

State of Minnesota



REQUEST FOR PROPOSAL

RFP 80 Custodial Services

Date Posted: January 22, 2024

- Responses must be received not later than 4:00 p.m., Central Standard Time (CST), February 21, 2024.
- Late responses will not be considered

Minnesota's Commitment to Diversity and Inclusion

The State of Minnesota is committed to diversity and inclusion in its public procurement process. The goal is to ensure that those providing goods and services to the State are representative of our Minnesota communities and include businesses owned by minorities, women, veterans, and those with substantial physical disabilities. Creating broader opportunities for historically under-represented groups provides for additional options and greater competition in the marketplace, creates stronger relationships and engagement within our communities, and fosters economic development and equality.

To further this commitment, the Department of Administration operates a program for Minnesota-based small businesses owned by minorities, women, veterans, and those with substantial physical disabilities. For additional information on this program, or to determine eligibility, please call 651-296-2600 or go to the Office of Equity in Procurement home page, at www.mn.gov/admin/oep.

SPECIAL NOTICE: This is a request for proposal. It does not obligate the State of Minnesota to award a contract or complete the proposed program, and the State reserves the right to cancel this solicitation if it is considered in its best interest.

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Solicitation Attachments

- Attachment A: Responder Declarations
- Attachment B: Exceptions to State's Terms and Conditions
- Attachment C: Cost Detail
- Attachment D: Responder Forms
 - Veteran-Owned Preference Form [If Applicable]
 - Workforce and Equal Pay Declaration

Sample Contract

- Exhibit A: Contract Terms
- Exhibit B: Insurance Requirements
- Exhibit C: Specifications, Duties, and Scope of Work
- Exhibit D: Pricing

SECTION 1 – INSTRUCTIONS TO RESPONDERS

Steps for Completing Your Response	<p>Follow the steps below to complete your response to this Solicitation:</p> <p style="padding-left: 40px;">Step 1: Read the solicitation documents and ask questions, if any</p> <p style="padding-left: 40px;">Step 2: Write your response</p> <p style="padding-left: 40px;">Step 3: Submit your response</p>
Incomplete Submittals	<p>A response must be submitted along with any required additional documents. Incomplete responses that materially deviate from the required format and content may be rejected.</p>
STEP 1 – READ THE SOLICITATION DOCUMENT & ASK QUESTIONS, IF ANY	
How to Ask Questions	<p>The contact person for questions is:</p> <p style="padding-left: 40px;">Kris Wenner, Contract Manager Minnesota State Retirement System kris.wenner@msrs.us</p> <p>Questions should be emailed to the contact by 4:00 p.m. CST February 2, 2024. Other personnel are not authorized to answer questions regarding this solicitation.</p>
STEP 2 – WRITE YOUR RESPONSE	
	<p>The Response Content section is in this link to Section 4. Prepare a written response and supply all requested content. Responses should address the requested information and documents detailed in Section 4.</p> <p><u>DO NOT INCLUDE</u> Non-Public/Trade Secret data (as defined in this link to Minn. Stat. § 13.37).</p> <p>Review, sign, and include the Responder Declarations with your response.</p>
STEP 3 –SUBMIT YOUR RESPONSE	
Paper and Email Your Response	<p>Responses must be submitted in both electronic and paper format.</p> <ul style="list-style-type: none"> • Eight (8) paper copies of Proposal must be delivered to MSRS, Kris Wenner at 60 Empire Drive, 3rd floor, Saint Paul, Minnesota 55103 by the specified due date and time. • One (1) electronic copy of Proposal and Cost Detail as two separate attached documents to one email submission: kris.wenner@msrs.us <ul style="list-style-type: none"> • Subject Line of Email to read “RFP 80; <i>Responder’s Company name</i>” The two separate attached documents to the email should be named as follows: <ul style="list-style-type: none"> ○ RFP 80 Proposal; <i>Responder’s Company name</i> ○ RFP 80 Cost; <i>Responder’s Company name</i>

By submitting a response, your company is making a binding legal offer for the period of time set forth below in Section 6, Conditions of Offer.

Proposals must be received not later than **4:00 p.m. CST February 21, 2024.**

Late responses will not be considered, even if errors or delays were caused by issues outside of Responders' control.

Receiving the RFP & Questions Regarding the RFP

To receive the RFP, or for Responders who have any questions regarding this RFP, contact:

Kris Wenner
Contract Manager
Email: kris.wenner@msrs.us
Phone: (651) 284-7762

Other personnel at MSRS are not authorized to discuss this RFP with Responders before the proposal submission deadline. Any contact with any MSRS personnel not listed above regarding this RFP could result in disqualification. The late delivery of proposals to MSRS, regardless of delivery method, will result in disqualification and that proposal will not be considered for evaluation.

SECTION 2 – SUMMARY OF SCOPE

2.1 - Procurement Overview and Goals.

The Minnesota State Retirement System (“MSRS,” “State,” or “Plan Sponsor”) requests proposals for financial custodian services from qualified firms. MSRS intends to evaluate and select a financial custodian for a 24-month period starting June 1, 2025, with the option to extend three (3) additional years. If the selected firm is not the incumbent, the period from June 1, 2025, to June 30, 2025, will be devoted to transition activities.

If MSRS determines there are benefits to the state to extend beyond the initial two years, and if the Department of Administration approves the extension, the resulting contract may be extended to a maximum contract length of 10 years, in increments determined by the state.

MSRS currently retains Empower Trust Company, LLC, as the Custodian for the Funds. The current five-year contract will expire on June 30, 2025 and an RFP process must be completed before a new contract can be issued. MSRS is issuing this RFP to comply with State law that requires all contracts be posted for bid when the contract reaches its maximum extension, not out of dissatisfaction with the performance of the incumbent custodian. MSRS encourages custody organizations to respond to this RFP. The incumbent Custodian is retained by MSRS through June 30, 2025.

