

MINNESOTA
DEPARTMENT OF HUMAN SERVICES
CONTINUING CARE ADMINISTRATION

REQUEST FOR PROPOSALS



FOR
A QUALIFIED CONTRACTOR TO
CONDUCT A STUDY OF CRITICAL ACCESS TO
HOME AND COMMUNITY-BASED SERVICES

For communication assistance, contact Minnesota Relay Service at 7-1-1 or 1-800-627-3529. If you ask, we will give you this information in another form, such as Braille, large print, or audiotape.

February 14, 2014

TABLE OF CONTENTS

I.	INTRODUCTION	04
	A. Purpose of Request.....	04
	B. Objective of this RFP	04
	C. Background	05
II.	SCOPE OF WORK	08
	A. Overview.....	08
	B. Tasks/Deliverables	09
III.	PROPOSAL FORMAT	12
	A. Required Proposal Contents.....	12
	B. Technical Requirements.....	13
	C. Required Statements	14
	D. Cost Proposal	18
IV.	RFP PROCESS	18
	A. Responders' Conference	
	B. Responders' Questions.....	18
	C. Proposal Submission	18
V.	PROPOSAL EVALUATION AND SELECTION	19
	A. Overview of Evaluation Methodology.....	20
	B. Evaluation Team	20
	C. Evaluation Phases.....	20
	D. Contract Negotiations and Unsuccessful Responder Notice.....	23
VI.	REQUIRED CONTRACT TERMS AND CONDITIONS	23
VII.	STATE'S RIGHTS RESERVED	28
VIII.	ADDITIONAL REQUIREMENTS	
	APPENDIX A Responder Information and Declarations	31
	APPENDIX B Exceptions to Terms and Conditions	33
	APPENDIX C Affidavit of Noncollusion	34
	APPENDIX D Trade Secret/Confidential Data Notification	35
	APPENDIX E Affirmative Action Data Page	37
	APPENDIX F Certification and Restrictions on Lobbying	39
	APPENDIX G Veteran-Owned Preference Form.....	40
	APPENDIX H Cost Proposal	42
	APPENDIX H -1 Budget Template.....	43
	APPENDIX H -2 Staff time Allocation for Program	44
	APPENDIX I Resident Vendor Form.....	45
	APPENDIX J Sample State Professional Services Contract.....	46

RFP Summary

Important Dates:

RFP Published	February 5, 2014
Responder's Conference	None
Questions Due:	February 19, 2014
Proposals Due:	March 5, 2014 SWIFT EVENT END
Anticipated Selection of Successful Responder(s)	March 12, 2014 SWIFT EVENT END Date
Anticipated Start of Contract	March 20, 2014
Anticipated End of Contract	July 31, 2015
Anticipated Extensions	None
Number of Copies	Email a courtesy of the copy of the Technical proposal to: dhs.hbcsriticalaccesstechnical@state.mn.us
.	Email a courtesy copy of the Cost proposal to: dhs.hbcsriticalaccesscost@state.mn.us
	both due at the same date and time as SWIFT EVENT
State Contact:	Rolf Hage 651-431-2594 Rolf.hage@state.mn.us

I. INTRODUCTION

A. PURPOSE OF REQUEST

The Minnesota Department of Human Services, through its Continuing Care Administration (State), is seeking Proposals from qualified Responders to conduct a onetime study to assess the local capacity and availability of home and community-based services for older adults, people with disabilities, children and youth with mental health conditions and adults living with mental illnesses. The study must assess critical access at the community level and identify potential strategies to build home and community-based service capacity in critical access areas. A report of the findings of this study is due to the Legislature no later than August 15, 2015.

B. OBJECTIVE OF THIS RFP

The objective of this RFP is to contract with a qualified Responder(s) to perform the tasks and services set forth in this RFP. The term of any resulting contract is anticipated to be for 18 months, from March 20, 2014 until August 29, 2015.

The official response to this RFP must be submitted and received in SWIFT no later than the Event End Date and time as set forth in the SWIFT Event Details applicable to this RFP.

An email courtesy copy of all application materials saved as .PDF files must also must be submitted and received no later than the Event End Date and time as set forth in the SWIFT Event Details applicable to this RFP .

The .PDF copy of the elements of the Technical proposal must be received at:

*DHS_HCBS Critical Access Technical <dhs.hcbscriticalaccesstechnical@state.mn.us>.

The .PDF copy of Cost proposal must be received at:

*DHS_HCBS Critical Access Cost <dhs.hcbscriticalaccesscost@state.mn.us>.

This RFP does not obligate the State to award a contract or complete the project, and the State reserves the right to cancel the solicitation if it is considered to be in its best interest. All costs incurred in responding to this RFP will be borne by the Responder.

This RFP provides background information and describes the services desired by the State. It delineates the requirements for this procurement and specifies the contractual conditions required by the State. Although this RFP establishes the basis for Responder Proposals, the detailed obligations and additional measures of performance will be defined in the final negotiated contract.

C. BACKGROUND

Minnesota is a national leader in providing publicly-funded long-term services and supports (LTSS) for older adults and people with disabilities. The state has systematically encouraged the development of and support for home and community-based services (HCBS)¹, which older adults and people with disabilities prefer. Since 1995, Minnesota has spent an increasing proportion of its Medical Assistance LTSS dollars on HCBS and less on institutional services. Currently, 74 percent of all Medical Assistance LTSS expenditures in Minnesota support HCBS.

Most people with disabilities who receive LTSS receive them in community-based settings instead of nursing facilities, intermediate care facilities, or state-operated facilities. In 2007, about 90 percent of people with disabilities in Minnesota receiving Medical Assistance LTSS received home and community-based services (HCBS). By 2011, that percentage had increased to approximately 93 percent.

Older adults who receive LTSS increasingly receive them in their homes instead of going to institutions. In 2007, almost 58 percent of older adults in Minnesota receiving Medical Assistance LTSS received HCBS. By 2011, that percentage had increased to 64.3 percent.

The information gathered and analyses completed to date indicate gaps in the availability of some HCBS for some populations as well as barriers to accessing services. Any conclusions that can be drawn from this information are limited to preliminary findings at the state or county levels.

The Critical Access Study will provide the state with the opportunity to determine in more detail the extent to which the LTSS that people need and prefer (i.e., HCBS) are or are not available and to identify the barriers, if any, to their availability. This study will build on the work completed to date and use additional work currently underway to document the experience of individuals as they try to access HCBS and to identify barriers. DHS does not have a final definition of critical access in this context but acknowledges that it includes, but is not limited to, situations in which an individual has to leave their home or community and move into a more restrictive setting because they cannot receive the HCBS that they need in their own home.

Status of Long-Term Services and Supports Report to the Legislature

Beginning in 2001 and every two years thereafter, the Minnesota Department of Human Services (DHS) has reported on the current capacity of and gaps in LTSS and housing to

¹ The term *long-term services and supports* refers to on-going supports that an individual needs due to a chronic health condition or disability. These services can be delivered in a person's home, in another community setting, or in an institutional setting. Currently, long-term services and supports (LTSS) is the nationally recognized term for this range of services and is used by the federal government. The term *home and community-based services* (HCBS) refers to long-term services and supports that are delivered in homes or other community-based settings, not in institutional settings. Home and community-based services are a subset of long-term services and supports.

support older adults in Minnesota. The primary source of information for this report has been a survey completed by the counties to describe the capacity for these services in their local areas. Input has also been gathered from health plans, county-based purchasing entities and the Area Agencies on Aging regarding the service capacity across the state. In 2012, the Legislature amended state statute to expand the scope of the survey and resulting report to include people with disabilities, children and youth with mental health conditions and adults living with mental illnesses.

For the 2012 Gaps Analysis, DHS developed a separate survey to focus on services for each of the four populations. The surveys focusing on services for older adults and people with disabilities primarily asked about the availability of LTSS. The surveys focusing on services for children and youth with mental health conditions and adults living with mental illnesses primarily asked about the availability of mental health treatment services. In addition to the Gaps Analysis surveys, DHS contracted with The Improve Group to conduct the Community Service Input Project. The Community Service Input Project gathered insights about LTSS directly from people with disabilities, adults living with mental illnesses, older people, and their families and caregivers (including those supporting children and youth with mental health conditions).

The 2012 Gaps Analysis results and the findings from the Community Service Input Project were summarized in a report to the Legislature submitted in October 2013. This report also contained a summary of the full report on the status of nursing home services. These documents can be found online on the DHS public website:

www.dhs.state.mn.us/gapsanalysis.

Medical Assistance Reform Data Analysis

In 2012, DHS contracted with Truven Health Analytics to conduct a set of analyses using Medical Assistance data for Reform 2020. The purpose of these analyses was to provide an analytic review of DHS current understanding about service utilization and costs of Medical Assistance-funded LTSS in Minnesota. The Truven analyses resulted in a series of summary data tables and profiles. These data tables and profiles included the following information:

- In 2010, the population-level characteristics (demographics, service use, costs and combinations of services) for each of the DHS LTSS including HCBS waiver programs and other major services, by age group.
- In 2010, the degree to which the descriptive characteristics, service utilization and costs varied for:
 - those enrolled in programs that exclusively served older adults (EW and AC) varied by case mix category;
 - people in the DD waiver by indicator of need;
 - people receiving PCA and PDN by indicators of need in the home care assessment.
- In 2010, the service use and cost profile of select disability population groups who access HCBS and rehabilitative services across multiple programs.

- For 2006-2010, the five-year trends in descriptive characteristics, service utilization and costs for those enrolled in the HCBS and rehabilitative programs.
- For 2006-2010, the characteristics of the populations who use waiver programs or Alternative Care for a short period of time.
- In 2010, the service use profile (including PCA, waiver and behavioral health services) for PCA users, those on a waiver waiting list and short-term/episodic users.
- In 2010, the demographic and service utilization profile of “crisis” LTSS users and predictors for high-cost utilization of mental health services.

All data tables are included as part of PowerPoint presentations prepared by Truven Health Analytics which are available at:

[Preliminary Analysis PPT – presented May 4, 2012](#)

[Secondary Analysis PPT – presented June 18, 2012](#)

Copies of these data tables and profiles are available upon request by contacting Rolf Hage at rolf.hage@state.mn.us or 651-431-2594.

