any irregularities or informalities in bids received; and to cancel the solicitation if it is considered to be in the State's best interest.
7. Bids submitted are irrevocable offers for 60 days following submission deadline date unless otherwise stated in the solicitation terms. Bids may be modified or withdrawn prior to the time and date set forth above. After the time set forth above, no bids may be withdrawn or modified.
8. Prices must be submitted in United States currency.
9. Do not include sales tax in your pricing unless otherwise specified in the solicitation. The State of Minnesota holds Direct Pay Permit 1114.
10. ADDENDA TO SOLICITATION. Changes to the solicitation will be made by written addendum. Any addendum issued will become part of the solicitation. Each responder must follow the directions on the addendum. All requests for clarification must be directed to the contact person. Only changes made via addendum will be valid. (This paragraph supersedes paragraph 4 in Exhibit 2, General Terms & Conditions.)
11. INFORMAL BID. The words "Signature (in ink)" when used in this solicitation includes signature stamps, photocopies of signatures, and signatures. Responders may be required to provide original signatures when requested. ***Bids may be scanned and emailed to the contact provided above.***
12. AWARD--ITEM, GROUP, TOTAL. The award will be made to the lowest responsible vendor meeting the specifications and all terms and conditions. The state reserves the right to award items separately, by grouping items, or by total, whichever is deemed most advantageous to the state.

13. **OPTIONAL** - Responders may visit Kevin Obrien at MSRS onsite for a tour of the Liebert System, First floor: 60 Empire Drive, St. Paul, Minnesota 55103 Wednesday, October 2, 2019; 1:00 p.m. Sample for Optional Site Visit Invitation - attached for your information.

ATTACHMENTS
<b>Exhibit 1:</b> Specifications <b>Exhibit 2:</b> General Terms and Conditions <b>Exhibit 3:</b> General Insurance Requirements

**RESPONSE QUESTIONS:**

<b>1. Per-visit cost to provide Preventive Maintenance, as described in Exhibit 1:</b> \$0.00/per event
<b>2. Hourly cost for service calls, as described in Exhibit 1:</b> "Normal Working Hours" - Monday through Friday, 7:30 a.m. – 4:30 p.m.: \$0.00/hr. "After Hours" - Monday through Friday, 4:31 p.m. – 7:29 a.m.: \$0.00/hr. Weekends and State Holidays: \$0.00/hr.
<b>3. Material Costs</b> Material costs mark-up: 0%
<b>4. Does the vendor agree to the State's General Terms and Conditions in Exhibit 2?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>5. What are additional terms/conditions that the vendor would request?</b> <i>[Add terms that do not conflict with the State's General Terms and Conditions in Exhibit 2.]</i>
<b>6. If selected, can the vendor provide a certificate of insurance to satisfy the State's General Insurance Requirements in Exhibit 3?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>7. Eligible TG/ED Vendor (see Exhibit 2)</b> <input type="checkbox"/> Yes <input type="checkbox"/> No

- 8. Will the technician working on MSRS' Liebert Deluxe System/3 6-30 ton – DX unit have Liebert experience?**

Yes, Explain  No

MUST BE COMPLETED BY VENDOR		
Prompt Payment Terms (if available):	<input type="checkbox"/> % 30; <input type="checkbox"/> % 15/Net 30; <input type="checkbox"/> % 10/Net 30; <input type="checkbox"/> Other (specify): _____	
Vendor's Quotation Reference Number, if any:	_____ SWIFT Vendor Number: _____	
Vendor Contact Person:	Phone: _____	Fax: _____
_____	_____	_____
Company Name (type or print)	Authorized Signature	Date

Mailing Address (if different than above)

Name and Title (type or print)



**STATE OF MINNESOTA: VETERAN-OWNED PREFERENCE FORM**

In accordance with Minn. Stat. § 16C.16, subd. 6a, (a) except when mandated by the federal government as a condition of receiving federal funds, the commissioner shall award up to a six percent preference in the amount bid on state procurement to certified small businesses that are majority-owned and operated by:

- (1) recently separated veterans who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United States Department of Defense form DD-214 or by the commissioner of veterans affairs;
- (2) veterans with service-connected disabilities, as determined at any time by the United States Department of Veterans Affairs; or
- (3) any other veteran-owned small businesses certified under section 16C.19, paragraph (d).