This request for proposal (RFP) does not obligate the State to award a contract, and the State reserves the right to cancel this solicitation if it is considered to be in its best interest. The deadline for submitting a proposal under this RFP is February 16, 2024, at 4:00 p.m. CST. Late submissions will not be evaluated.

The purpose of this RFP is to obtain a Custodian capable of providing MSRS with the custodial services necessary to fulfill its fiduciary responsibility. All cash contributions to the Plans pending investment, all cash being transferred among the investment options offered by the Plans, and all cash awaiting distribution to the participants and beneficiaries of the Plans will be held in custodian bank accounts for the exclusive benefit of the Plans’ participants and beneficiaries. The Custodian, with respect to property of the MSRS held by the custodian, is expected to:

- Hold securities
- Provide custodial services for the Money Market Fund and the Stable Value Fund and temporarily hold assets in short term investment fund where the interest remains the property of the Plan.
- Release and deliver securities of the Plans held by the Custodian upon receipt of proper instructions.

2.2 - MSRS Background

MSRS was established by the Minnesota State Legislature in 1929. MSRS is administered by an Executive Director who is responsible to an 11-member Board of Directors that has a fiduciary responsibility to the members and beneficiaries of all MSRS plans, the taxpayers, and the State of Minnesota. In carrying out its responsibilities, the Custodian will work closely with the MSRS's Executive Director and other MSRS staff.¹

Membership, election, and terms of the Board of Directors of the Minnesota State Retirement System, as well as the duties and powers of the Board are specified in Minnesota Statutes Chapter 352.03.

¹ These plans are established and administered according to Minnesota Statutes Chapters 352, 352A, 352B, 352C, 352D, 352F, 356, 356A, 490 and 3A.

The Minnesota State Board of Investment (SBI) is the state agency responsible for the investment management of MSRS retirement funds which, as of June 30, 2023, were approximately \$31.0 billion in total. The investments for MSRS are split into five Defined Benefit Plans and four Defined Contribution Plans. Custodian services for the purposes of this request for proposal are for the Defined Contribution Plans, which totaled over \$11.5 billion as of June 30, 2023.

2.3 - MSRS Responsibilities

MSRS contracts recordkeeping duties for its plans to a third-party, but maintains responsibility for:

- Primary customer service to its participants
- Receiving all participant calls, including initial requests for investment information
- Mailing informational materials and forms to participants, as necessary
- Authorizing all plan and participant decisions, including new enrollments, beneficiary additions and updates, investment-option changes, unforeseeable-emergency withdrawals, domestic relations orders, and distributions
- Facilitating efforts to have employers remit payroll amounts and allocation instructions electronically via a direct on-line access to Recordkeeper's system and transmit funds via Automated Clearing House (ACH) or other electronic means.
- Execution of distribution requests including periodic payments, rollovers, service credit purchases, and emergency withdrawals.
- MSRS staff uses the Recordkeeper systems to facilitate the responsibilities outlined above.

To process participant inquiries and requests, MSRS employs internal counselors, external counselors and a service center. These staff carry State Life & Health insurances licenses, FINRA Series 6 and 63 licenses and Series 26 licenses overseeing MSRS licensed staff. MSRS staff do not provide investment advice.

2.4 - Defined Contribution Retirement Plans

MSRS administers four defined-contribution plans, with net assets exceeding \$11.5 billion, as of June 30, 2023:

A. Minnesota State Deferred Compensation Plan [a multiple-employer IRC 457(b) plan]

In 1971, the State of Minnesota established a deferred compensation Internal Revenue Code Section 457(b) Plan for eligible Minnesota public employees pursuant to Minnesota Statutes 352.965.

The MNDCP is administered by MSRS. Currently there are approximately 815 employers contributing to the MNDCP. Total plan assets as of June 30, 2023 are \$9.2 billion. More Plan information can be found in the Plan Document at: <https://employers.msrs.state.mn.us/governing-law>. The investment options currently offered for this plan are listed in Table 1.

B. Health Care Savings Plan

The Health Care Savings Plan is an employer-sponsored program established in 2001 by a private letter ruling under IRS Section 115 and created under Minn. Stat. § 352.98. The HCSP is administered by MSRS. The HCSP allows employees to save money through a Minnesota public employer's personnel policy or union contract for reimbursement of eligible post-employment medical and dental expenses and/or health insurance premiums. Contributions and any earnings are tax-free. Reimbursements from the HCSP are also tax-free. Currently there are approximately 610 employers contributing to the HCSP. Total plan assets as of June 30, 2023 are \$1.8 billion. The investment options currently offered in the HCSP are listed in Section 3.1. More information about this plan can be found in the Plan Document at: <https://employers.msrs.state.mn.us/governing-law>. The investment options currently offered for this plan are listed in Table 1.

C. Unclassified Employees Retirement Plan

The Unclassified Employees Retirement Plan (UNCL) with assets of \$359 million as of June 30, 2023, is a 401(a) plan administered by MSRS, governed by Minn. Stat. § 352D. This plan bases retirement benefits on the amounts contributed to the account by the employer and the employee, plus any investment earnings on the money in the account. When funds are withdrawn, both contributions and earnings are taxable. There are approximately ten employers contributing to the Unclassified Plan.

D. Hennepin County 1% Supplemental Retirement Plan (SRHC)

Hennepin County 1% Supplemental Retirement Plan (SRHC) is a non-qualified plan established by Hennepin County through a private letter ruling. The Plan has assets of \$163 million as of June 30, 2023, and approximately 900 participants have a balance. Two employers contribute to the Hennepin County Supplemental Retirement Plan. The plan closed to new participants on April 1, 1982, but people continue to contribute to the plan. The investments currently being offered are listed in Table 1.

The Minnesota State Board of Investment (SBI) has the sole discretion to select one or more investment options offered under the plans. The investment options that may be offered are specified in Minn. Stat. § 352.96, subd 2. It is the sole responsibility of the SBI to ensure that all investment options offered under the plan are appropriate and in compliance with any and all state laws pertaining to the investments. The Recordkeeper will have the administrative capability to handle any change in the array of authorized investment options. No investment product changes are expected on July 1, 2025; however, investment products are continually reviewed by the SBI.