Service Access Study

In 2012, DHS contracted with Truven Health Analytics to conduct the Service Access Study, which seeks to evaluate the impact of Medical Assistance rate changes on participant access to LTSS. For most non-residential LTSS, there were rate increases in State Fiscal Years (FYs) 2008 and 2009, followed by rate decreases in FYs 2010 and 2012. While rate reductions have allowed DHS to avoid decreasing the number of people served, they potentially could carry the risk for limiting access to necessary services. Recognizing this risk, the 2011 Minnesota Legislature authorized an evaluation to measure the impact of rate changes on LTSS access.

The overarching goal of the study is to develop and test meaningful access metrics, based on real-time data. The resulting measures are to be operationalized into a dashboard to serve multiple purposes, such as:

- Identifying areas and services with potentially constrained access;
- Influencing future policy decisions on provider reimbursement;
- Communicating with internal and external stakeholders; and
- Complying with any future federal regulations.

The analysis completed thus far by Truven Health Analytics includes:

- Literature review on how other states measure and monitor LTSS access;
- Proposal and development of LTSS access measures;
- Summary of Minnesota managed care LTSS access requirements;
- Summary of findings from semi-structured phone interviews with Minnesota MCOs on their methods of assuring access and any observed impacts from rate changes;
- Managed care demographic and utilization trends for FYs 2008-2011; and
- FFS utilization and other access measure trends for FYs 2007-2011.

Currently, Truven Health Analytics is conducting multivariate analyses to determine the level of impact, if any, of the rate changes on access to specific LTSS. The services that are included in this analysis are: Personal Care Assistance, Private Duty Nursing, Homemaker Services and Skilled Nurse Visits. The analyses will determine the impact on two recipient-level access measures (service utilization and authorized vs. used amounts of service) and two provider-level access measures (provider participation and recipients per provider ratio).

II. SCOPE OF WORK

A. OVERVIEW

The State seeks to define and describe critical access as it relates to the availability of HCBS for older adults, people with disabilities, children and youth with mental health conditions and adults living with mental illnesses through the completion of a onetime study. The study must assess what constitutes critical access at the community level and identify potential strategies to build home and community-based service capacity to assure access in all areas of Minnesota.

The Critical Access Study will provide the state with the opportunity to determine in more detail the extent to which the LTSS that people need and prefer (i.e., HCBS) are or are not available and to identify the barriers, if any, to their availability. This study will build on the work completed to date and use additional work currently underway to document the experience of individuals as they try to access HCBS and to identify barriers. DHS does not have a final definition of critical access in this context but acknowledges that it includes, but is not limited to, situations in which an individual has to leave their home or community and move into a more restrictive setting because they cannot receive the HCBS that they need in their own home.

For the purposes of this study, HCBS includes services provided through the Medical Assistance (MA) HCBS Waiver Programs (MN Statutes [256B.0915](#), [256B.092](#), [256B.49](#) and [256B.5013](#)), Alternative Care Program (MN Statute [256B.0913](#)), including providers of intermediate care facilities for persons with developmental disabilities (MN Statute [256B.5013](#)) and MA State Plan-funded Home Care Services (MN Statute [256B.0651](#)). In addition, the state is interested in gaining a better understanding of critical access issues for all populations in need of HCBS, including those not eligible for MA programs.

More specifically, the state is interested in the following:

- Comparing the number of people served through MA HCBS programs (state and federally funded) with estimates of potential demand for publicly-funded HCBS at the state, regional, county and local levels.
- Comparing the number of people eligible for an MA HCBS Waiver but not receiving waiver services at the state, and regional, and county and local levels.

- Exploring service utilization patterns by population, pay source, service, geographic area and community. Analysis should be conducted at the regional level to incorporate economic/market centers and at the local level to allow for community differences. For these purposes a community can be defined as cultural communities including racial and ethnic minority communities; new American, immigrant and refugee communities; gay, lesbian, bisexual and transgender (GLBT) communities; and communities of individuals who are deaf/hard of hearing and/or who have limited/low vision.
- Exploring the interaction between variables that may impact an individual's access to services, including the mix of services available in a given geographic area, distance between an individual's home and the service provider, county and other political boundaries and others.

The State seeks a contractor to design and implement the HCBS Critical Access Study in order to inform the State on the aspects identified above.

The Critical Access HCBS contractor must:

- 1. Work closely with the contractor selected to conduct the stakeholder input process for the 2014 LTSS Gaps Analysis process.** The Gaps Analysis process primarily involves a survey of counties regarding the availability of LTSS. A contractor will be selected through a competitive RFP process in Spring 2014 to review and propose improvements to the survey process and to collect input regarding gaps in the availability of LTSS by additional stakeholder groups.
- 2. Work with the HCBS Partners Panel** to gather stakeholder input to inform the overall study design, finalize the definition of critical access, review study results and discuss potential solutions to address barriers to access.
- 3. Rely primarily on existing data sources to inform the study design and analysis.** In addition to the data sources noted in the previous section, the contractor must include data from the following sources:
 - [2009 Gaps Analysis Reports and county profiles \(older adults only\)](#)
 - 2001-2007 Gaps Analysis Reports and county profiles (older adults only)²
 - [Eldercare Development Program regional analyses of 2012 Gaps Analysis](#)³
 - [DHS Continuing Care Administration Performance Measures](#)
 - [Minnesota Board on Aging Caregiver Respite Services Survey Report, August 2013](#)⁴
 - [Initial Needs Determination Report for Disability Waiver Residential and Support Services](#)
 - [Biennial Report on Long-Term Services and Supports for People with Disabilities, Jan. 2013](#)

¹ Copies available upon request by contacting Rolf Hage at rolf.hage@state.mn.us or 651-431-2594.

4. **Gather additional stakeholder input, as needed, to inform the study.** This input may include, but is not limited to, the perspectives from the users of long-term services and supports, family members, advocates, service providers and lead agencies. The primary interest of DHS is in hearing directly from participants about their experience in accessing services.

B. TASKS/DELIVERABLES

The Contractor must develop a project work plan to perform the following tasks to accomplish the purpose of this Request for Proposal (RFP). Responding organizations shall describe, in detail, their proposed approach to addressing each task. Each task constitutes a contract deliverable and a work plan including a timeline for each specific deliverable must be completed no later than thirty days after the execution of the contract.

1. Updated Project Plan

The Contractor must submit an updated project plan providing more detail than the initial work plan provided in the proposal. The updated project plan should also provide a description of the deliverables to be provided along with a detailed work plan that identifies how and when the major tasks are to be accomplished.

2. Methodology for Analyzing Existing Data

The Contractor must submit a detailed work plan that articulates the questions to be answered by the study; outlines the process to analyze and use the existing data by question, population, program and service; and identifies gaps in the existing data. The Contractor should allow for in-depth discussions with DHS staff as necessary to develop and refine the questions and to gain an understanding of the existing data. The Contractor shall propose a process to analyze the data at the state, regional, county and local levels and to identify any limitations in the data that prevent certain types of analysis.

3. Methodology for Gathering and Analyzing New Data

The Contractor must submit a detailed work plan that identifies the additional data that is necessary for the successful completion of this research project. The Contractor must include an explanation of the need for the additional data and a description of how it relates to and complements the existing data. The Contractor must also provide a detailed description of how the additional data would be collected and analyzed.

4. Process to Work with the HCBS Partners Panel

The Contractor must propose the process that they will use to work with the HCBS Partners Panel for the duration of the proposed study.

The Contractor will have to work closely with the DHS staff that is responsible for staffing the HCBS Partners Panel to set agendas for meetings, invite participants and determine when sub-workgroups might be necessary. The Contractor will also be responsible for Travel costs incurred by the contractor and preparing handouts to be distributed to participants in these meetings, including ensuring that all documents are accessible.

Contractor should propose an approach for conducting the meetings. The State wants to ensure efficiency, time well spent for the contractor as well as participants in these meetings, as well as efficacy, encouraging all interested parties the opportunity to speak freely therefore giving us the best information. Contractors may consider the use of tools to survey participants in the meeting, such as audience interactive response systems.

Topics to be covered during these meetings include the definition of critical access, overall study design, interim study results and potential solutions to address barriers to access.

5. Methodology for Gathering Participant Input

The Contractor must propose a process or processes through which additional participant input will be gathered to learn about experiences using services as well as barriers to accessing services. The Contractor will be responsible for the logistics involved in the process/es and should consider a variety of methods, including technology, to gather this input. The Contractor may also propose a process to gather input from additional stakeholders if a need is identified and can be documented.

6. Presentation of Periodic Updates and Final Report

The Contractor must deliver periodic updates to the HCBS Partners Panel and will provide a report summarizing the study's findings and provide a presentation of those findings to the State, the HCBS Partners Panel and other audiences determined by mutual agreement. At least one of these presentations must be conducted via webinar at the end of which a transcript is provided to DHS.

7. Development of Accessible Products and Services

All products and services developed must meet the State of Minnesota accessibility [standards](#) and [guidelines](#). The goal of the Accessibility Standard is to improve the accessibility and usability of information technology products and

services for all users. The standard incorporates the [WebContentAccessibility Guidelines2.0](#) and [Section 508](#) of the Rehabilitation Act of 1973.

III. PROPOSAL FORMAT

Proposals must conform to all instructions, conditions, and requirements included in the RFP. Responders are expected to examine all documentation and other requirements. Failure to observe the terms and conditions in completion of the Proposal are at the Responder's risk and may, at the discretion of the State, result in disqualification of the Proposal for nonresponsiveness. Acceptable Proposals must offer all services identified in Section II - *Scope of Work* and agree to the contract conditions specified throughout the RFP.

A. REQUIRED PROPOSAL CONTENTS

Responses to this RFP must consist of all of the following components (See following sections for more detail on each component). **The Trade Secret/Confidential Data Notification and Cost Proposal must be submitted in SWIFT as separately attached documents. The e-mail courtesy copy of the cost proposal must be provided as an attached .PDF file sent to**

dhs.hcbscriticalaccesscost@state.mn.us

and any materials constituting TRADE SECRET must be clearly marked as such.

1. Table of Contents
2. Technical Requirements
 - a. Statement of Understanding
 - b. Proposed Work Plan
 - c. Relevant Responder Experience/Resumes of Lead Responder Staff
4. Required Statements
 - a. Responder Information and Declarations
 - b. Exceptions to Terms and Conditions
 - c. Affidavit of Noncollusion
 - d. Trade Secret/Confidential Data Notification
 - e. Preference to Targeted Group and Economically Disadvantaged Business and Individuals
 - f. Affirmative Action Data Page
 - g. Certification and Restriction on Lobbying
 - h. Veteran-Owned Preference Form (if applicable)

6. Appendix (*If Applicable*)

Any additional information thought to be relevant, but not applicable to the prescribed format, may be included in the Appendix of your Proposal.

