GENERAL TERMS AND CONDITIONS

1. INQUIRIES. Direct all correspondence, inquiries, questions, general issues, or technical issues regarding this solicitation to the contact named on the sourcing EVENT. Dates are listed in the sequence of month/date/year. Times shown are based on the Central Time Zone, USA.

2. PRICES/ALTERATIONS. For each product or service, a unit price and a total for the quantity must be stated. In case of error in the extension, the unit price prevails. For NON-ELECTRONIC RESPONSES, an alteration or erasure of any price contained in the response that is used in determining the lowest responsible response may be rejected unless the alteration or erasure is crossed out and the correction is adjacent thereto and initialed by the person signing the response.

3. TAXES. DO NOT include sales tax to the prices being offered. State agencies are subject to paying Minnesota sales and use taxes. Taxes will be paid to the Department of Revenue using Direct Payment Permit 1114, unless otherwise specified in this solicitation. If allowed in the solicitation and orders are issued by Cooperative Purchasing Venture (CPV) Members, the Contract Vendor should confirm all of the tax requirements with the purchaser.

4. MODIFICATIONS TO THE SOLICITATION. Modifications to the solicitation will be made through the creation of a new event version of the solicitation that will be posted on the Supplier Portal. Event versions will be numbered and dated. The most recent solicitation event version will prevail. Any questions regarding the solicitation event must be directed to the contact person listed in this solicitation.

5. SPECIFICATIONS. Responses will be held to strict compliance with the specifications. If a response deviates from the specifications, the deviation must be clearly noted. When brand name or manufacturer's numbers are stated in the specifications, they are intended to establish a standard only and are not restrictive unless the solicitation states: "No Substitute." Responses will be considered on other makes, models, or brands having comparable quality, style, and performance characteristics. Alternate equipment is subject to approval and must be available for demonstration. Samples may be required prior to award. Alternate responses offering lower quality will not be considered. Responders must clearly indicate if they are offering other than new equipment. The state reserves the right to reject any or all responses that are not an approved equal.

Responders are cautioned that by taking any exception they may be materially deviating from the solicitation. If a responder materially deviates from the general terms and conditions, special terms, conditions and/or specifications, the response may be rejected.

6. MATERIAL DEVIATION. The responder shall be presumed to be in agreement with these terms and conditions unless it takes specific exception to one or more of the conditions. Submission by the responder of its proposed language shall not be viewed as an exception unless the responder specifically states in the response that its proposed changes are intended to supersede the state's terms and conditions.

A material deviation is an exception to the solicitation general or special terms and conditions that:

- Gives the Responder taking the exception a competitive advantage over other responders, or

- Gives the state something MATERIALLY different from that with the state requested.
7. **DELIVERY.** The solicitation shows the expected delivery date to the requisitioning agency. If the responder cannot meet the stated delivery date, an alternate delivery schedule may be offered. The use of an alternate delivery offer may become a factor in the award. The state reserves the right to reject a lower-priced response that offers delayed or protracted delivery in favor of a higher-priced response offering a more timely delivery. Such responders are obligated to deliver within the quoted lead times.

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

**Conditions of Payment.** The Contract Vendor, under this Contract, must be in accordance with the Contract as determined by the sole discretion of the state's authorized representative and be in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the State of Minnesota Office of the Secretary of State.

9. **PROMPT PAYMENT DISCOUNT TERMS.** Prompt payment discounts offered with net 30 payment terms will be considered in making the award. Prompt payment discounts offered for payment in less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date of receipt of the invoice, receipt of shipment or date of acceptance, whichever is later. If testing is performed, however, then the date shall be the date of acceptance of the goods or services.

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

11. **TG/ED VENDOR PREFERENCE.** In accordance with Minn. Stat. § 16C, subds. 6 and 7, eligible certified targeted group (TG) businesses will receive a six (6) percent preference and certified economically disadvantaged (ED) businesses will receive a six (6) percent preference, except in construction ED businesses will receive a four (4) percent preference, on the basis of award for this solicitation. The preference is applied only to the first $1,000,000 of the response. Eligible TG/ED businesses must be certified by the materials management division prior to the solicitation opening date and time.

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

To verify TG eligibility for preference, refer to the Materials Management Division's website at www.mmd.admin.state.mn.us under "Vendor Information, Targeted Group/Economically Disadvantaged (TG/ED) Small Business Program, Targeted Group Eligibility," or call the Division's Helpline at 651.296.2600.

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

12. **VETERAN-OWNED PREFERENCE.** In accordance with Minn. Stat. § 16C.16, subd. 6a and § 16C.19, eligible certified veteran-owned small businesses will receive a six (6) percent preference on the basis of award for this solicitation. The preference is applied only to the first $1,000,000 of the response.
Only eligible and certified, veteran-owned small businesses that provide the required information, will be given preference.

Eligible veteran-owned small businesses are certified small businesses of which the principal place of business is in Minnesota and that are majority-owned and operated by a veteran and are VERIFIED by the United States Department of Veterans Affairs as a veteran-owned business.

Eligible veteran-owned small businesses must be currently (at the time of solicitation due date) VERIFIED by the U.S. Department of Veterans Affairs prior to the solicitation opening date and time to receive the preference.

Information regarding verification by the United States Department of Veterans Affairs may be found at [http://www.vip.vetbix.gov](http://www.vip.vetbix.gov).

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

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

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

   a. That I am the responder (if the responder is an individual), a partner in the company (if the responder is a partnership) or an officer or employee of the responding corporation having authority to sign on its behalf (if the responder is a corporation);

   b. That the response has been arrived at by the responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with any other vendor designed to limit fair or open competition;

   c. That the contents of the solicitation response have not been communicated by the responder or its employees or agents to any person not an employee or agent of the responder and will not be communicated to any other individual prior to the official opening of the response.