MSRS and SBI have currently authorized the unallocated investment options below. The term "unallocated" describes investment-option recordkeeping whereby individual investment providers will not keep participant records. Investment options are continually reviewed by the SBI and are subject to change at any time with at least 90 days notice to the Recordkeeper. Approval by the Recordkeeper of any additional unallocated investment options will not be unreasonably withheld. MSRS and SBI may choose up to 30 unallocated investment options for each plan. It is the responsibility of the Recordkeeper to maintain individual participant records.

Table 1. MNDCP, HCSP, UNCL, and Hennepin County Investment Options

T. Rowe Price Small Cap Stock Fund	MN Target Retirement 2065 Fund
Fidelity Diversified International Comingled Trust	MN Target Retirement 2060 Fund
Vanguard Total International Stock Index Fund	MN Target Retirement 2055 Fund
Vanguard Mid Cap Index Fund	MN Target Retirement 2050 Fund
Vanguard Total Stock Market Index Fund	MN Target Retirement 2045 Fund
Vanguard Institutional Index Fund	MN Target Retirement 2040 Fund
Vanguard Dividend Growth Fund	MN Target Retirement 2035 Fund
Vanguard Balanced Fund	MN Target Retirement 2030 Fund
Dodge & Cox Income Fund	MN Target Retirement 2025 Fund
Vanguard Total Bond Market Index Fund	MN Target Retirement Income Fund
Stable Value Fund	Self-Directed Brokerage Account
Money Market Fund	

MSRS also offers Plan participants a mutual fund-only Self-Directed Brokerage Account (SDBA) option currently provided by Charles Schwab.

2.5 - Scope of Work

The Custodian will perform the following tasks, or provide equivalent services:

A. Establishment of the Trust

MSRS will establish with the Custodian a fund (Custodial Account) to consist of assets contributed or transferred to the Custodian including proceeds, reinvestments, and income and other investment gains. Such property shall be held by the Custodian in trust. The assets of the Custodial Account may be held at Depository Trust Company (DTC), the Federal Reserve Book Entry System or any other clearinghouse, book entry system or central depository system for securities, provided that ownership of the assets of the Plans are at all times reflected as such upon the books and records of the Custodian. The Custodial Account is intended to satisfy the requirements of the applicable sections of Internal Revenue Code, and to be treated as a trust solely for purposes of applicable tax laws. In no event shall the Custodial Account be treated as a trust for purposes of state law.

B. Hold assets and manage securities

1. Hold in safekeeping the assets contributed or transferred to the Custodian on behalf of MSRS, including proceeds and investment funds for the duration of the contract term in a security system provided that ownership of the assets of MSRS shall at all times be reflected as such upon the books and records of the Custodian
2. Provide custodian services for the Money Market Fund and the Stable Value Fund
3. Temporarily hold assets in short term investment funds and the interest shall remain the property of the Plans
4. Manage accounts and transactions, settle purchases and sales, report the status of assets
5. Hold securities
6. Release and deliver securities
7. Register securities
8. Open and maintain bank accounts
9. Credit income to the plan and account as earned
10. Settle all purchase and sales transactions
11. Process transactions when securities, funds, and ETFs are bought and sold
12. Collect dividend and interest payments
13. Trade date accounting for all securities and full accrual accounting for all assets

C. Follow proper instructions or perform delegated tasks

1. Appoint agents or sub-custodians
2. Process payments of accounts upon receipt of proper instructions
3. Allow the appointment of an Investment Manager(s) by the State Board of Investment (SBI)
4. Require prompt delivery of proxies from agents, sub-custodians to Custodian
5. Rely upon the identity and authority of persons duly authorized to provide instruction to Custodian
6. Rely upon proper instructions from an Investment Manager(s), with such limitations as the MSRS and the Recordkeeper provide by written agreement
7. Make distributions
8. Perform certain actions permitted without express MSRS authority such as:
 - Endorse for collection checks or other negotiable instruments
 - Make payments to itself or others for minor expenses of handling securities

D. Report

1. Produce monthly statements that document holdings, cost basis, and current market value on a trade date basis
2. Promptly communicate all pertinent information related to account securities
3. Provide timely monthly reports of all monies received or paid on behalf of the account and an itemized statement of the securities held in trust
4. Keep accurate accounts of all investments of the trust fund and of receipts and disbursements and other transactions
5. Make the books and records open at all reasonable times under reasonable conditions to inspection and audit, up to six years after the contract period
6. Provide interim reports at MSRS request
7. Reasonably cooperate with and provide reports and data to consulting and performance measurement firms selected and appointed by MSRS
8. The values of each investment shall be determined daily by the Custodian in accordance with the reasonable methods which it generally employs for such purposes

E. Collect fees

Expect compensation for services and expenses; including fees and “float.”

F. Assist in transitions

1. Incoming custodian duties: Custodian will appoint a project manager, establish a plan and timeline to transfer all of the Plan’s securities to the Custodian’s securities system, and lead the transition project. The Custodian will cooperate with the successor Custodian and ensure a successful transfer of assets.
2. Outgoing custodian duties: If a successor Custodian is appointed, the Custodian will, within a reasonable time after termination, cooperate with transition to successor Custodian and transfer to an account of the successor Custodian all of the Plan’s securities held in a securities system.

SECTION 3 – PROPOSAL INSTRUCTIONS AND ADDITIONAL INFORMATION

3.1 - Anticipated Contract Term.

The term of this contract is anticipated to be from July 1, 2024 to June 30, 2030, with the option to extend up to an additional four years in increments determined by the State.

3.2 - Question and Answer Instructions.