7. Cost Proposal

B. TECHNICAL REQUIREMENTS PROPOSAL

The following will be considered minimum requirements of the Technical part of the Proposal. Emphasis should be on completeness and clarity of content.

1. *Statement of Understanding*

This component of the Proposal should demonstrate the Responder's understanding of the services requested in this RFP, the nature of the contract, and any problems anticipated in accomplishing the work. Specifically, the Proposal should demonstrate the Responder's familiarity with the project elements, a summary of its solution(s) to the problems presented and knowledge of the requested services and/or deliverables.

2. *Proposed Work Plan*

The Responder should provide a description of the deliverables to be provided along with a detailed work plan that identifies how the major tasks are to be accomplished. The work plan should provide sufficient information to be used as a scheduling and managing tool. The work plan should show the Responder's overall design of the project in response to achieving the deliverables as defined in this RFP. Responder should include proposed staffing for the project.

3. *Relevant Responder Experience, Resumes of Lead Responder Staff*

The Responder should demonstrate the length, depth, and applicability of prior experience in providing the requested services. This component of the Proposal must include previous experiences that will demonstrate the Responder's ability to deliver the services requested in this RFP. Responder may identify entities for which it has supplied similar services to those requested in the RFP, if any. If such organizations are identified, Responder should include each identified organization's name and address, and the name, title and telephone number of a contact of each organization. Responder should also provide a narrative description of the actual services provided to the organization(s). Describe what role, if any, staff proposed for this project had in the referenced service. Letters of reference may be included.

The Responder should also demonstrate the skill and experience of proposed lead staff. At a minimum, resumes must be provided for employees who would be assigned lead responsibilities on this Project. Resumes should describe the education, professional affiliations, and other relevant background of the lead staff to be assigned to this project. No change in the Successful Responder's personnel assigned to this project will be permitted without the prior approval of the State Program Manager.

C. REQUIRED STATEMENTS

The following are required statements that must be included with your Proposal. Complete the correlating forms found in the RFP Appendix and submit them as the “Required Statements” section of your Proposal.

1. *Responder Information and Declarations*

Complete and submit the attached “*Responder Information and Declarations*” form. If you are required to submit additional information as a result of the declarations, include the additional information as part of this form.

2. *Exceptions to RFP Terms*

The contents of this RFP and the Proposal(s) of the Successful Responder(s) may become part of the final contract if a contract is awarded. Each Responder's Proposal must include a statement of acceptance of all terms and conditions stated within this RFP or provide a detailed statement of exception for each item excepted by the Responder. Responders who object to any condition of this RFP must note the objection on the attached “*Exceptions to RFP Terms*” form. If a Responder has no objections to any terms or conditions, the Responder should write “None” on the form.

Responder should be aware of the State's standard contract terms and conditions in preparing its response. A sample State of Minnesota, Department of Human Services, Contract is attached for your reference. Much of the language reflected in the contract is required by statute. If you take exception to any of the terms, conditions or language in the contract, you must indicate those exceptions in your response to the RFP. Only those exceptions indicated in your response to the RFP will be available for discussion or negotiation.

Responders are cautioned that any exceptions to the terms of the standard State contract which give the Responder a material advantage over other Responders may result in the Responder's Proposal being declared nonresponsive. Proposals being declared nonresponsive will receive no further consideration for award of the Contract. Also, Proposals that take blanket exception to all or substantially all boilerplate contract provisions will be considered nonresponsive Proposals and rejected from further consideration for contract award.

3. *Affidavit of Noncollusion*

Each Responder must complete and submit the attached “*Affidavit of Noncollusion*” form.

4. *Trade Secret/Confidential Data Notification*

All materials submitted in response to this RFP will become property of the State and will become public record in accordance with Minnesota Statutes, section 13.591, after the evaluation process is completed. Pursuant to the statute, completion of the evaluation process occurs when the State has completed negotiating the contract with the Successful Responder. If a contract is awarded to the Responder, the State must have the right to use or disclose the trade secret data to the extent otherwise provided in the Contract or by law.

If the Responder submits information in response to this RFP that it believes to be trade secret/confidential materials, as defined by the Minnesota Government Data Practices Act, Minn. Stat. §13.37, and the Responder does not want such data used or disclosed for any purpose other than the evaluation of this Proposal, the Responder must:

- a. clearly mark every page of trade secret materials in its Proposal at the time the Proposal is submitted with the words “**TRADE SECRET**” or “**CONFIDENTIAL**” in capitalized, underlined and bolded type that is at least 20 pt. ; the State does not assume liability for the use or disclosure of unmarked or unclearly marked trade secret/confidential data. **NOTE:** all non-public/trade secret data must be posted to the “Add Non Public/Trade Secret Data” link on the Event Information page in SWIFT. The State is unable to ensure the protection of non-public/trade secret data contained in any other attachment
- b. fill out and submit the attached “*Trade Secret/Confidential Information Notification Form*”, specifying the pages of the Proposal which are to be restricted and justifying the trade secret designation for each item. If no material is being designated as protected, a statement of “None” should be listed on the form;
- c. satisfy the burden to justify any claim of trade secret/confidential information. Use of generic trade secret/confidential language encompassing substantial portions of the Proposal or simple assertions of trade secret interest without substantive explanation of the basis therefore will be regarded as nonresponsive requests for trade secret/confidential exception and will not be considered by the State in the event of a data request is received for Proposal information; and
- d. defend any action seeking release of the materials it believes to be trade secret and/or confidential, 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 this RFP, the Responder agrees that this indemnification survives as long as the trade secret materials are in the

possession of the State. The State is required to keep all the basic documents related to its contracts, including selected responses to RFPs, for a minimum of six years after the end of the contract. Non-selected RFP Proposals will be kept by the State for a minimum of one year after the award of a contract, and could potentially be kept for much longer.

The State reserves the right to reject a claim if it determines Responder has not met the burden of establishing that the information constitutes a trade secret or is confidential. **The State will not consider prices or costs submitted by the Responder to be trade secret materials.** Any decision by the State to disclose information designated by the Responder as trade secret/confidential will be made consistent with the Minnesota Government Data Practices Act and other relevant laws and regulations. If certain information is found to constitute a trade secret/confidential, the remainder of the Proposal will become public; only the trade secret/confidential information will be removed and remain nonpublic.

The State also retains the right to use any or all system ideas presented in any Proposal received in response to this RFP unless the Responder presents a positive statement of objection in the Proposal. Exceptions to such Responder objections include: (1) public data, (2) ideas which were known to the State before submission of such Proposal, or (3) ideas which properly became known to the State thereafter through other sources or through acceptance of the Responder's Proposal.

5. *Preference to Targeted Group and Economically Disadvantaged Business and Individuals*

In accordance with Minnesota Rules, part 1230.1810, subpart B and Minnesota Rules, part 1230.1830, certified Targeted Group Businesses and individuals submitting proposals as prime contractors will receive a six percent preference in the evaluation of their proposal, and certified Economically Disadvantaged Businesses and individuals submitting proposals as prime contractors will receive a six percent preference in the evaluation of their proposal. Eligible TG businesses must be currently certified by the Materials Management Division prior to the solicitation opening date and time. For information regarding certification, contact the Materials Management Helpline at 651.296.2600, or you may reach the Helpline by email at mmdhelp.line@state.mn.us. For TTY/TDD communications, contact the Helpline through the Minnesota Relay Services at 1.800.627.3529.

6. *Human Rights Compliance*

For all contracts estimated to be in excess of \$100,000, Responders are required to complete and submit the attached “Affirmative Action Data” page. As required by Minn. R. 5000.3600, “It is hereby agreed between the parties that Minn. Stat. § 363A.36 and Minn. R.5000.3400 - 5000.3600 are incorporated into any contract

between these parties based upon this specification or any modification of it. A copy of Minn. Stat. § 363A.36 and Minn. R.5000.3400 - 5000.3600 are available upon request from the contracting agency.”

7. *Certification Regarding Lobbying*

Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore the Responder must complete and submit the attached “*Certification Regarding Lobbying*” form.

8. *Veteran-Owned Preference*

In accordance with Minnesota Statutes, section 16C.16, subdivision 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 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 Minnesota Statutes, section 16C.19, paragraph (d).

In accordance with Minnesota Statutes, section 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.

To receive a preference the veteran-owned small business must meet the statutory requirements above by the solicitation opening date and time.

If you are claiming the veteran-owned preference, **attach documentation, sign and return the Veteran-Owned Preference 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.

9. *Resident Vendor Form*

In accordance with Laws of Minnesota 2013, Chapter 142, Article 2, Section 16, amending Minn. Stat. § 16C.02, subd. 13, eligible responders may claim resident vendor status. To do so, eligible resident vendors should complete and sign the Resident Vendor Status form in this solicitation. Only qualifying businesses that provide the required documentation, per the form, will be given the status.

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

D. COST PROPOSAL

Responders must use the attached “*Cost Proposal Sheet – Proposed Rate*” form (**Appendix H**), form “*Budget Template*” (**Appendix H-1**), and form “*Staff Time Allocation for the Project*” (**Appendix H-2**) to submit their Cost Proposal. The Cost Proposal must be loaded and submitted in SWIFT as a **separate** document(s) from your technical response. The email courtesy copy of the cost proposal must be provided as a separate .PDF documents to

dhs.hcbscriticalaccesscost@state.mn.us.

Cost proposals will not reviewed by the evaluation team prior to the qualification scores being finalized. **Do not include any cost information in the Technical Requirements part of the Proposal.** The Technical and Cost Proposals must be open for acceptance until a contract is approved, the RFP is cancelled, or 180 days after the submission deadline for the RFP, whichever comes first.

The rate(s) identified in the Cost Proposal must reflect all costs, including but not limited to: mass mailings, fees, commissions, compensation, equipment and other charges by the Responder for the service and/or deliverable. For purposes of completing the Cost Proposal, Responder should know that the State does not make regular payments based solely upon the passage of time; it only pays for services performed or work delivered after it is accomplished. The contract will contain no cost-of-living adjustment provision.