In accordance with Minn. Stat. § 16C.19 (d), a veteran-owned small business, the principal place of business of which is in Minnesota, is certified if it has been verified by the United States Department of Veterans Affairs as being either a veteran-owned small business or a service disabled veteran-owned small business, in accordance with Public Law 109-461 and Code of Federal Regulations, title 38, part 74.

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To receive a preference the veteran-owned small business must meet the statutory requirements above by the solicitation opening date and time. The preference is applied only to the first \$500,000 of the response.

If you are claiming the veteran-owned preference, **attach documentation, sign and return this form with your response to the solicitation.** Only eligible veteran-owned small businesses that meet the statutory requirements and provide adequate documentation will be given the preference.

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**I HEREBY CERTIFY THAT THE FIRM LISTED BELOW:**

My firm is a certified small business and it is majority-owned and operated by an eligible person as defined by Minn. Stat. § 16C.16, subd. 6a.  YES  NO (must check yes or no)

**IF YES, DOCUMENTATION MUST BE PROVIDED FOR ONE OF THE FOLLOWING REQUIREMENTS AND MUST CLEARLY STATE WHICH OF THE REQUIREMENTS IT MEETS.**

(1) recently separated veterans who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United States Department of Defense form DD-214 or by the commissioner of veterans affairs;

**State the type of documentation attached:** \_\_\_\_\_

(2) veterans with service-connected disabilities, as determined at any time by the United States Department of Veterans Affairs;

**State the type of documentation attached:** \_\_\_\_\_

(3) any other veteran-owned small businesses certified under Minnesota Statute Section 16C.19, paragraph (d).

**State the type of documentation attached:** \_\_\_\_\_

Name of Company: \_\_\_\_\_ Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Sample for Optional Site Visit Invitation

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**9.0 SEMIANNUAL MAINTENANCE INSPECTION CHECKLIST**

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

Prepared by: \_\_\_\_\_

Model #: \_\_\_\_\_

Serial #: \_\_\_\_\_

**Filters**

- \_\_\_ 1. Restricted air flow
- \_\_\_ 2. Check filter switch
- \_\_\_ 3. Wipe section clean

**Blower Section**

- \_\_\_ 1. Impellers free of debris and move freely
- \_\_\_ 2. Check belt tension and condition
- \_\_\_ 3. Bearings in good condition
- \_\_\_ 4. Inspect & tighten electrical connections

**Compressor**

- \_\_\_ 1. Check oil leaks
- \_\_\_ 2. Check for leaks
- \_\_\_ 3. Inspect & tighten electrical connections

**Air Cooled Condenser (if applicable)**

- \_\_\_ 1. Condenser coil clean
- \_\_\_ 2. Motor mounts tight
- \_\_\_ 3. Bearings in good condition
- \_\_\_ 4. Refrigerant lines properly supported
- \_\_\_ 5. Inspect & tighten electrical connections

**Water/Glycol Condenser (if applicable)**

- \_\_\_ 1. Copper tube clean
- \_\_\_ 2. Water regulating valves function
- \_\_\_ 3. Glycol solution
- \_\_\_ 4. Check for water/glycol leaks

**Glycol Pump**

- \_\_\_ 1. Glycol leaks
- \_\_\_ 2. Pump operation
- \_\_\_ 3. Inspect & tighten electrical connections

**Steam Generating Humidifier**

- \_\_\_ 1. Check canister for deposits
- \_\_\_ 2. Check condition of steam hoses
- \_\_\_ 3. Check water make-up valve for leaks
- \_\_\_ 4. Inspect & tighten electrical connections