MSRS anticipates that the answers to questions will be provided around February 9, 2024 at <https://www.msrs.state.mn.us/vendors> under Current MSRS Opportunities. MSRS is not obligated to answer questions submitted after the question due date and time; however, MSRS reserves the right to answer questions received after this date if it will improve the RFP.

Only personnel listed above are authorized to discuss this solicitation with Responders. Contact regarding this solicitation with any personnel not listed above could result in disqualification. This provision is not intended to prevent Responders from seeking guidance from state procurement assistance programs regarding general procurement questions.

If a Responder discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in the solicitation, please immediately notify kris.wenner@msrs.us in writing of such error and request modification or clarification of the document.

SECTION 4 – PROPOSAL CONTENT

Proposals submitted in response to this RFP must contain certain necessary information essential to understanding and evaluating the proposals. The intent is not to limit the content of the proposals. Responders may propose additional tasks if they will substantially improve the recordkeeping services sought by MSRS; these proposed additional tasks should be separated in the Work Plan and Cost Proposal.

Unnecessarily lengthy proposals will not enhance the evaluations MSRS will conduct. The emphasis of the proposal should be on the firm's ability to satisfy the requirements of this RFP. Information submitted in the proposal must be current, complete, and accurate. Misrepresentations of proposal data may be grounds for rejection of the proposal or cancellation of the contract (if one has been awarded), and legal remedies may be sought.

MSRS assumes no liability for payment of expenses incurred in preparing and submitting proposals, or any travel-related expenses incurred in interviews of finalists prior to the contract award.

All materials submitted in response to this RFP will become property of MSRS. Materials received will be considered public information and will be open to public inspection with the Minnesota Data Practices Act after the contract negotiation process is complete. Please see the "Disposition of Responses" section in the "General Requirements" section below for more details regarding the inclusion of information believed to be trade secret. Price will be a significant factor in the evaluation of proposals.

Responders must submit the following information:

4.1 - Cover Letter

Provide a description of the responder's understanding of the deliverables to be provided by the responder. Submit a statement of the objectives, goals, and tasks to show or demonstrate the responder's view and understanding of the nature of the contract.

4.2 - Company and Employee Experience

An outline of the responder's background and experience with examples of similar work done by the responder and a list of personnel who will conduct the project, detailing their training, and work experience. Please expressly address each of the minimum qualifications found below. Failure to illustrate how the responder meets each minimum qualification will result in disqualification.

4.3 - Work Plan

Describe how your firm will perform the Scope of Work, described above.

4.4 - Performance Standards Guarantees/Fees

Propose guarantees and fees for failure to meet performance standards related to the Scope of Work, described above.

4.5 - Cost Proposal (Exhibit A)

(See instructions below for submission of pricing information.) Submit a Cost Proposal in the format provided in Exhibit A. Identify the level of the Plan Sponsor's participation, and details of cost allowances for this participation in the contract.

4.6 - Forms

Submit the following forms, as applicable (attached to Solicitation Attachments this RFP):

1. Attachment A: Responder Declarations
2. Attachment B: Exceptions to State's Terms and Conditions
3. Attachment C: Cost Detail
4. Attachment D: Responder Forms
 - a. Veteran-Owned Preference Form [If Applicable]
 - b. Workforce and Equal Pay Declaration

DO NOT INCLUDE Non-Public/Trade Secret data (as defined by Minn. Stat. § 13.37).

4.7 - Proposal Format & Submittal

- Submit *eight (8) paper copies* of the proposal that do not include cost data.
 - Proposals are to be sealed in mailing envelopes or packages with the responder's name and address written on the outside.
 - At least one copy of the proposal should be signed in ink by an authorized employee of the firm. In addition to the paper copies, please provide one copy of the proposal in electronic format.
- Submit *one (1) electronic copy* of Proposal and Cost Detail as two separate attached documents to one email submission: kris.wenner@msrs.us
 - Subject Line of Email to read "*RFP 76; Responder's Company name*"
 - The two separate attached documents to the email should be named as follows:
 - RFP 76 Proposal; *Responder's Company name*
 - RFP 76 Cost; *Responder's Company name*

By submitting a response, your company is making a binding legal offer for the period of time set forth below in Section 6, Conditions of Offer.

Proposals will be evaluated on "best value" as specified in this RFP. The Cost Proposal will not be opened by the MSRS selection committee until after the technical qualification points are awarded.

Send proposals to:

Kris Wenner, Contracts Manager
Minnesota State Retirement System
60 Empire Drive, Suite 300
St. Paul, MN 55103

Note: For purposes of completing the Cost Proposal, the State does not make regular payments based upon the passage of time; it only pays for services performed or work delivered after it is accomplished. MSRS will process payment within 30 days of receipt of an invoice, or receipt of services performed, whichever is later.

SECTION 5 – EVALUATION PROCEDURE AND CRITERIA

MSRS will conduct an evaluation of responses to this solicitation. Evaluations will be conducted in three phases using the scoring methodology described below.

Phase 1 – Review responses for mandatory pass/fail requirements

Phase 2 – Evaluate responses

Phase 3 – Select finalist(s)

Phase 1 – Responsiveness and Pass/Fail Requirements

The purpose of this phase is to determine if each response complies with mandatory requirements. The State will first review each proposal for responsiveness to determine if the Responder satisfies all mandatory requirements. The State will evaluate these requirements on a pass/fail basis.

All responses received by the deadline will be evaluated by representatives of MSRS and its Board of Directors. Proposals will first be reviewed for responsiveness to determine if the minimum requirements have been met. Proposals that fail to meet minimum requirements will not advance to the next phase of the evaluation. The State reserves the right, based on the scores of the proposals, to create a short list of vendors who have received the highest scores to interview, or conduct demonstrations, presentations, interviews, or site visits.

The State reserves the right to seek best and final offers from one or more responders. A 1,000-point scale will be used to create the final evaluation recommendation.