IV. RFP PROCESS

A. RESPONDERS' QUESTIONS

Responders' questions regarding this RFP must be submitted **by email prior to 4:00 p.m. Central Time on February 19, 2014**. All questions must be sent to Rolf Hage at rolf.hage@state.mn.us.

Other personnel are **NOT** authorized to discuss this RFP with Responders before the proposal submission deadline. **Contact regarding this RFP with any State personnel not listed above could result in disqualification.** The State will not be held responsible for oral responses to Responders.

Questions will be addressed in writing and distributed to all identified prospective Responders. Every attempt will be made to provide answers timely, with the intent that they are sent no later than February 26, 2014 via an addendum to the RFP in SWIFT.

C. PROPOSAL SUBMISSION

1. Official Responses

All responses to this RFP (termed an “Event” within SWIFT) must be submitted through SWIFT using the Supplier portal (<http://supplier.swift.state.mn.us/>). Training and documentation on how to submit your response is available through the Supplier portal link above.

All responses to this RFP must be submitted and received in SWIFT no later than the Event End Date and time as set forth in the SWIFT Event Details applicable to this RFP.

Interested responders may begin preparing and entering their response into SWIFT as soon as they have downloaded the RFP. Electronic submissions to the State will be accepted beginning on the SWIFT Start Date for this RFP. Cost information must be loaded into the system as a separate document(s) from your technical response.

All proposals will be automatically time and date stamped internal to the SWIFT system when they are received. Proposals received after End Date above will not be considered. The State shall not be responsible for any errors or delays caused by technology-related issues, even if they are caused by the State.

NOTE: If you are reviewing this RFP in the SWIFT system or downloaded the RFP from the SWIFT system, you are likely already a registered vendor with the State. If you are reviewing this RFP in paper form, you may need to register as a vendor by going to <http://www.mmb.state.mn.us/vendorresources>. For new vendors, please note that approval of your registration may take 3 – 4 business days. If you need assistance obtaining a vendor ID or completing the registration process, please call 651-201-8100, Option 1.

Late proposals will not be considered.

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

Your official response must be submitted and received in SWIFT.

To aid the State in reviewing and evaluating your proposal, you must also email a courtesy .PDF copy of the Technical Proposal as specified in the RFP Summary on page 3 to:

dhs.hbscriticalaccesstechnical@state.mn.us

The courtesy email .PDF copy of the Cost Proposal must be emailed to: ***DHS_HCBS Critical Access Cost <dhs.hbscriticalaccesscost@state.mn.us>**.

The courtesy copies must be content identical to the official response. The Cost Proposal must be emailed to the separate

dhs.hbscriticalaccesscost@state.mn.us

Please make sure that no cost information is included with the Technical Proposal.

Faxed and e-mailed proposals will not be accepted or considered. Emailed courtesy copies of proposals will not be considered as an official response to this RFP.

V. PROPOSAL EVALUATION AND SELECTION

A. OVERVIEW OF EVALUATION METHODOLOGY

1. All responsive Proposals received by the deadline will be evaluated by the State. Proposals will be evaluated on “best value” as specified below, using a 100 point scale (70 possible technical points and 30 possible cost points). The evaluation will be conducted in four phases:
 - a. Phase I Required Statements Review
 - b. Phase II Evaluation of Technical Proposal
 - c. Phase III Evaluation of Cost Proposals
 - d. Phase IV Selection of the Successful Responder
2. During the evaluation process, all information concerning the Proposals submitted, except identity of Responders, will remain non-public.
3. Nonselection of any Proposals will mean that either another Proposal(s) was determined to be more advantageous to the State or that the State exercised its right to reject any or all Proposals. At its discretion, the State may perform an appropriate cost and pricing analysis of a Responder's Proposal, including an audit of the reasonableness of any Proposal.

B. EVALUATION TEAM

1. A evaluation team will be selected to evaluate Responder Proposals.
2. State and professional staff, other than the evaluation team, may also assist in the evaluation process. This assistance could include, but is not limited to, the initial mandatory requirements review, contacting of references, or answering technical questions from evaluators.

C. EVALUATION PHASES

At any time during the evaluation phases, the State may, at the State’s discretion, contact a Responder to: (1) provide further or missing information or clarification of their Proposal, (2) provide an oral presentation of their Proposal, or (3) obtain the opportunity to interview the proposed key personnel. Reference checks may also be made at this time. However, there is no guarantee that the State will look for information or clarification outside of the submitted written Proposal. Therefore, it is important that the Responder ensure that all sections of the Proposal have been completed to avoid the possibility of failing an evaluation phase or having their score reduced for lack of information.

1. Phase I – Required Statements Review

The Required Statements will be evaluated on a pass or fail basis. Responders must "pass" each of the requirements identified in these sections to move to Phase II. The Required Statements will also be reviewed for submission by the Responder of the optional Preference to Targeted Group and Economically Disadvantaged Business and Individuals or the Veteran-Owned Preference Form. If proper proof of these certifications are submitted, the eligible preference points will be awarded to the Responder at this time.

2. Phase II - Evaluation of Technical Proposals

a. Points have been assigned to the non-cost component areas. The total possible points for the non-cost component areas are as follows:

	<u>Component</u>	<u>Total Possible Points</u>
i.	Statement of Understanding	10
ii.	Proposed Work Plan	30
iii.	Relevant Responder/Worker Exp.	<u>30</u>
	Total:	70

b. The evaluation team will review the components of each responsive Proposal submitted. Each component will be evaluated on the team's evaluation of the Responder's understanding and the quality and completeness of the Responder's approach and solution to the problems or issues presented.

c. After reviewing the Proposals, the members of the evaluation team will assign to each proposal component points up to the maximum outlined in 2a.

3. Phase III - Evaluation of Cost Proposals

a. **Prior to evaluation in Phase III, no Cost Proposal will be reviewed and all will remain sealed.**

b. Only the Proposals found to be responsive under Phases I and II will be considered in Phase III.

c. Cost Proposals will be examined to determine if they are complete, in compliance with the requirements of this RFP, accurate in their calculation, and rationally related to their technical counterpart and contract requirements. Any Cost Proposal that does not meet these criteria may be considered nonresponsive and rejected.

- d. Cost will be of significant importance in selecting a Responder(s) deemed qualified to provide all the requested services, but will not be the sole determining factor.
- e. Points for Cost Proposals will be awarded as follows:

Lowest cost will be determined by the Cost Proposal rate submitted by the Responder. The Proposal with the lowest cost will receive 100% of the available points. The other Proposals will receive points using the following formula:

$$\frac{\text{Lowest Proposal Rate}}{\text{Rate of Other Proposal}} \times \text{Max. Pts.} = \text{Pts.}$$

EXAMPLE (Using 30 points as maximum): If Responder A submitted the lowest rate of \$11,500, and Responder B submitted a rate of \$12,000, Responder A would receive 30 points and Responder B would receive 28.74 points ($11,500 \div 12,000 \times 30 = 28.74$).

- 4. Phase IV - Selection of the Successful Responder(s)
 - a. Only the Proposals found to be responsive under Phases I, II, and III will be considered in Phase IV.
 - b. The evaluation team will review the Proposal scores in making its recommendations of the Successful Responder(s). A Responder's total score will be the sum of the scores received for the Technical Proposal and the Cost Proposal, along with any points awarded as bonus and/or for being a Targeted Group and Economically Disadvantaged Business and Individuals, an eligible veteran-owned businesses.
 - c. The State may submit a list of detailed comments, questions, and concerns to one or more Responders after the initial evaluation. The State may require said response to be written, oral, or both. The State will only use written responses for evaluation purposes. This may include requesting one or more Responders' "Best and Final" offers on price or technical requirements, or both. The total scores for those Responders selected to submit additional information may be revised as a result of the new information.
 - d. The evaluation team will make its recommendation based on the above-described evaluation process. The Successful Responder(s), if any, will be selected approximately 15 days after the Proposal submission due date.
 - e. The final award decision will be made by the Commissioner of the Minnesota Department of Human Services or his or her authorized

designee (“Commissioner”). The Commissioner may accept or reject the recommendation of the evaluation team.

D. CONTRACT NEGOTIATIONS AND UNSUCCESSFUL RESPONDER NOTICE

If a Responder(s) is selected, the State will notify the Successful Responder(s) in writing of their selection and the State's desire to enter into contract negotiations. Until the State successfully completes negotiations with the selected Responder(s), all submitted Proposals remain eligible for selection by the State.

In the event contract negotiations are unsuccessful with the selected Responder(s), the evaluation team may recommend another Responder(s). The final award decision will be made by the Commissioner. The Commissioner may accept or reject any subsequent recommendation of the evaluation team.

After the State and chosen Responder(s) have successfully negotiated a contract, the State will notify the unsuccessful Responders in writing that their Proposals have not been accepted. All public information within Proposals will then be available for Responders to review, upon request.

VI. REQUIRED TERMS AND CONDITIONS

- A. **Requirements.** All Responders must be willing to comply with all state and federal legal requirements regarding the performance of the Contract. The requirements are set forth throughout this RFP and are contained in the attached Draft Contract.
- B. **Governing Law/Venue.** This RFP and any subsequent contract must be governed by the laws of the State of Minnesota. Any and all legal proceedings arising from this RFP or any resulting contract in which the State is made a party must be brought in the State of Minnesota, District Court of Ramsey County. The venue of any federal action or proceeding arising here from in which the State is a party must be the United States District Court for the State of Minnesota.
- C. **Travel.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the contractor as a result of the contract will be in no greater amount than provided in the current "Commissioner's Plan" promulgated by the commissioner of Minnesota Management and Budget. Reimbursements will not be made for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.
- D. **Preparation Costs.** The State is not liable for any cost incurred by Responders in the preparation and production of a Proposal. Any work performed prior to the issuance of a fully executed contract will be done only to the extent the Responder voluntarily assumes risk of non-payment.
- E. **Contingency Fees Prohibited.** Pursuant to Minn. Stat. §10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

- F. **Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.** Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore the Proposer must certify the following, as required by the regulations implementing Executive Order 12549.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under

48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

G. Insurance Requirements

1. Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.
2. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:
 - a. **Workers' Compensation Insurance:** Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance **minimum** limits are as follows:

\$100,000 – Bodily Injury by Disease per employee
\$500,000 – Bodily Injury by Disease aggregate

\$100,000 – Bodily Injury by Accident

If Minnesota Statute, section 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements.