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

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

b. Include a statement with its response justifying the trade secret designation for each item; and

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

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

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

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

19. COPYRIGHTED MATERIAL WAIVER. The state reserves the right to use, reproduce, and publish responses in any manner necessary for state agencies and local units of government to access the responses including but not limited to, photocopying, state intranet/internet postings, broadcast faxing, and direct mailing. In the event the response contains copyrighted or trademarked materials, it is the responder’s responsibility to obtain permission for the state to reproduce and publish the information, regardless of whether the responder is the manufacturer or reseller of the products listed in the materials. By signing its response, the responder certifies that it has obtained all necessary approvals for the reproduction and/or distribution of the contents of its response and agrees to indemnify, protect, save and hold the state, its representatives and employees harmless from any and all claims arising from the violation of this section and agrees to pay all legal fees incurred by the state in the defense of any such action.

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

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

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

23. **INDEMNIFICATION, HOLD HARMLESS AND LIMITATION OF LIABILITY.** The Contract Vendor shall indemnify, protect, save and hold harmless the state, contract users, its representatives and employees and the Contract users from any and all claims or causes of action, including all legal fees incurred by the state arising from the performance of the Contract by the Contract Vendor or its agents, employees, or subcontractors. This clause shall not be construed to bar any legal remedies the Contract Vendor may have with the state's failure to fulfill its obligations pursuant to the Contract.

The state agrees that the Contract Vendor, its principals, members and employees shall not be liable to the state for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to the goods provided or services performed hereunder for an aggregate amount in excess of $10,000,000 or the Contract amount, whichever is greater. This limitation of liability does not apply to damages for personal injury or death, or to the Contract Vendor's obligation to indemnify, and hold the state harmless against intellectual property infringement claims. This indemnification does not include liabilities caused by the state's gross negligence intentional wrong doing of the State.

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

25. **CANCELLATION OF THE CONTRACT.** The Contract may be cancelled by the state or the commissioner of Administration at any time, with or without cause, upon 30 days' written notice to the Contract Vendor. In the event the Contract Vendor is in default, the Contract is subject to immediate cancellation to the extent allowable by the applicable law. In the event of cancellation, the Contract Vendor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.
26. **RISK OF LOSS OR DAMAGE.** The state is relieved of all risks of loss or damage to the goods and/or equipment during periods of transportation, and installation by the Contract Vendor and in the possession of the Contract Vendor or their authorized agent.

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

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

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

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

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

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

   - A Contract Vendor is unable or potentially unable to render impartial assistance or advice to the state;

   - The Contract Vendor's objectivity in performing the work is or might be otherwise impaired; or

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

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

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

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

34. **UNDILUTED COAL TAR SEALERS.** By signing and submitting a response to this solicitation, the Contract Vendor/responder is certifying that undiluted coal tar sealers are not included in their response. Undiluted coal tar sealers are defined as any sealant containing coal tar that has not been mixed with asphalt and is intended for use on asphalt surfaces, including driveways and parking lots. See Minn. Stat. § 116.201.

35. **PREVAILING WAGE.** If this solicitation involves a project which includes erection, construction, remodeling, or repairing of a public building or other public work financed in whole or part by state funds, it is subject to prevailing wage laws in accordance with Minn. Stat. §§ 177.30-.32, 177.41-.44, subsd. 16B, and 16C, and corresponding Minn. R. 5200.100 to 5200.1120. The Contract Vendor is solely responsible for payment of any and all required prevailing wage rates. In accordance with Minn. Stat. §§ 177.30(4), 177.31, and 177.32 there are Contract Vendor and subcontractor liabilities for failure to adhere to prevailing wage laws. For questions regarding the prevailing wage laws, contact the Minnesota Department of Labor and Industry at 651.284.5091.

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

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

38. **PRICING OFFERED IN RESPONSE.** Prices listed in your response to this solicitation must take into consideration all inherent costs of providing the requested goods and/or services. The responder agrees to pay any and all fees, including, but not limited to: duties, custom fees, permits, brokerage fees, licenses and registrations. The state will not pay any additional charges beyond the price(s) listed in the response, unless otherwise provided for by law or expressly allowed by the terms of the solicitation.
39. **FEDERAL DEBARMENT.** By submission of its response, the responder certifies that neither it nor its principals is presently debarred or suspended by any federal department or agency; or if the amount of this response is equal to or in excess of $25,000.00 that neither it nor its principals, nor its subcontractors receiving subawards equal to or in excess of $25,000.00 is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

If unable to certify to any of the statements in this certification, the responder must attach an explanation to its response.

40. **STATE DEBARMENT.** By submission of its response, the responder certifies that neither it nor its principals is presently debarred or suspended by any state agency.

If unable to certify to any of the statements in this certification, the responder must attach an explanation to its response.

41. **STATE REQUIREMENTS.** The Contract Vendor is responsible to present information to the ordering state agency regarding product compliance with state requirements. The Contract Vendor's catalog and other marketing materials utilized to offer products under the contract shall affirmatively state when a product is in compliance with the Americans with Disabilities Act (ADA), the non-visual access standards (Minn. Stat. § 16C.145), and the Energy Star Standards. The Contract Vendor must also indicate in the catalog or other marketing materials if the product will not operate, is not intended to operate, or will not operate under full manufacturer's warranty, using paper with a post-consumer recycled content of 30 percent or greater. If any descriptive marketing materials are silent as to any or all of these requirements (e.g., ADA compliance, functions utilizing 30 percent recycled content paper), the Contract Vendor agrees that the customer can assume the product meets or exceeds the state requirements.