A. Mandatory Requirements (Scored as Pass/Fail)

The following will be considered on a pass/fail basis:

1. Proposals must be received on or before the due date and time specified in this solicitation.
2. The responder must currently be providing custodian services for at least five (5) U. S. based institutional clients with U. S. marketable security trust assets having an aggregate market value in excess of \$25 billion dollars.
3. The responder must currently be providing international custodian services for at least five (5) U. S. based institutional clients with international marketable security trust assets having an aggregate market value in excess of \$5 billion dollars.
4. The Senior Account Manager proposed for this account must have a minimum of seven (7) years' experience administering domestic and international custodian accounts.
5. The responder must be a U.S. domiciled trust company and a member of the Federal Reserve, or a U.S. subsidiary of a foreign bank subject to the jurisdiction of U. S. courts.
6. The responder must have a long term debt rating of A- or higher from at least two nationally recognized rating agencies.
7. The Custodian shall have no responsibility or liability for any obligations imposed on the MSRS or the Plan by the tax law of the United States of America.
8. The Responder must have a clean compliance record at FINRA.org.

Phase 2 - Evaluate Responses

Only those responses found to have met Phase 1 criteria will be considered in Phase 2.

Preference points are described under Solicitation Terms and will be applied to the total score after points have been awarded.

A. Evaluation Factors

A 1000-point scale will be used to score the proposals and determine the final selected Contractor recommendation. The technical component is 70% of total points and the cost component is 30% of total score. Responses will be rated as follows:

Criteria	Points
1. Expressed understanding of project objectives	50
2. Company and Employee Experience	50
3. Work Plan	550
4. Performance Standards Guarantees/Fees	50
5. Cost Proposal	300
6. Preference Points (if applicable) - 120 points in addition to 1000 points available	120

The Cost Proposal with the lowest cost receives 300 points. Other Cost Proposals are evaluated according to this formula:

$$\text{Cost calculation formula is: } \frac{\text{Low Price}}{\text{Price Being Evaluated}} \times \text{Maximum Cost Points} = \text{Cost Score}$$

Preferences points are described under Solicitation Terms and will be applied to the total score after points have been awarded.

MSRS reserves the right, based on the scores of the proposals, to create a short list of vendors who have received the highest scores.

Phase 3 - Select Finalist(s)

Only those responses that have been evaluated under Phase 2 shall be eligible for Phase 3.

MSRS will make its selection based on best value, as determined by this evaluation process. MSRS reserves the right to seek best and final offers from one or more responders. A 1000-point scale will be used to create the final evaluation recommendation.

MSRS reserves the right to pursue negotiations on any exception taken to the State’s standard terms and conditions. In the event that negotiated terms cannot be reached, MSRS reserves the right to terminate negotiations and begin negotiating with the next highest scoring responder or take other actions as MSRS deems appropriate. If MSRS anticipates multiple awards, MSRS reserves the right to negotiate with more than one Responder.

It is anticipated that the evaluation and selection will be completed by July 1, 2024.

SECTION 6 – SOLICITATION TERMS

6.1 - Competition in Responding

The State desires open and fair competition. Questions from responders regarding any of the requirements of the Solicitation must be submitted in writing to the Solicitation Administrator listed in the Solicitation before the due date and time. If changes are made the State will issue an addendum.

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.

6.2 - Addenda to the Solicitation

Changes to the Solicitation will be made by addendum with notification and posted in the same manner as the original Solicitation. Any addenda issued will become part of the Solicitation.

6.3 - Data Security - Foreign Outsourcing of Work is Prohibited

All storage and processing of information shall be performed within the borders of the United States. This provision also applies to work performed by subcontractors at all levels.

6.4 - Joint Ventures

The State allows joint ventures among groups of responders when responding to the solicitation. However, one responder must submit a response on behalf of all the others in the group. The responder that submits the response will be considered legally responsible for the response (and the contract, if awarded).

6.5 - Withdrawing Response

A responder may withdraw its response prior to the due date and time of the Solicitation. For solicitations in the SWIFT Supplier Portal, a responder may withdraw its response from the SWIFT Supplier Portal. For solicitations done any other way, a responder may withdraw its response by notifying the Solicitation Administrator in writing of the desire to withdraw.

After the due date and time of this Solicitation, a responder may withdraw a response only upon showing that an obvious error exists in the response. The showing and request for withdrawal must be made in writing to Solicitation Administrator within a reasonable time and prior to the State's detrimental reliance on the response.

6.6 - Rights Reserved

The State reserves the right to:

- Reject any and all responses received;
- Waive or modify any informalities, irregularities, or inconsistencies in the responses received;
- Negotiate with the highest scoring Responder[s];
- Terminate negotiations and select the next response providing the best value for the State;
- Consider documented past performance resulting from a State contract may be considered in the evaluation process;
- Short list the highest scoring Responders;
- Require Responders to conduct presentations, demonstrations, or submit samples;
- Interview key personnel or references;
- Request a best and final offer from one or more Responders;
- The State reserves the right to request additional information ; and
- The State reserves the right to use estimated usage or scenarios for the purpose of conducting pricing evaluations. The State reserves the right to modify scenarios, and to request or add additional scenarios for the evaluation.

6.7 - Samples and Demonstrations

Upon request, Responders are to provide samples to the State at no charge. Except for those destroyed or mutilated in testing, the State will return samples if requested and at the Responder's expense. All costs to conduct and associated with a demonstration will be the sole responsibility of the Responder.

6.8 - Responses are Nonpublic during Evaluation Process

All materials submitted in response to this Solicitation will become property of the State. During the evaluation process, all information concerning the responses submitted will remain private or nonpublic and will not be

disclosed to anyone whose official duties do not require such knowledge. Responses are private or nonpublic data until the completion of the evaluation process as defined by Minn. Stat. § 13.591. The completion of the evaluation process is defined as the State having completed negotiating a contract with the selected responder. The State will notify all responders in writing of the evaluation results.

6.9 - Trade Secret Information

Responders must not submit as part of their response trade secret material, as defined by Minn. Stat. § 13.37.