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

- b. **Commercial General Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the contract. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence

\$2,000,000 – annual aggregate

\$2,000,000 – annual aggregate – Products/Completed Operations

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage

Personal and Advertising Injury

Blanket Contractual Liability

Products and Completed Operations Liability

Other; if applicable, please list _____

State of Minnesota named as an Additional Insured, to the extent permitted by law

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

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

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile

- d. **Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance (if applicable)**

The retroactive or prior acts date of such coverage shall not be after the effective date of this contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If Contractor discontinues such insurance, then extended reporting period coverage must be purchased to fulfill this requirement.

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

Contractor is required to carry the following **minimum** limits:

\$2,000,000 – per claim or event

\$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of the Contractor and may not exceed \$50,000 without the written approval of the State. If the Contractor desires authority from the State to have a deductible in a higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Contractor to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

3. Additional Insurance Conditions:

- Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contractor's performance under this contract;
- If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota;
- Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
- Contractor's policy(ies) shall include legal defense fees in addition to its liability policy limits, with the exception of G.2.d. above;

- Contractor shall obtain insurance policy(ies) from insurance company(ies) having an “AM BEST” rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
 - An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor’s policy limits to satisfy the full policy limits required by the Contract.
4. The State reserves the right to immediately terminate the contract if the contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State’s authorized representative upon written request.
 5. The successful responder is required to submit Certificates of Insurance acceptable to the State of Minnesota as evidence of insurance coverage requirements prior to commencing work under the contract.

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

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

VII. STATE'S RIGHTS RESERVED

Notwithstanding anything to the contrary, the State reserves the right to:

- A. Reject any and all Proposals received in response to this RFP;
- B. Disqualify any Responder whose conduct or Proposal fails to conform to the requirements of this RFP;
- C. Have unlimited rights to duplicate all materials submitted for purposes of RFP evaluation, and duplicate all public information in response to data requests regarding the Proposal;
- D. Select for contract or for negotiations a Proposal which best represents “best value” as defined in Minnesota Statutes, section 16C.02, subdivision 4;

- E. At its sole discretion, reserve the right to waive any non-material deviations from the requirements and procedures of this RFP;
- F. Negotiate as to any aspect of the Proposal with any Responder and negotiate with more than one Responder at the same time, including asking for Responders' "Best and Final" offers as to price, technical provisions, or both;
- G. Extend the contract, in increments determined by the State, not to exceed a total contract term of five years; and
- H. Cancel the Request for Proposal at any time and for any reason with no cost or penalty to the State.
- I. Correct or amend the RFP at any time with no cost or penalty to the State. If the State should correct or amend any segment of the RFP after submission of Proposals and prior to announcement of the Successful Responder, all Responders will be afforded ample opportunity to revise their Proposal to accommodate the RFP amendment and the dates for submission of revised Proposals announced at that time. The State will not be liable for any errors in the RFP or other responses related to the RFP.
- J. Alter the composition of the evaluation team and their specific responsibilities.

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APPENDICES TO FOLLOW

APPENDICES

Appendix A – Responder Information/Declarations

RESPONDER INFORMATION

Responder Name:

Website:

Address:

Telephone Number:

CONTACT INFORMATION

Contact Name:

Title:

Telephone Number:

Fax Number:

E-mail:

Name(s) of individuals involved with the preparation of this Proposal (to assist in determining potential conflict of interest):

The above-named Responder submits the attached Proposal in response to the following Minnesota Department of Human Services Request for Proposals (state which RFP you are responding to):

By submission of this Proposal, Responder warrants that:

1. The information provided is true, correct and reliable for purposes of evaluation for potential contract award. Responder understands that the submission of inaccurate or misleading information may be grounds for disqualification from the award as well as subject the Responder to suspension or debarment proceedings as well as other remedies available by law.
2. It is competent to provide all the services set forth in its Proposal.
3. Each person signing a section of this Proposal is authorized to make decisions as to the prices quoted and/or duties proposed and is legally authorized to bind the company to those decisions.
4. If it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals, Responder will provide, along with this form, a list containing the names of the entities, the relationship, and a discussion of the conflict.
5. To the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, a vendor is unable or potentially unable to render impartial assistance or advice to the State, or the vendor's objectivity in performing the

contract work is or might be otherwise impaired, or the vendor has an unfair competitive advantage. Responder agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing will be made to the Assistant Director of the Department of Administration's Materials Management Division ("MMD") which will include a description of the action which Responder has taken or proposes to take to avoid or mitigate such conflicts. If an organization conflict of interest is determined to exist, the State may, at its discretion, cancel the contract. In the event the Responder was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to MMD, the State may terminate the contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms "contract," "contractor," and "contracting officer" modified appropriately to preserve the State's rights.

6. No attempt has been made or will be made by Responder to induce any other person or firm to submit or not to submit a Proposal.
7. In connection with this procurement, the prices proposed have been arrived at independently, without consultation, communication, or agreement, for the purpose of restriction of competition, as to any other Responder or with any competitor; and that unless otherwise required by law, the prices quoted have not been knowingly disclosed by Responder prior to award, either directly or indirectly, to any other Responder or competitor.
8. The services and prices stated in this Proposal (both Technical and Cost Proposals) will remain open for acceptance by the State until a contract is awarded, the RFP is cancelled, or 180 day s after the deadline for Proposal submission, whichever comes first.

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

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____ Telephone Number: _____

APPENDIX B

EXCEPTIONS TO TERMS AND CONDITIONS

A Responder shall be presumed to be in agreement with the terms and conditions of the RFP unless the Responder takes specific exception to one or more of the conditions on this form.

RESPONDERS ARE CAUTIONED THAT BY TAKING ANY EXCEPTION THEY MAY BE MATERIALLY DEVIATING FROM THE RFP SPECIFICATIONS. IF A RESPONDER MATERIALLY DEVIATES FROM A RFP SPECIFICATION, ITS PROPOSAL MAY BE REJECTED.

A material deviation is an exception to a specification which 1) affords the Responder taking the exception a competitive advantage over other Responders, or 2) gives the State something significantly different than the State requested.

INSTRUCTIONS: Responders must explicitly list all exceptions to State terms and conditions (including those found in the attached sample contract, if any. Reference the actual number of the State's term and condition and page number for which an exception(s) is being taken. If no exceptions exist, state "NONE" specifically on the form below. Whether or not exceptions are taken, the Responder must sign and date this form and submit it as part of their Proposal. *(Add additional pages if necessary.)*

Responder Name:	
<u>Term & Condition Number/Provision</u>	<u>Explanation of Exception</u>

By signing this form, I acknowledge that the above named Responder accepts, without qualification, all terms and conditions stated in this RFP (including the sample contract) except those clearly outlined as exceptions above.

Signature

Title

Date

Appendix C

**STATE OF MINNESOTA
AFFIDAVIT OF NONCOLLUSION**

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

- 1. That I am the Responder (if the Responder is an individual), a partner in the company (if the Responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Responder is a corporation);**
- 2. That the attached Proposal submitted in response to the _____ Request for Proposals has been arrived at by the Responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Responder of materials, supplies, equipment or services described in the Request for Proposal, designed to limit fair and open competition;**
- 3. That the contents of the Proposal have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any such persons prior to the official opening of the Proposals; and**
- 4. That I am fully informed regarding the accuracy of the statements made in this affidavit.**

Responder's Firm Name: _____

Authorized Signature: _____

Date: _____

Subscribed and sworn to me this _____ day of _____

Notary Public

My commission expires: _____

Appendix D -- Trade Secret/Confidential Data Notice

Responder/Company Name: _____

It is the position of the above-named Responder that certain data contained in the following page(s) of the attached Proposal have been submitted in confidence and contain trade secrets and/or privileged or confidential information (*list pages -- If no protected information has been submitted, state "NONE"*):

The justification for the Trade Secret/Confidential data designation is (*be specific, do not make general statements of confidentiality. Include reference to specific facts, licenses, trademarks, etc., and any relevant statutes or other law, such as how the data meets the requirements of Minn. Stat. §13.37, subd. 1(b). Add additional pages if necessary*):

The Responder acknowledges that, in accordance with Minn. Stat. §§ 13.591 and 16C.06, Subd. 3, upon completion of contract negotiations, all materials submitted in response to this RFP will become the property of the STATE and will become public record, with the exception of any portion(s) of an RFP or supporting data that are determined to be nonpublic "trade secret information."

The Responder asserts that it has clearly marked every page of trade secret or confidential materials in the attached Proposal at the time the Proposal was submitted with the words "**TRADE SECRET**" or "**CONFIDENTIAL**" in capitalized, underlined and bolded type that is at least 20 pt. Responder acknowledges that the State is not liable for the use or disclosure of trade secret data or confidential data that Responder has failed to clearly mark as such.

Responder agrees to defend any action seeking release of the materials it believes to be trade secret or confidential, 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 reasonable costs connected with that defense. This indemnification survives the STATE's award of a contract and remains as long as the trade secret and/or confidential materials are in the possession of the STATE.

Responder acknowledges that the STATE is required to keep all the basic documents related to its contracts, including selected responses to RFPs, for a minimum of six years after the end of the contract. Non-selected RFP Proposals will be kept by the STATE for a minimum of one year after the award of a contract, and may be kept for much longer. **Responder acknowledges that prices submitted by the Responder will not be considered trade secret materials.**

The Responder acknowledges that the STATE reserves the right to reject Responder's claim of trade secret/confidential data if the STATE determines that the Responder has not met the legal burden of establishing that the information constitutes a trade secret or is confidential. The

Responder also acknowledges that if certain information is found to constitute a trade secret or is confidential, the remainder of the Proposal will become public; only the protected information will be removed and remain nonpublic.

Signature	Title	Date
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** Whether or not protected information is provided, the Responder must sign and date this form and submit it with the "Required Statements".*

APPENDIX E
State Of Minnesota – Affirmative Action Certification

If your response to this solicitation is or could be in excess of \$100,000, complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes 363A.36) certification requirement, and to provide documentation of compliance if necessary. **It is your sole responsibility to provide this information and—if required—to apply for Human Rights certification prior to the due date of the bid or proposal and to obtain Human Rights certification prior to the execution of the contract. The State of Minnesota is under no obligation to delay proceeding with a contract until a company receives Human Rights certification**

BOX A – For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months. All other companies proceed to BOX B.

Your response will be rejected unless your business:

has a current Certificate of Compliance issued by the Minnesota Department of Human Rights (MDHR)

–or–

has submitted an affirmative action plan to the MDHR, which the Department received prior to the date the responses are due.