**Infrared Humidifier**

- \_\_\_ 1. Check pan drain for clogs
- \_\_\_ 2. Check humidifier lamps
- \_\_\_ 3. Check pan for mineral deposits
- \_\_\_ 4. Inspect & tighten electrical connections

**Refrigeration Cycle/Section**

- \_\_\_ 1. Check refrigerant lines
- \_\_\_ 2. Check for moisture (sight glass)
- \_\_\_ 3. Check suction pressure
- \_\_\_ 4. Check head pressure
- \_\_\_ 5. Check discharge pressure
- \_\_\_ 6. Check hot gas bypass valve
- \_\_\_ 7. Check thermostatic exp. valve

**Air Distribution Section**

- \_\_\_ 1. Restriction in grille free area

**Refrigerant Charge**

- \_\_\_ 1. Check refrigerant level

**Electrical Panel**

- \_\_\_ 1. Check fuses
- \_\_\_ 2. Inspect & tighten electrical connections
- \_\_\_ 3. Check operation sequence
- \_\_\_ 4. Check contactor operation

**Reheat**

- \_\_\_ 1. Check reheat element operation
- \_\_\_ 2. Inspect elements for cleanliness
- \_\_\_ 3. Inspect & tighten electrical connections

Notes \_\_\_\_\_

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## **Exhibit 1: Specifications**

### **Minnesota State Retirement System (MSRS)**

State agency Minnesota State Retirement System (MSRS) is requesting bids from vendors for a maintenance, repair, and supply contract to provide onsite maintenance for its Liebert Deluxe System/3 6-30 ton – DX unit located on the ground floor at 60 Empire Drive, St. Paul, MN 55103

The selected vendor will agree to the standard State of Minnesota contract terms/conditions in **Exhibit 2**, and will have a certificate(s) of insurance to meet the general insurance requirements in **Exhibit 3** before receiving a notification of contract award.

#### **Term of Contract:**

Up to two years (24 months).

#### **Preventive Maintenance (PM)**

The unit must have onsite preventive maintenance performed twice (2 times) per year in May and November, or as directed by MSRS. PM service must be provided during normal business hours. Normal business hours are from 8:00 a.m. through 5:00 p.m., Monday through Friday, excluding State holidays. As part of PM visits, service technicians should, as applicable:

1. Check and replace air filters as required.
2. Clear debris from impellers. Clean out debris/leaves that accumulate within the protective fencing/barricade.
3. Check and adjust belt tensions. Verify fan safety switch operation.
4. Check humidifier pans for mineral deposits, and ensure water make-up valves are dry and drains are clear.
5. Inspect refrigerant lines and levels, and inspect suction and discharge pressures.
6. Check fuses, and verify proper operation sequences
7. Clean the air-cooled condenser coil, check the motor mounts, and inspect motor bearing and refrigerant lines.
8. Examine the glycol pump for leaks and proper operation.
9. Inspect the chilled-water valve for proper operation and adjust and/or tighten the linkage.
10. Ability to switch the air-conditioning unit into a "free cooling mode" during the Fall PM and switch it back to Non a "free cooling mode" or standard mode in the Spring.

#### **Parts/Supplies**

If a part is near its replacement period, it should be replaced. Necessary part replacements should be made with new parts and vendor will include the cost of parts, but not tax (which is paid by MSRS directly to the Minnesota Department of Revenue) in its detailed invoice.



### **Maintenance Service/Repairs**

**Maintenance agreement terms in conflict with the terms and conditions of this solicitation will be unenforceable.** A four (4) hour response time is required. All equipment maintenance and/or replacement must be made on-site, unless otherwise approved by the MSRS. If the equipment has not been restored to full operation within four (4) hours after the service technician's arrival, the technician must propose all options and should arrive at a solution acceptable to MSRS site contact or designee prior to leaving the MSRS location. 'Response time,' defined as the time interval between the problem call by the customer and the on-site arrival of the Contract Vendor's technician, must not exceed four (4) working hours. The Contract Vendor's staff must notify the MSRS site contact of the expected arrival time of the service technician within one (1) hour of the initial trouble call.