In the event trade secret data are submitted, Responder must defend any action seeking release of data 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 data, and any and all costs connected with that defense.

The State does not consider cost or prices to be trade secret material, as defined by Minn. Stat. § 13.37.

A responder may present and discuss trade secret information during an interview or demonstration with the State, if applicable.

6.10 - Conditions of Offer

Unless otherwise approved in writing by the State, Responder's cost proposal and all terms offered in its response that pertain to the completion of professional and technical services and general services will remain firm for 180 days, until they are accepted or rejected by the State, or they are changed by further negotiations with the State prior to contract execution.

6.11 - Award

Any award that may result from this solicitation will be based upon the total accumulated points as established in the solicitation. The State reserves the right to award this solicitation to a single Responder, or to multiple Responders, whichever is in the best interest of the State, providing each Responder is in compliance with all terms and conditions of the solicitation. The State reserves the right to accept all or part of an offer, to reject all offers, to cancel the solicitation, or to re-issue the solicitation, whichever is in the best interest of the State.

6.12 - Requirements Prior to Contract Execution

Prior to contract execution, a responder receiving a contract award must comply with any submittal requests. A submittal request may include, but is not limited to, a Certificate of Insurance.

6.13 - Targeted Group, Economically Disadvantaged Business, Veteran-Owned and Individual Preference

Unless a greater preference is applicable and allowed by law, in accordance with Minn. Stat. § 16C.16, businesses that are eligible and certified by the State as targeted group (TG) businesses, economically disadvantaged (ED) businesses, and veteran-owned businesses will receive points equal to 12% percent of the total points available as preference.

For TG/ED/VO certification and eligibility information visit the Office of Equity in Procurement website at <https://mn.gov/admin/business/vendor-info/oep/> or call the Division's Helpline at 651.296.2600.

6.14 - Reciprocity

State shall comply with Minn. Stat. § 16C.06, subd. 7, as that applies to a non-resident vendor. This paragraph does not apply for any project in which federal funds are expended.

ATTACHMENT A: RESPONDER DECLARATIONS

The undersigned certifies, to the best of their knowledge and belief, that:

A. Response Contents.

The information provided is true, correct, and reliable for purposes of evaluation for potential contract award. 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.

B. Authorized Signature.

This Declaration is signed by the appropriate person(s), with the authority to contractually bind the Responder, as required by applicable articles, bylaws, resolutions, minutes, and ordinances.

C. Non-Collusion Certification.

The Proposal has been arrived at by the Responder independently and has been submitted without collusion and without any agreement, understanding or planned common course of action with any other vendor designed to limit fair or open competition; and

The contents of the 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 due date and time of this Solicitation. 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.

D. Organizational Conflicts of Interest.

To the best of Responder's knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons,

1. a vendor is unable or potentially unable to render impartial assistance or advice to the State;
2. the vendor's objectivity in performing the contract work is or might be otherwise impaired; or
3. the vendor has an unfair competitive advantage.

If after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the State's Chief Procurement Officer which must include a description of the action which the contractor 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 Contractor was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to OSP, the State may terminate the contract for default. Organizational conflicts of interest terms apply to any subcontractors for this work.

E. 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 sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients 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 and 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.

F. Copyrighted Material Waiver.

By signing its Response, the Responder certifies that it has obtained all necessary approvals for the reproduction and distribution of the contents of its response.

G. Diverse Spend Reporting.

The Sample Contract contains a clause for Diverse Spend Reporting. When this clause applies, Contractor will be required to register in a free portal to report diverse spend.

Please see [Diverse Spend Reporting Frequently Asked Questions](#) for additional information.

By signing this form, Responder acknowledges and certifies compliance with all applicable requirements indicated above.

Company Name: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Phone Number: _____

Email Address: _____

ATTACHMENT B: EXCEPTIONS TO STATE’S TERMS AND CONDITIONS

The State presumes a responder agrees to the terms and conditions of this solicitation unless a responder takes specific exception to one or more of the conditions on this form.

The State reserves the right to reject, negotiate, or accept any exception listed to the State’s terms and conditions (including those found in the attached Sample Contract).

INSTRUCTIONS: A responder must explicitly list all exceptions to State’s terms and conditions, if any (including those found in the attached Sample Contract). Reference the clause number and page number of the State's term and condition for each of a responder’s exceptions. 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 response. *(Add additional pages if necessary.)*

Clause and Page Number	Suggested Change to Clause	Explanation or Justification

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

Signature: _____

Printed Name: _____

Title: _____

Date: _____

ATTACHMENT C: COST DETAIL

Instructions

This Cost Proposal must be separate from the rest of your firm’s response. It will be evaluated after the technical merits of your response.

The total cost specified must be all-inclusive. It must include travel fees, communication costs, other expenses incidental to the resulting contract and any additional costs expected to be provided by MSRS. Indicate hourly rates of compensation for all roles/skill sets. Indicate any additional costs resulting from recommended proposed services not specifically listed in this RFP.

Pricing should assume the existing fund line-up and services described in the RFP - Scope of Work section. All other services requested will be billed based on mutually agreed upon costs.

Funding for any services beyond the scope of the contract resulting from this RFP will require advance approval from MSRS’ Board of Directors or Executive Director and must be within the scope of this RFP. These additional services will require an amendment to the existing contract or creation of a new contract and require approval from the Minnesota Department of Administration – Office of State Procurement.

All tax charges will be paid directly by MSRS to the Minnesota Department of Revenue.

MSRS does not make regular payments based on the passage of time, it only pays for services performed or work delivered after it is satisfactorily completed – on a reimbursement basis. Payment is only made after the submission of a detailed invoice for services rendered, approved by the State’s Authorized Representative. The state must pay its approved invoices within 30 days of invoice receipt, unless they are formally contested.

Retainage: This agreement has been exempted from Minnesota Statutes Section 16C.08, subdivision 5(b), which requires no more than 90% of the amount due under a contract may be paid until the final product of this contract has been reviewed by the State’s agency head. There will be no retainage for this contract.