Check one of the following statements if you have employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- We have a current Certificate of Compliance issued by the MDHR. **Proceed to BOX C. Include a copy of your certificate with your response.**
 - We do not have a current Certificate of Compliance. However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on _____ (date). **Proceed to BOX C.**
 - We do not have a Certificate of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. **We acknowledge that our response will be rejected. Proceed to BOX C. Contact the Minnesota Department of Human Rights for assistance.** (See below for contact information.)
1. **Please note:** Certificates of Compliance must be issued by the Minnesota Department of Human Rights. Affirmative Action Plans approved by the Federal government, a county, or a municipality must still be received, reviewed, and approved by the Minnesota Department of Human Rights before a certificate can be issued.

BOX B – For those companies not described in BOX A

- Check below.
- We have not employed more than 40 full-time employees on any single working day in Minnesota within the previous 12 months. **Proceed to BOX C.**

BOX C – For all companies

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of the responder. You also certify that you are in compliance with federal affirmative action requirements that may apply to your company. (These requirements are generally triggered only by participating as a prime or subcontractor on federal projects or contracts. Contractors are alerted to these requirements by the federal government.)

Name of Company: _____

Date: _____

Authorized Signature: _____ Telephone number: _____

Printed Name: _____ Title: _____

For assistance with this form, contact:

Minnesota Department of Human Rights, Compliance Services

Mail: The Freeman Building 625 Robert Street TC (651) 296-5663 Toll 800-657-3704
North, Saint Paul, MN 55155 Metro: Free:

Web: www.humanrights.state.mn.us Fax: (651) 296-9042 TTY: (651) 296-1283

Email: compliance.mdhr@state.mn.us

APPENDIX F
CERTIFICATION REGARDING LOBBYING
For State of Minnesota Contracts and Grants over \$100,000

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, A Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Organization Name

Name and Title of Official Signing for Organization

By: _____
Signature of Official

Date

**APPENDIX G
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.

To receive a preference the veteran-owned small business must meet the statutory requirements above by the solicitation opening date and time. When responding to a Request for Bid (RFB), the preference is applied only to the first \$500,000 of the response. When responding to a Request for Proposal (RFP), the preference is applied as detailed in the RFP.

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.

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) **State the type of documentation attached:** _____

DOCUMENTATION MUST BE PROVIDED FOR ONE OF THE FOLLOWING REQUIREMENTS:

(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: _____

Date:

Authorized Signature: _____

Telephone:

Printed Name: _____

Title:

IF YOU ARE CLAIMING THE VETERAN-OWNED PREFERENCE, ATTACH DOCUMENTATION, SIGN AND RETURN THIS FORM WITH YOUR RESPONSE TO THE SOLICITATION.

APPENDIX H

Cost Proposal Sheet – Proposed Rate

This form must be completed and **submitted separately** as the sealed Cost Proposal for the entire Project. **Do not include this form in the appendix or elsewhere in the Technical Proposal.**

The Successful Responder will not receive any other compensation as a result of this RFP. Therefore, the Responder must consider **all** costs it will incur (including mass mailing costs, services, equipment, travel costs, fees, commissions, etc.) in determining the proposed rate(s). **The rate proposed by the Responder will be the full consideration paid for that specified period of time covered by the contract.** Any assumptions made regarding the impact of inflationary factors during the term of the agreement are the sole responsibility of the Responder. The contract will contain no cost-of-living adjustment provision.

This form must be signed by an individual authorized to legally bind the Responder. The title of the person signing and the date this form was signed must be entered. The cost Proposal must be open for acceptance until a contract is signed, the RFP is cancelled, or 180 days from the final submission date of the RFP, whichever is first.

RFP responding to:

Company Name and Address:

Rate(s): \$ _____

Attach a breakdown of costs that resulted in this rate.

By signing this Cost Proposal, I do hereby certify the Responder named above wishes to enter a price for the services requested by the Minnesota Department of Human Services in the correlating RFP. This cost or price data submitted with this Proposal is accurate, complete and current as of the following date. This cost or pricing data shall remain current and is open for acceptance by the State until a Contract is approved, the RFP is cancelled, or for a period of 180 days from the Proposal closing date, whichever comes first. If awarded a contract, the costs quoted above will remain in effect through the term of the contract, unless a change to the costs is mutually agreed to by the parties.

Signature

Title

Date

APPENDIX H-1: Budget Template

Budget Summary Template: HCBS Critical Access

Study Responder Name: _____

March 20, 2014 – July 31, 2015

Categories	Amount(Dollars)
1. Personnel (<i>Salaries</i>) <i>Number of Hours</i>	\$
2. Fringe Benefits (<i>Rate %</i>)	\$
3. Travel	\$
4. Equipment	\$
5. Supplies	\$
6. Printing and Copying	\$
7. Telephone and Postage	\$
8. Contractual (<i>Attach a separate Budget Summary for each subcontractor</i>)	\$
9. Indirect Cost (<i>Rate %</i>)	\$
10. Fee	\$
11. Other Costs: <i>List</i>	\$
Total Budget	\$

Remarks

APPENDIX H-2: Staff Time Allocation for the Project

Staff Time Allocation Detail Template: HCBS Critical Access

Study Responder Name: _____

March 20, 2014 – July 31, 2015

Staff/Contractor Name	Estimated Hours*	Cost per Hour	Total Cost	Deliverable/Function	Notes
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
TOTAL					

**The "estimated hours" should equal line 1 on Table H1 "Personnel (Salaries) Number of Hours" B B '*

**APPENDIX I
STATE OF MINNESOTA
RESIDENT VENDOR FORM**

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

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

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

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

I HEREBY CERTIFY THAT THE COMPANY LISTED BELOW:

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

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

Name of Company: _____ Date: _____
Authorized Signature: _____ Telephone: _____
Printed Name: _____ Title: _____

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

APPENDIX J
STATE OF MINNESOTA
PROFESSIONAL AND TECHNICAL SERVICES CONTRACT

THIS CONTRACT, and amendments and supplements thereto, is between the State of Minnesota, acting through its Department of Human Services, _____ Division (the "STATE"), and _____, an independent contractor, not an employee of the State of Minnesota, (the "CONTRACTOR").

Under Minnesota Statutes §§ 15.061 and 256.01, subd. 2, the STATE is empowered to enter into contracts to provide services and engage such assistance as deemed necessary to carry out its mission.

STATE is permitted to share information with CONTRACTOR in accordance with Minnesota Statutes, section 13.46.

The STATE is in need of the following services: _____.

The CONTRACTOR represents that it is duly qualified and agrees to perform all services described in this contract to the satisfaction of the STATE.

The parties therefore agree as follows:

1. Term of Contract.

1.1 **Effective date.** The effective date of this contract is ___(DATE)___, or the date that the STATE obtains all required signatures under Minnesota Statutes, section 16C.05, subdivision 2, whichever is later. **The CONTRACTOR must not begin work under this contract until this contract is fully executed and CONTRACTOR has been notified by the STATE'S Authorized Representative to begin work.**

1.2 **Expiration date.** The expiration date of this contract is ___(DATE)___, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation, or termination of this contract: 7. Information Privacy Protection; 8. Intellectual Property Rights; 10. Indemnification; 12. Publicity and Endorsement; 14. Audit Requirements and Contractor Debarment Information; 15. Data Disclosure; and 19. Governing Law, Jurisdiction and Venue.

2. **Contractor's Duties.** CONTRACTOR, who is not a state employee, will:

3. **Time.** CONTRACTOR will perform its duties within the time limits established in this contract unless prior approval is obtained from STATE. In performance of this contract, time is of the essence.

4. **Consideration and Payment.**
 - 4.1. **Consideration.** The STATE will pay for all services performed by the CONTRACTOR under this contract as follows:
 - (a) **Compensation.** The CONTRACTOR will be paid as follows:

 - (b) **Reimbursement.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by CONTRACTOR in performance of this contract in an amount not to exceed _____ **dollars** (\$_____.00); provided, that CONTRACTOR will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than is provided in the current Commissioner's Plan (which is incorporated by reference) established by the Commissioner of Minnesota Management and Budget. CONTRACTOR will not be reimbursed for travel and subsistence expense incurred outside the State of Minnesota unless it has received prior written approval for such out of state travel from the STATE.

 - (c) **Total Obligation.** The total obligation of the STATE for all compensation and reimbursements to CONTRACTOR will not exceed _____ **dollars** (\$_____.00).

 - (d) (If applicable.) For compensation payable under this contract, which is subject to withholding under state or federal law, appropriate amounts will be deducted and withheld by STATE as required.

 - 4.2. **Payment.**
 - (a) **Invoices.** The STATE will promptly pay the CONTRACTOR after the CONTRACTOR presents itemized invoices for services performed and the STATE'S authorized representative accepts the invoiced services. Invoices will be submitted timely, in a form prescribed by the STATE and according to _____

- (b) **Retainage.** Under Minnesota Statutes, section 16C.08, subdivision 5(b), no more than ninety (90%) percent of the compensation due under this contract may be paid until the final product(s) of the contract has been reviewed by the STATE and it has been determined that the CONTRACTOR has satisfactorily fulfilled all the terms of the contract. Accordingly, the STATE will withhold 10% of the total amount of each invoice submitted by CONTRACTOR for payment. The balance due will be paid when the STATE determines that the CONTRACTOR has satisfactorily fulfilled all the terms of this contract.

- (c) **Federal funds.** Payments under this contract will be made from federal funds obtained by the STATE through Title _____, Catalog of Federal Domestic Assistance (CFDA) Number _____, of the _____ Act of (year) _____ (Public law _____ and amendments thereto). The CONTRACTOR is responsible for compliance with all applicable federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by CONTRACTOR'S failure to comply with federal requirements. If at any time such funds become unavailable, this contract will be terminated immediately upon written notice of such fact by the STATE to the CONTRACTOR. In the event of such termination, CONTRACTOR will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

4.3. **Payments to Subcontractors.** (If Applicable) As required by Minn. Stat. §16A.1245, the prime contractor must pay all subcontractors, less any retainage, within 10 calendar days of the prime contractor's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) or any undisputed amount not paid on time to the subcontractor(s).

5. **Conditions of Payment.** All services provided by CONTRACTOR under this contract must be performed to the STATE'S satisfaction, as determined by the STATE'S authorized representative, and in accordance with all applicable federal, state, and local laws, ordinances, rules and regulations including business registration requirements of the Office of the Secretary of State. CONTRACTOR will 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.