### **Excessive Service**

Equipment that develops a trend of requiring excessive service calls must be reported by the vendor to MSRS.

### **Invoicing/Payments**

Summary type invoicing and reports must be provided and available electronically at least twice a year, but no more frequently than monthly, and include these fields:

1. Purchase Order Number
2. Invoice Number
3. Equipment Type
4. Equipment Identification Number
5. Equipment Location
7. Maintenance/Service hours and location of service
8. Cost of Parts/Supplies

### **Insurance Requirements**

Because work is to be performed on State property, MSRS must obtain a valid Certificate of Insurance from the vendor and verify the coverage meets all of the requirements prior to issuing a purchase order. See **Exhibit 3** for *General Insurance Requirements*.

## Exhibit 2: Terms and Conditions

**INQUIRIES.** Direct all correspondence, inquiries, questions, general issues, or technical issues regarding this Request for Bid (RFB) solicitation to Kris Wenner, [kris.wenner@mrs.us](mailto:kris.wenner@mrs.us), or at 651-284-7762 (office).

**PRICES/ALTERATIONS.** For each product or service, a unit price and a total for the quantity must be stated. In case of error in the extension, the unit price prevails. Provide your costs in the table format provided in the RFB email.

**TAXES.** DO NOT include sales tax to the prices being offered. State agencies are subject to paying Minnesota sales and use taxes. Taxes will be paid to the Department of Revenue using Direct Payment Permit 1114, unless otherwise instructed in the Special Terms and Conditions of this solicitation.

**SPECIFICATIONS.** Responses will be held to strict compliance with the specifications. If a response deviates from the specifications, the deviation must be clearly noted in the response.

**PAYMENT.** Minn. Stat. § 16A.124 requires payment within 30 days following receipt of an undisputed invoice, merchandise or service whichever is later. Terms requesting payment in less than 30 days will be changed to read "Net 30 Days" if it is in the State's best interest. The State reserves the right to take advantage of prompt pay discount terms.

**PUBLICITY.** The Contract Vendor shall not make any representation of the State's opinion or position as to the quality or effectiveness of the product and/or services that are the subject of the Contract without the prior written consent of the State's authorized representative. Representations include, but are not limited to, publicity, advertisements, notices, press releases, reports, signs, and similar public notices.

**AWARD.** Unless otherwise provided for in the RFB, the award will be made to the lowest responsible vendor meeting the specifications and all terms and conditions. The State reserves the right to award items separately, by grouping items, by total lot or by issuing multiple awards to more than one responder. The State reserves the right to accept all or part of an offer, to reject all offers, to cancel the solicitation, or to re-issue the solicitation, whichever is in the best interest of the State.

**TG/ED VENDOR PREFERENCE.** In accordance with Minn. Stat. § 16C, subds. 6 and 7, eligible certified targeted group (TG) businesses will receive a six (6) percent preference and certified economically disadvantaged (ED) businesses will receive a six (6) percent preference, except in construction ED businesses will receive a four (4) percent preference, on the basis of award for this solicitation. The preference is applied only to the first \$1,000,000 of the response. Eligible TG/ED businesses must be certified by the Materials Management Division, and, if a manufacturer's representative must have the manufacturer's agreement approved, prior to the RFB solicitation opening date and time.

To verify TG/ED certification, refer to the Materials Management Division's website at [www.mmd.admin.state.mn.us](http://www.mmd.admin.state.mn.us) under "Vendor Information, Targeted Group/Economically Disadvantaged (TG/ED) Small Business Program, Directory of Certified TG/ED Vendors."

To verify TG eligibility for preference, refer to the Materials Management Division's website at [www.mmd.admin.state.mn.us](http://www.mmd.admin.state.mn.us) under "Vendor Information, Targeted Group/Economically



Disadvantaged (TG/ED) Small Business Program, Targeted Group Eligibility,” or call the Division’s Helpline at 651.296.2600.