No hardware/software purchases will be allowed under this RFP. Please provide your proposed costs for a 6-year contract:

Table 1. Costs for a 6-year contract

Fee*	Period (monthly, quarterly, annually, e.g.)	Amount
Total Estimated Costs for 6-Year Contract:		

*Add rows as necessary.

ATTACHMENT D: RESPONDER FORMS

Veteran-Owned Preference Form

Unless a greater preference is applicable and allowed by law, in accordance with Minn. Stat. §16C.16, subd. 6a, the Commissioner of Administration will award up to a 12% preference on state procurement to certified small businesses that are majority owned and operated by veterans.

Veteran-Owned Preference Requirements - See Minn. Stat. § 16C.19(d):

- 1) The business has been certified by the Office of Equity in Procurement (OEP) as being a veteran-owned or service-disabled veteran-owned small business.

or

- 2) The principal place of business is in Minnesota AND the US Small Business Administration verifies the business as being a veteran-owned or service-disabled veteran-owned small business under Public Law 109-461 and Code of Federal Regulations, title 13, part 128.

Statutory requirements and appropriate documentation must be met **by the solicitation response due date and time** to be awarded the veteran-owned preference. For Bids, the preference applies only to the first \$2,000,000.

Claim the Preference

By signing below I confirm that:

My company is claiming the veteran-owned preference afforded by Minn. Stat. § 16C.16, subd. 6a. By making this claim, I verify that:

- The business has been certified by the Office of Equity in Procurement (OEP) as being a veteran-owned or service-disabled veteran-owned small business.
- or**
- My company’s principal place of business is in Minnesota **and** the US Small Business Administration verifies my company as being a veteran-owned or service-disabled veteran-owned small business.

Name of Company: _____ Date: _____

Authorized Signature: _____ Telephone: _____

Printed Name: _____ Title: _____

Sign and return this form with your solicitation response to claim the veteran-owned preference.

Workforce and Equal Pay Declaration Page

This form is **required for all businesses** executing government contracts under the following:

Select one:

- Businesses executing a contract with **State or Metropolitan agencies** in excess of \$100,000 ([Workforce Certificate](#)) and if applicable \$500,000 ([Equal Pay Certificate](#))
- Businesses executing a contract with **University of Minnesota** for general obligation bond funded capital projects in excess of \$100,000 ([Workforce Certificate](#)) and if applicable \$500,000 ([Equal Pay Certificate](#))
- Businesses executing a contract with **Political Subdivisions** for general obligation bond funded capital projects in excess of \$250,000 ([Workforce Certificate](#)) and if applicable \$1,000,000 ([Equal Pay Certificate](#))

Select all that apply:

We are a Certificate holder:

- Workforce Certificate under the name: _____
- Equal Pay Certificate under the name: _____

We are applying/have applied for the following certificate(s):

- Workforce Certificate Application date (MM/DD/YYYY): _____
- Equal Pay Certificate Application date (MM/DD/YYYY): _____

We have not applied for one or both certificates:

- Our Company does not yet have a Workforce Certificate or Equal Pay Certificate. We acknowledge that a Workforce and, if applicable, Equal Pay Certificate, or approved exemption by MDHR is required before a contract can be executed.

We are Exempt:

- We attest to MDHR that we have not employed 40 or more employees on a single day during the prior 12 months in Minnesota or the state in where we have our primary place of business. MDHR may request the names of our employees during the previous 12 months, the date of separation, if applicable, and the current employment status and count.

Business Information

Vendor/Supplier ID	Business Name	Name of Contracting Agency
Authorized Signatory Name	Title	Date
Signature	Email	Phone

For assistance with this form, email the Minnesota Department of Human Rights Compliance.MDHR@state.mn.us



SAMPLE State of Minnesota Contract

SWIFT Contract No. _____

This Contract is between the State of Minnesota, acting through the Executive Director of the Minnesota State Retirement System, 60 Empire Drive, St. Paul, Minnesota, 55103 (“MSRS” or “State”) and _____ whose designated business address is _____ (“Contractor”). State and Contractor may be referred to jointly as “Parties.”

Recitals

1. State issued a solicitation identified as Custodial Services Contract RFP 80 on January 2, 2024 for Recordkeeping Services(“Solicitation”);
2. Contractor provided a response to the Solicitation indicating its interest in and ability to provide the goods or services requested in the Solicitation; and
3. Subsequent to an evaluation in accordance with the terms of the Solicitation and negotiation, the Parties desire to enter into a contract.

Accordingly, the Parties agree as follows:

Contract

2.1 Term of Contract

Effective date. _____, or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later. The Contractor must not begin work under this Contract until this Contract is fully executed and the Contractor has been notified by the State’s Authorized Representative to begin the work.

Expiration date. _____, or until all obligations have been satisfactorily fulfilled, whichever occurs first. The contract may be extended for up to an additional _____, in increments as determined by the State, through a duly executed amendment.

3.1 Contractor’s Duties

The Contractor shall perform all duties described in this Contract to the satisfaction of the State.

The Contractor, who is not a State employee, shall:

4.1 Representations and Warranties

Under Minn. Stat. §§ 15.061 and 16C.03, subd. 3, and other applicable law, the State is empowered to engage such assistance as deemed necessary.

Contractor warrants that it is duly qualified and shall perform its obligations under this Contract in accordance with the commercially reasonable standards of care, skill, and diligence in Contractor's industry, trade, or profession, and in accordance with the specifications set forth in this Contract, to the satisfaction of the State.

Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms.

5.1 Time

The Contractor must comply with all the time requirements described in this Contract. In the performance of this Contract, time is of the essence.

6.1 Consideration and Payment

A. Consideration.

The State will pay for performance by the Contractor under this Contract as follows:

Compensation. The Contractor will be paid _____.

Total obligation. The total obligation of the State for all compensation and reimbursements to the Contractor under this Contract will not exceed \$_____.