6. **Authorized Representatives and Responsible Authority.**

6.1 **State.** The STATE'S authorized representative is _____ or his/her successor, who has the responsibility to monitor the CONTRACTOR'S performance and the authority to accept the services provided under this contract. If the services are satisfactory, the STATE'S Authorized Representative will

certify acceptance on each invoice submitted for payment, in accordance with Clause 4.2.

- 6.2 **Contractor.** The CONTRACTOR'S Authorized Representative is _____ or his/her successor. If the CONTRACTOR'S Authorized Representative changes at any time during this contract, the CONTRACTOR must immediately notify STATE.
- 6.3 **Information Privacy and Security.** (If applicable) CONTRACTOR'S responsible authority for the purposes of complying with data privacy and security for this agreement is _____ or his/her successor.

7. **Information Privacy and Security.**

7.1 Information Covered by this Provision. In carrying out its duties, CONTRACTOR shall be handling one or more types of private information, collectively referred to as “protected information,” concerning individual clients of STATE programs or services. “Protected information,” for purposes of this contract, includes any or all of the following:

- (a) Private data (as defined in Minn. Stat. §13.02, subd. 12), confidential data (as defined in Minn. Stat. §13.02, subd. 3), welfare data (as governed by Minn. Stat. §13.46), medical data (as governed by Minn. Stat. §13.384), and other non-public data governed elsewhere in the Minnesota Government Data Practices Act (MGDPA), Minn. Stats. Chapter 13;
- (b) Health records (as governed by the Minnesota Health Records Act [Minn. Stat. §144.291 - 144.298]);
- (c) Chemical health records (as governed by 42 U.S.C. § 290dd-2 and 42 C.F.R. § 2.1 to §2.67);
- (d) Protected health information (“PHI”) (as defined in and governed by the Health Insurance Portability Accountability Act [“HIPAA”], 45 C.F.R. § 160.103);
- (e) Federal tax information (“FTI”) (as protected by 26 U.S.C. 6103), and
- (f) Other data subject to applicable state and federal statutes, rules, and regulations affecting the collection, storage, use, or dissemination of private or confidential information.

7.2 General Oversight Responsibilities. CONTRACTOR shall be responsible for ensuring proper handling and safeguarding by its employees, subcontractors, and authorized agents of protected information collected, created, used, maintained, or disclosed on behalf of STATE. This responsibility includes:

- (a) **Training:** Ensuring that employees and agents comply with and are properly trained regarding, as applicable, the laws listed in 7.1 and
- (b) **Minimum necessary access to information.** CONTRACTOR shall comply with the “minimum necessary” access and disclosure rule set forth in the HIPAA and the

MGDPA. The collection, creation, use, maintenance, and disclosure by CONTRACTOR shall be limited to “that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government.” *See, respectively*, 45 C.F.R. §§ 164.502(b) and 164.514(d), and Minn. Stat § 13.05 subd. 3.

(c) **Information Requests.** Unless provided for otherwise in this contract, if CONTRACTOR receives a request to release protected information, CONTRACTOR must immediately notify STATE. STATE shall provide CONTRACTOR instructions or direction concerning the release of the data to the requesting party before the data is released. See paragraph 7.3(e) below regarding requests from individuals for their own data.

7.3 Additional Duties to Ensure Proper Handling of Protected Information. The CONTRACTOR shall:

- (a) Not use or disclose protected health information other than as permitted or required by this contract or as required by law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by this contract;
- (c) As required at 45 C.F.R. §164.410, report to STATE any use or disclosure of protected health information that is not provided for by the contract of which CONTRACTOR becomes aware, including any breach of unsecured protected health information or any other “privacy” or “security incident” as described below. Upon direction from STATE, CONTRACTOR must also attempt to mitigate harmful effects resulting from the disclosure.
 - (i) For purposes of this contract, “Security incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. Security incident shall not include pings and other broadcast attacks on CONTRACTOR’s firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above; so long as such incidents do not result in unauthorized access, use or disclosure of STATE’s information. “Privacy incident” means violation of the MGDPA and/or the HIPAA Privacy Rule (45 CFR Part 164, Subpart E), including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached.
 - (ii) The report to the STATE must be in writing and must be sent to STATE not more than seven (7) days after learning of such non-permitted use or disclosure. The report must, at a minimum: 1) Identify the nature of the non-permitted use or disclosure; 2) Identify the PHI used or disclosed; 3) Identify who made the non-permitted use or disclosure, and who received the non-permitted or violating

disclosure, if known; 4) Identify what corrective action was taken or will be taken to prevent further non-permitted uses or disclosures; 5) Identify what was done or will be done to mitigate any deleterious effect of the non-permitted use or disclosure; and 6) Provide such other information, including any written documentation, as STATE may reasonably request.

(iii) CONTRACTOR will provide notice required by 45 C.F.R. §§ 164.404 through 164.408 to affected individuals, news media, and/or the Office of Civil Rights, Department of Health and Human Services, only upon direction from and in coordination with the STATE.

(d) In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree in writing to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;

(e) Within ten (10) business days of a request from an individual or their designee, make available protected health information in a designated record set, consistent with Minn. Stat. § 13.04, subd. 3, and 45 C.F.R. § 164.524;

(f) Within ten (10) business days, forward any request to make any amendment(s) to protected health information in a designated record set to STATE in order for the STATE to satisfy STATE's obligations under Minn. Stat. § 13.04, subd. 3 and 45 C.F.R. § 164.526;

(g) Maintain and make available no later than fifteen (15) days after receipt of request from the STATE, the information required to provide an accounting of disclosures to the STATE as necessary to satisfy the STATE's obligations under 45 C.F.R. § 164.528, or upon request from STATE respond directly to individual's request for an accounting of disclosures;

(h) To the extent the business associate is to carry out one or more of the STATE's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the STATE in the performance of such obligation(s); and

(i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

(j) Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by STATE.

7.4 STATE's Duties. STATE shall:

(a) Only release information which it is authorized by law or regulation to share with CONTRACTOR.

(b) Obtain any required consents, authorizations or other permissions that may be

necessary for it to share information with CONTRACTOR.

- (c) Notify CONTRACTOR of limitation(s), restrictions, changes, or revocation of permission by an individual to use or disclose protected information, to the extent that such limitation(s), restrictions, changes or revocation may affect CONTRACTOR'S use or permitted disclosure of protected information.
- (d) Not request CONTRACTOR to use or disclose protected information in any manner that would not be permitted under law if done by STATE.

7.5 Disposition and/or Retention of Protected Information/Data upon Completion, Expiration, or Contract Termination. Upon completion, expiration, or termination of this contract, CONTRACTOR shall return to STATE or destroy all protected information received or created on behalf of STATE for purposes associated with this contract. CONTRACTOR shall return the protected information to the STATE's Authorized Representative *or* provide the state with written certification of destruction of the protected information. CONTRACTOR shall retain no copies of such protected information, provided that if both parties agree that such return or destruction is not feasible, or if CONTRACTOR is required by the applicable regulation, rule or statutory retention schedule to retain beyond the life of this contract, CONTRACTOR shall extend the protections of this contract to the protected information and refrain from further use or disclosure of such information, except for those purposes that make return or destruction infeasible, for as long as CONTRACTOR maintains the information.

7.6 Sanctions. In addition to acknowledging and accepting the general terms set forth in this contract relating to indemnification, the parties acknowledge that violation of the laws and protections described above could result in limitations being placed on future access to protected information, in investigation and imposition of sanctions (including but limited to civil and criminal penalties) by, among other agencies, the U.S. Department of Health and Human Services, Office for Civil Rights; the federal Internal Revenue Service (IRS); the Centers for Medicare & Medicaid Services (CMS); and the Office of the Attorney General for the State Minnesota.

7.7 Miscellaneous

- (a) DHS Information Security Policy. Additional information regarding the handling and, as appropriate, destruction (upon expiration or termination of a contract or agreement) of protected information obtained from DHS is available at <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-4683-ENG>.

(b) Effect of statutory amendments or rule changes. The Parties agree to take such action as is necessary to amend this contract from time to time as is necessary for compliance with the requirements of the laws listed in paragraph 7.1 of this clause or in any other applicable law. However, any requirement in this contract or in the DHS Information Security Policy that is based upon HIPAA Rules or upon other federal or state information privacy or security laws means the requirement as it is *currently* in effect, including any applicable amendment(s), regardless of whether the contract has been amended to reflect the amendments(s).

(c) Interpretation. Any ambiguity in this contract shall be interpreted to permit compliance with the laws listed in paragraph 7.1 of this clause or in any other applicable law.

(d) Survival. The obligations of CONTRACTOR under this clause shall survive the termination of this contract.

8. Intellectual Property Rights.

8.1 **Definitions.** *Works* means all inventions, improvements, discoveries (whether or not patentable or copyrightable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the CONTRACTOR, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this contract. *Works* includes “*Documents.*” *Documents* are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the CONTRACTOR, its employees, agents, or subcontractors, in the performance of this contract.

8.2 **Ownership.** The STATE owns all rights, title, and interest in all of the intellectual property, including copyrights, patents, trade secrets, trademarks, and service marks in the *Works* and *Documents created and paid for under this contract.* The *Works* and *Documents* will be the exclusive property of the STATE and all such *Works* and *Documents* must be immediately returned to the STATE by the CONTRACTOR upon completion or cancellation of this contract. To the extent possible, those *Works* eligible for copyright protection under the United States Copyright Act will be deemed to be “works made for hire.” If using STATE data, CONTRACTOR must cite the data, or make clear by referencing that STATE is the source.

8.3 Obligations.

(a) **Notification.** Whenever any *Works* or *Documents* (whether or not patentable) are made or conceived for the first time or actually or constructively reduced to practice by the CONTRACTOR, including its

employees and subcontractors, and are created and paid for under this contract, the CONTRACTOR will immediately give the STATE'S Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon. The CONTRACTOR will assign all right, title, and interest it may have in the Works and the Documents to the STATE.