Persons with a hearing or speech disability may contact the Division through the Minnesota Relay Service at 711 or 800.627.3529

**VETERAN-OWNED SMALL BUSINESS PREFERENCE.** In accordance with Minn. Stat. § 16C.16, subd. 6a, the Commissioner of Administration will award a 6% preference in the amount bid on State procurement to certified small businesses that are majority owned and operated by veterans.

A small business qualifies for the “veteran-owned” preference when it meets two requirements. 1) The principal place of business is in Minnesota. 2) The United States Department of Veterans Affairs verifies the business as being a veteran-owned small business under Public Law 109-461 and Code of Federal Regulations, title 38, part 74 (Supported By Documentation). See Minn. Stat. § 16C.19(d).

Submit the appropriate documentation with the solicitation response to claim the veteran-owned preference. Statutory requirements and documentation must be met by the solicitation response due date and time to be awarded the preference. The preference applies only to the first \$1,000,000 of a solicitation response.

**LAWS AND REGULATIONS.** Any and all goods, materials, supplies, services, and/or construction must comply fully with all local, state, and federal laws and regulations. Any and all goods, materials, supplies, and/or construction, must comply fully with Minn. Stat. § 181.59 prohibiting discrimination.

**GOVERNING LAW.** The solicitation and the Contract will be construed in accordance with and performance governed by the laws of the State of Minnesota. Except to the extent that the provisions of the Contract are clearly inconsistent therewith, the Contract will be governed by the Uniform Commercial Code (UCC) as adopted by the State of Minnesota. To the extent the Contract entails delivery of performance of services, the services will be deemed “goods” within the meaning of the UCC, except when to deem such services as “goods” is unreasonable.

**CERTIFICATION OF NON COLLUSION.** By submitting a response to the solicitation, I hereby swear (or affirm) under penalty of perjury:

- a. That I am the responder (if the responder is an individual), a partner in the company (if the responder is a partnership) or an officer or employee of the responding corporation having authority to sign on its behalf (if the responder is a corporation);
- b. That the response has been arrived at by the responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with any other vendor designed to limit fair or open competition;
- c. That the contents of the solicitation response have not been communicated by the responder or its employees or agents to any person not an employee or agent of the responder and will not be communicated to any other individual prior to the official opening of the response.

Any evidence of collusion among responders in any form designed to defeat competitive responses will be reported to the Minnesota Attorney General for investigation and appropriate action.

**DISPOSITION OF RESPONSES.** All materials submitted in response to this solicitation will become property of the State and will become public record after the evaluation process is completed and an award decision made. If the responder submits information in response to this solicitation that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minn. Stat. § 13.37, the responder must:

- a. Clearly mark all trade secret materials in its response at the time the response is submitted;
- b. Include a statement with its response justifying the trade secret designation for each item; and
- c. Defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the state, its agents and employees, from any judgments awarded against the State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the State's award of a Contract. In submitting a response to the solicitation, the responder agrees that this indemnification survives as long as the trade secret materials are in possession of the state. The State is required to keep all the basic documents related to its contracts, including responses to solicitation, for a minimum of seven years. The State will not consider the prices submitted by the responder to be trade secret materials.

The State reserves its right to make its own determination whether the responder's materials meet the definition of Trade Secret as provided in Minn. Stat. § 13.37, subd. 1(b).

**JURISDICTION AND VENUE.** This solicitation and the Contract, amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of the Contract or breach thereof shall be in the State or federal court with competent jurisdiction in Ramsey County, Minnesota.

**ASSIGNMENT.** The Contract Vendor shall not sell, transfer, assign, or otherwise dispose of the Contract or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized representative. Such consent shall not be unreasonably withheld. The Contract Vendor shall give written notice to the State's authorized representative of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of the contract. Failure to do so may result in the Contract Vendor being held in default. This consent requirement does not include reassignment of the contract due to a change in ownership, merger, or acquisition of the Contract Vendor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contract Vendor's right to assign the Contract to corporations to provide some of the services hereunder as a subcontractor. Notwithstanding the foregoing acknowledgment, the Contract Vendor shall remain solely liable for all performance required and provided under the terms and conditions of the Contract for services provided by the Contract Vendor's subcontractors.

**COPYRIGHTED MATERIAL WAIVER.** The State reserves the right to use, reproduce, and publish responses in any manner necessary for State agencies and local units of government to access the responses including but not limited to, photocopying, State intranet/internet postings, broadcast faxing,



and direct mailing. In the event the response contains copyrighted or trademarked materials, it is the responder's responsibility to obtain permission for the State to reproduce and publish the information, regardless of whether the responder is the manufacturer or reseller of the products listed in the materials. By signing its response, the responder certifies that it has obtained all necessary approvals for the reproduction and/or distribution of the contents of its response and agrees to indemnify, protect, save and hold the state, its representatives and employees harmless from any and all claims arising from the violation of this section and agrees to pay all legal fees incurred by the State in the defense of any such action.

**STATE AUDIT.** Pursuant to Minn. Stat. § 16C.05, subd. 5, the books, records, documents, and accounting procedures and practices of the Contract Vendor and its employees, agents, or subcontractors relevant to the Contract must be made available to and subject to examination by the contracting agency or its agents, the legislative auditor and/or the State auditor for a minimum of six years after the end of the Contract.

**NOTICE TO RESPONDERS.** Pursuant to Minn. Stat. § 270.65, subd. 3, Minnesota Contract Vendors are required to provide their Minnesota tax identification number and federal employer identification number (or Social Security number). Non-Minnesota Contract Vendors are required to provide their federal employer I.D. number (or Social Security number) only. This information may be used in the enforcement of federal and State tax laws. Supplying these numbers could result in action to require a Contract Vendor to file tax returns and pay delinquent State tax liabilities. These numbers will be available to federal and State tax authorities and State personnel involved in the payment of State obligations.

**HAZARDOUS SUBSTANCES.** To the extent that the goods to be supplied to the State by the Contract Vendor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contract Vendor must provide the State with material safety data sheets regarding those substances. A copy must be included with each delivery.

**INDEMNIFICATION, HOLD HARMLESS, AND LIMITATION OF LIABILITY.** The Contract Vendor must indemnify, protect, save and hold harmless the State, its representatives and employees, from any and all claims or causes of action, including all legal fees incurred by the State arising from the performance of the Contract by the Contract Vendor or its agents, employees, or subcontractors. The State does not agree to indemnify, defend, or hold harmless the Contract Vendor, the Contract Vendor's employees, affiliates, or any third parties that may be a beneficiary of the contract. The State does not agree to release the Contract Vendor, Contract Vendor's employees, affiliates or any third parties that may be a beneficiary of the contract from all liability under this contract. This clause must not be construed to bar any legal remedies the Contract Vendor may have with the State's failure to fulfill its obligations pursuant to the Contract.

The State agrees that Contract Vendor, its principals, members and employees will be liable to the State for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to the goods provided or services performed hereunder for an aggregate amount \$2,000,000 or the Contract amount, whichever is greater. This limitation of liability does not apply to damages for

personal injury or death, or to Contract Vendor's obligation to indemnify, defend and hold the State harmless against intellectual property infringement claims under paragraphs included in the Solicitation or a resulting contract. This indemnification does not include liabilities caused by the State's gross negligence or intentional wrong doing of the State.