- (b) **Filing and recording of ownership interests.** The CONTRACTOR must, at the request of the STATE, execute all papers and perform all other acts necessary to transfer or record the STATE'S ownership interest in the Works and Documents created and paid for under this contract. The CONTRACTOR must perform all acts, and take all steps necessary to ensure that all intellectual property rights in these Works and Documents are the sole property of the STATE, and that neither CONTRACTOR nor its employees, agents, or subcontractors retain any interest in and to these Works and Documents.
- (c) **Duty not to Infringe on intellectual property rights of others.** The CONTRACTOR represents and warrants that the Works and Documents created and paid for under this contract do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 10, the CONTRACTOR will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the STATE, at the CONTRACTOR'S expense, from any action or claim brought against the STATE to the extent that it is based on a claim that all or part of these Works or Documents infringe upon the intellectual property rights of others. The CONTRACTOR will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the CONTRACTOR'S or the STATE'S opinion is likely to arise, the CONTRACTOR must, at the STATE'S discretion, either procure for the STATE the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the STATE will be in addition to and not exclusive of other remedies provided by law.

9. **Workers' Compensation and Other Insurance.**

- 9.1 **Workers' Compensation.** The CONTRACTOR certifies that, if applicable, it is in compliance with Minn. Stat. §176.181, subd. 2, pertaining to workers' compensation insurance coverage. If CONTRACTOR is required to comply with the above statute, CONTRACTOR must provide STATE with evidence of compliance. The CONTRACTOR'S employees and agents will not be considered employees of STATE. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by

any third party as a consequence of any act or omission on the part of these employees or agents are in no way the STATE'S obligation or responsibility.

9.2 **Other Insurance.** Contractor certifies that it is in compliance with any insurance requirements specified in the solicitation document relevant to this Contract.

9.2 **Other Insurance.** Contractor certifies that it is in compliance with the following insurance requirements:

10. **Indemnification.**

In the performance of this contract by CONTRACTOR, or CONTRACTOR'S agents or employees, the CONTRACTOR must indemnify, save, and hold harmless the STATE, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the STATE, to the extent caused by CONTRACTOR'S:

- 1) Intentional, willful, or negligent acts or omissions; or
- 2) Actions that give rise to strict liability; or
- 3) Breach of contract or warranty.

The indemnification obligations of this clause do not apply in the event the claim or cause of action is the result of the STATE'S sole negligence. This clause will not be construed to bar any legal remedies the CONTRACTOR may have for the STATE'S failure to fulfill its obligation under this contract.

11. **Affirmative Action and Non-Discrimination.**

11.1 **Affirmative Action requirements for Contractors with more than 40 full-time employees and contract in excess of \$100,000.** (If this contract, including all amendments, does not exceed \$100,000, this provision does not apply). If the Contract exceeds \$100,000 and the CONTRACTOR employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the CONTRACTOR must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

11.2 **Minn. Stat. § 363A.36.** Minn. Stat. § 363A.36 requires the CONTRACTOR to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

11.3 **Minn. R. 5000.3400-5000.3600.**

- (a) *General.* Minn. R. 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. 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.
- (b) *Disabled Workers.* The CONTRACTOR must comply with the following affirmative action requirements for disabled workers:
- (1) The CONTRACTOR must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The CONTRACTOR agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - (2) The CONTRACTOR agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (3) In the event of the CONTRACTOR'S noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. §363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (4) The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner 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.

- (5) The CONTRACTOR must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minn. Stat. §363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- (c) *Consequences.* The consequences for the CONTRACTOR's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the STATE.
- (d) *Certification.* The CONTRACTOR hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

11.4 **Common or Skilled Labor.** In accordance with Minn. Stat. § 181.59, if this contract is for materials, supplies, or construction, CONTRACTOR agrees:

- (a) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;
- (b) That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (a) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;
- (c) That a violation of this section is a misdemeanor; and
- (d) That this contract may be canceled or terminated, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

12. **Publicity and Endorsement.**

12.1 **Publicity.** Any publicity regarding the subject matter of this contract must identify the STATE as the sponsoring agency and must not be released without prior written approval from the STATE'S authorized representative. For purposes of this provision, publicity includes, notices, informational pamphlets, press

releases, research, reports, signs, and similar public notices prepared by or for the CONTRACTOR or its employees individually or jointly with others or any subcontractors, with respect to the program, publications, or services provided resulting from this contract.

- 12.2 **Endorsement.** The CONTRACTOR must not claim that the STATE endorses its products or services.
13. **Voter Registration Requirement.** CONTRACTOR certifies that if it is a not-for-profit business or governmental agency it will comply with Minnesota Statutes, section 201.162 by providing voter registration services for CONTRACTOR'S employees and for the public served by the CONTRACTOR.
14. **Audit Requirements and Contractor Debarment Information.**
- 14.1 **State Audits.** Under Minn. Stat. §16C.05, subd. 5, the books, records, documents, and accounting procedures and practices of the CONTRACTOR and its employees, agents, or subcontractors relevant to this contract will be made available and subject to examination by the STATE, including the contracting Agency/Division, Legislative Auditor, and State Auditor for a minimum of six years from the end of this contract.
- 14.2 **Compliance with Single Audit Act.** All sub-recipients receiving \$500,000 or more of federal assistance in a fiscal year will obtain a financial and compliance audit made in accordance with the Single Audit Act, OMB Circular A-133. CONTRACTOR certifies it will comply with the Single Audit Act, OMB Circular A-133, if applicable. Failure to comply with these requirements could result in forfeiture of federal funds.
- 14.3 **Debarment by State, its Departments, Commissions, Agencies or Political Subdivisions.**
CONTRACTOR certifies that neither it nor its principles is presently debarred or suspended by the STATE, or any of its departments, commissions, agencies, or political subdivisions. CONTRACTOR'S certification is a material representation upon which the contract award was based. CONTRACTOR shall provide immediate written notice to the STATE'S authorized representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.
- 14.4 **Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.**
Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore CONTRACTOR certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing

Executive Order 12549. CONTRACTOR'S certification is a material representation upon which the contract award was based.

15. **Data Disclosure.** Under Minn. Stat. §270C.65, subd. 3, and other applicable law, the CONTRACTOR consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, to the STATE, to federal and state agencies and state personnel involved in the approval and payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the CONTRACTOR to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities. **This contract will not be approved unless these numbers are provided.**
16. **Prohibition on Weapons.** CONTRACTOR agrees to comply with all terms of the Department of Human Services' policy prohibiting carrying or possessing weapons wherever and whenever the CONTRACTOR is performing services within the scope of this contract. This policy, which is located at the business location of the STATE and is available to CONTRACTOR upon request, is incorporated by reference into this contract. Any violations of this policy by CONTRACTOR or CONTRACTOR'S employees may be grounds for immediate suspension or termination of the contract.
17. **Severability.** If any provision of this Contract is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Contract shall remain in full force and effect.
18. **Cancellation or Termination.**
 - 18.1 **Cancellation.** This contract may be canceled by the STATE or the Minnesota Commissioner of Administration at any time, with or without cause, upon thirty (30) days written notice to the CONTRACTOR. In the event of such a cancellation, CONTRACTOR will be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed.
 - 18.2 **Insufficient Funding.** Notwithstanding clause 18.1, the STATE may immediately terminate this contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination will be by written or fax notice to the CONTRACTOR. The STATE is not obligated to pay for any services that are provided after notice and effective date of termination. However, the CONTRACTOR will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The STATE will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The STATE must provide the CONTRACTOR notice of the lack of funding within a reasonable time of the STATE'S receiving that notice.

- 18.3 **Breach.** Upon clause 18.1, upon STATE's knowledge of a curable material breach of this Agreement by CONTRACTOR, STATE shall provide CONTRACTOR written notice of the breach and ten (10) days to cure the breach. If CONTRACTOR does not cure the breach within the time allowed, CONTRACTOR will be in default of this agreement and STATE may cancel the contract immediately thereafter. If CONTRACTOR has breached a material term of this Agreement and cure is not possible, STATE may immediately terminate this Agreement.
19. **Governing Law, Jurisdiction and Venue.** Minnesota law, without regard to its choice of law provisions, governs this contract, and amendments and supplements thereto. Venue for all legal proceedings arising out of this contract, or breach thereof, will be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.
20. **Assignment, Amendments, Waiver, and Contract Complete.**
- 20.1 **Assignment.** The CONTRACTOR may neither assign nor transfer any rights or obligations under this contract without the prior consent of the STATE and a fully executed Assignment Agreement, approved by the same parties who executed and approved this contract, or their successors in office.
- 20.2 **Amendments.** Any amendment to this contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original contract, or their successors in office.
- 20.3 **Waiver.** If the STATE fails to enforce any provision of this contract, that failure does not waive the provision or STATE'S right to enforce it.
- 20.4 **Contract Complete.** This contract contains all negotiations and agreements between the STATE and the CONTRACTOR. No other understanding regarding this contract, whether written or oral, may be used to bind either party.
21. **Other Provisions.**
- 21.1 **Criminal Background Check Required.** CONTRACTOR and employees of CONTRACTOR working on site at STATE's Central Office and accessing STATE's protected information (as defined in 7. Information Privacy and Security of this contract.) must submit to or provide evidence of a computerized criminal history system background check (hereinafter "CCH background check") performed within the last 12 months before work can begin under this contract. "CCH background check" is defined as a background check including search of the computerized criminal history system of the Minnesota Department of Public Safety's Bureau of Criminal Apprehension.
- 21.2 **E-Verify Certification (In accordance with Minn. Stat. §16C.075)**

For services valued in excess of \$50,000, CONTRACTOR certifies that as of the date of
HCBS Critical Access RFP

services performed on behalf of the STATE, CONTRACTOR and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the STATE. CONTRACTOR is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc> All subcontractor certifications must be kept on file with CONTRACTOR and made available to the STATE upon request.

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(Signature Page Follows)**

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

APPROVED:

1. STATE ENCUMBRANCE VERIFICATION:

Individual certifies that funds have been encumbered as required by Minn. Stat. 16A.15 and 16C.05.

By:
Date:
CFMS Contract No.:

2. CONTRACTOR:

Contractor certifies that the appropriate person(s) have executed the contract on behalf of the CONTRACTOR as required by applicable articles, by-laws resolutions or ordinances.

By:
Title:
Date:

By:
Title:
Date:

3. STATE AGENCY:

By:
Title:
Date:

4. STATE AGENCY: (if over \$100,000)

By:
Title: Assistant Commissioner
Date:

5. COMMISSIONER OF ADMINISTRATION:

By:
Date:

Distribution (One fully executed original contract each):

Dept. of Administration
Contracting, Procurement & Legal Compliance Division
Agency
Contractor

State Authorized Representative – (copy)