**DEFAULT.** A State purchase order constitutes a binding contract. All commodities furnished will be subject to inspection and acceptance by the requisitioning entity after delivery. No substitutions or cancellations are permitted without written approval of the State contracting agency. Back orders, defaults in contracted delivery, or failure to meet specifications in the purchase order and/or the solicitation authorize the State contracting agency to cancel the award or any portion of it, purchase elsewhere, and charge the full increase, if any, in cost and handling to the defaulting Contract Vendor. A Contract Vendor may be suspended or debarred from receiving awards for consistent failure to comply with the terms and conditions of the Contract, or for failure to pay the State for the cost incurred on defaulted Contracts.

**CANCELLATION OF THE CONTRACT.** The Contract may be cancelled by the State or the commissioner of Administration at any time, with or without cause, upon 30 days' written notice to the Contract Vendor. In the event the Contract Vendor is in default, the Contract is subject to immediate cancellation to the extent allowable by the applicable law. In the event of cancellation, the Contract Vendor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

**RISK OF LOSS OR DAMAGE.** The State is relieved of all risks of loss or damage to the goods and/or equipment during periods of transportation, and installation by the Contract Vendor and in the possession of the Contract Vendor or their authorized agent.

**CONFLICT OF TERMS.** In the event of any conflict between the General Terms and Conditions, and any Special Terms and Conditions, the Special Terms and Conditions govern.

**FORCE MAJEURE.** Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

**GOVERNMENT DATA PRACTICES.** The Contract Vendor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch.13, (and where applicable, if the State contracting party is part of the judicial branch, with the rules of public access to records of the judicial branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State to the Contract Vendor in accordance with this Contract that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the rules of public access to records of the judicial branch).



In the event the Contract Vendor receives a request to release the data referred to in this article, the Contract Vendor must immediately notify the state. The State will give the Contract Vendor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data by either the Contract Vendor or the state.

The Contract Vendor agrees to indemnify, save, and hold the State of Minnesota, its agent and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act (and where applicable, the rules of public access to records of the judicial branch), including legal fees and, disbursements paid or incurred to enforce this provision of the Contract. In the event that the Contract Vendor subcontracts any or all of the work to be performed under the Contract, the Contract Vendor shall retain responsibility under the terms of this paragraph for such work.

**ORGANIZATIONAL CONFLICTS OF INTEREST.** The responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:

- a. A Contract Vendor is unable or potentially unable to render impartial assistance or advice to the state;
- b. The Contract Vendor's objectivity in performing the work is or might be otherwise impaired; or
- c. The Contract Vendor has an unfair competitive advantage.

The Contract Vendor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the assistant director of the Department of Administration's Materials Management Division that shall include a description of the action the Contract Vendor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Contract. In the event the Contract Vendor was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the State's authorized representative, the State may terminate the Contract for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Contract," "Contract Vendor," and "State's authorized representative" modified appropriately to preserve the State's rights.

**PUBLIC INFORMATION.** Once the information contained in the responses is deemed public information, interested parties may request to obtain the public information. Contact the person listed on the front page of the solicitation for award information.

**ANTITRUST.** The Contract Vendor hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with the contract resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the state.

**PRODUCTS CONTAINING CERTAIN TYPE OF PLYBROMINATED DIPHENYL ETHER BANNED.** By signing and submitting a response to this solicitation, Contract Vendor/responder certifies that they have read and will comply with Minn. Stat. §§ 325E.385 325E.388.



**COAL TAR SEALANT USE AND SALE PROHIBITED.** By submitting a response to this solicitation, the Responder certifies that coal tar sealant products are not included in its response. "Coal tar sealant product" means a surface applied sealing product containing coal tar, coal tar pitch, coal tar pitch volatiles, or any variation assigned the Chemical Abstracts Service (CAS) number 65996-93-2, 65996-89-6, or 8007-45-2. Coal tar sealants must not be used or sold for application on asphalt-paved

**ENVIRONMENTAL CHARACTERISTICS FOR REPORTING PURPOSES.** The State desires to purchase environmentally responsible goods and services where practicable.

**MERCURY.** As per Minnesota Statutes, the State cannot buy mercury in thermometers and certain other products. Products offered may not contain mercury unless otherwise allowed in the Special Terms and Conditions.

**PRICING OFFERED IN RESPONSE.** Prices listed in your response to this solicitation must take into consideration all inherent costs of providing the requested goods and/or services. The responder agrees to pay any and all fees, including, but not limited to: duties, custom fees, permits, brokerage fees, licenses and registrations. The State will not pay any additional charges beyond the price(s) listed in the response, unless otherwise provided for by law or expressly allowed by the terms of the solicitation.

**STATE DEBARMENT.** By submission of its response, the responder certifies that neither it nor its principals is presently debarred or suspended by any State agency. If unable to certify to any of the statements in this certification, the responder must attach an explanation to its response.

**STATE'S NON-INDEMNIFICATION.** The State does not agree to indemnify, defend, hold harmless or release the Contract Vendor, Contract Vendor's subcontractors, or Contract Vendor's agents.

### Exhibit 3: State of Minnesota General Insurance Requirements

The Contractor shall maintain insurance to cover claims which may arise from operations under a Contract arising from this solicitation.

The Contractor shall not commence work under a Contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. The Contractor shall maintain such insurance in force and effect throughout the term of the Contract.

All coverages and limits shall remain in force and effect throughout the term of the Contract.

#### **NOTICE TO THE CONTRACTOR:**

The failure of the State of Minnesota to obtain a Certificate of Insurance, for the policies required under this Contract or renewals thereof, or failure of the insurance company to notify the State of the cancellation of policies required under this Contract shall not constitute a waiver by the Owner to the Contractor to provide such insurance.

The Owner reserves the right to immediately terminate the Contract if the Contractor is not in compliance with the insurance requirements and the Owner retains all rights to pursue any legal remedies against the Contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.

#### **NOTICE TO INSURER:**

The Contractor's insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.

#### **REQUIREMENTS FOR THE CONTRACTOR:**

The Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contractor's performance under this Contract.

If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota.

The Contractor is responsible for payment of Contract related insurance premiums and deductibles.

If the Contractor is self-insured, a Certificate of Self-Insurance must be attached.

Insurance companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the MN Department of Commerce if they are not rated by AM Best.

The Contractor's Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.

#### **INSURANCE POLICY REQUIREMENTS:**

##### **1. Workers' Compensation Insurance:**

Statutory Compensation Coverage. Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Minimum limits of liability:

Coverage B – Employer's Liability

- \$100,000 Bodily Injury by Disease per Employee
- \$500,000 Bodily Injury by Disease Aggregate
- \$100,000 Bodily Injury by Accident

If Minn. Stat. § 176.041 exempts the Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, the Contractor must provide a written statement, signed by the authorized signer of the Contract, stating the qualifying exemption that excludes the Contractor from MN Workers' Compensation requirements.

If during the course of the Contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements included herein and provide the State of Minnesota with a certificate of insurance.

Evidence of Subcontractor insurance shall be filed with the Contractor.

**2. Automobile Liability Insurance:**

The Contractor shall maintain insurance to cover liability arising out of the ownership, operation, use or maintenance of all owned, hired and non-owned autos, and in case any work is subcontracted the Contractor will require the subcontractor to maintain Automobile Liability insurance.

A. Minimum Limits of Liability:

\$2,000,000 - Per Occurrence – Bodily Injury and Property Damage Combined Single Limit

B. Coverages:

- Owned Automobile
- Non-owned Automobile
- Hired Automobile

Evidence of Subcontractor insurance shall be filed with the Contractor.

**3. General Liability Insurance:**

The Contractor shall maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the Contract.

A. Minimum Limits of Liability:

- \$2,000,000 - Per Occurrence
- \$2,000,000 - Annual Aggregate
- \$2,000,000 - Annual Aggregate applying to Products/Completed Operations

B. Coverages

- Premises and Operations Bodily Injury and Property Damage
- Personal & Advertising Injury
- Blanket Contractual
- Products and Completed Operations
- State of Minnesota named as an Additional Insured***