B. Payment.

Invoices. The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the goods received or services actually performed, and the State's Authorized Representative accepts the invoiced goods or services.

Contractor will not submit invoices more frequent than on a monthly basis. Summary type invoicing must include these fields:

- Purchase Order Number
- Invoice Number
- MSRS Authorized Representative
- Dates and hours of service
- Description of specific task or deliverable
- Explanation of work performed per charge indicated on the invoice

Send invoices by E-mail to:

msrs_ap@msrs.us (In the subject line include the Contract number and the name of MSRS' Authorized Representative.)

Or

Minnesota State Retirement System
Accounts Payable
60 Empire Drive, Suite 300
St. Paul, Minnesota 55103-3000

Conditions of payment. All services delivered by the Contractor under this Contract must be performed to the State's satisfaction 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. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

7.1 Authorized Representative

MSRS's Authorized Representative is _____, or his/her/their successor or delegate, and has the responsibility to monitor the Contractor's performance.

Contractor's Authorized Representative. The Contractor's Authorized Representative is _____ at the following business address and telephone number: _____, or his/her/their successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the State.

8.1 Exhibits

The following Exhibits are attached and incorporated into this Contract. In the event of a conflict between the terms of this Contract and its Exhibits, or between Exhibits, the order of precedence is first the Contract, and then in the following order:

- Exhibit A: Contract Terms
- Exhibit B: Insurance Terms
- Exhibit C: Specifications, Duties, and Scope of Work
- Exhibit D: Price

Signatures as required by the State of Minnesota

Exhibit A: Contract Terms

1. Prompt Payment and Invoicing.

1.1 Prompt Payment. The State will pay the Contractor pursuant to Minn. Stat. § 16A.124, which requires payment within 30 days following receipt of an undisputed invoice, or merchandise or service, whichever is later. Terms requesting payment in less than 30 days will be changed to read “Net 30 days.” Notwithstanding the foregoing, the State may pay the Contractor in advance for purchases as allowed pursuant to Minn. Stat. §16A.065.

The payment for each order will only be made for goods received or services actually performed that have been accepted by the ordering entity, and meet all terms, conditions, and specifications of the Contract and the ordering document.

1.2 Invoicing. The invoice must be submitted as described in the Contract Consideration and Payment Section 6.1. See Section 6.1, for minimum invoice requirements.

2. Assignment, Amendments, Waiver, and Contract Complete.

2.1 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, executed and approved by the authorized parties or their successors.

2.2 Amendments. Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the authorized parties or their successors.

2.3 Waiver. If the State fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.

2.4 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.

3. Termination.

3.1 Termination for Convenience. The State or Commissioner of Administration may cancel this Contract at any time, with or without cause, upon 30 days’ written notice to the Contractor. Upon termination for convenience, the Contractor will be entitled to payment, determined on a pro rata basis, for services or goods satisfactorily performed or delivered.

3.2 Termination for Breach. The State may terminate this Contract, with cause, upon 30 days’ written notice to Contractor of the alleged breach and opportunity to cure. If after 30 days, the alleged breach has not been remedied, the State may immediately terminate the Contract.

3.3 Termination for Insufficient Funding. 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 addressed within this Contract. Termination must be by written 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 dedicated 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. This notice will be provided within a reasonable time of the State's receiving notice.

4. Force Majeure.

Neither party shall be responsible to the other or considered in default of its obligations within this Contract to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot, disruption of government, 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 relying on this provision to excuse performance must provide the other party prompt written notice of the inability to perform and take all necessary steps to bring about performance as soon as practicable.

5. Indemnification.

In the performance of this Contract, the Indemnifying Party 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 Indemnifying Party's:

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

The Indemnifying Party is defined to include the Contractor, Contractor's reseller, any third party that has a business relationship with the Contractor, or Contractor's agents or employees, and to the fullest extent permitted by law. The indemnification obligations of this section 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 Indemnifying Party may have for the State's failure to fulfill its obligation under this Contract.

Nothing within this Contract, whether express or implied, shall be deemed to create an obligation on the part of the State to indemnify, defend, hold harmless or release the Indemnifying Party. This shall extend to all agreements related to the subject matter of this Contract, and to all terms subsequently added, without regard to order of precedence.

6. Governing Law, Jurisdiction, and Venue.

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

7. Foreign Outsourcing of Work Prohibited.

All services under this contract shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision also applies to work performed by all subcontractors.

8. Subcontracting and Subcontract Payment.

8.1 Subcontracting Allowed. A subcontractor is a person or company that has been awarded a portion of the Contract by Contractor. Only subcontractors that have been approved by the State's Authorized Representative can be used for this Contract.

After the effective date of the Contract, the Contractor shall not, without prior written approval of the State's Authorized Representative, subcontract for the performance of any of the Contractor's obligations that were not already approved for subcontracting when the Contract was awarded. During this Contract, if an approved subcontractor is determined to be performing unsatisfactorily by the State's Authorized Representative, the Contractor will receive written notification that the subcontractor can no longer be used for this Contract.

The provisions of the Contract shall apply with equal force and effect to all approved subcontractors engaged by the Contractor. Notwithstanding approval by the State, no subcontract shall serve to terminate or in any way affect the primary legal responsibility of the Contractor for timely and satisfactory performances of the obligations contemplated by the Contract.

8.2 Subcontractor Payment. Contractor must pay any subcontractor in accordance with Minn. Stat. § 16A.1245.

9. 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 Minnesota tax identification number, already provided to the State, to federal and state agencies, and state personnel involved in the 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.

10. Government Data Practices.

The Contractor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (or, 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 under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this clause, the Contractor must immediately notify and consult with the State's Authorized Representative as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

11. Intellectual Property Rights.

11.1 Definitions. For the purpose of this Section, the following words and phrases have the assigned definitions:

11.1.1 “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.

11.1.2 “Pre-Existing Intellectual Property” means intellectual property developed prior to or outside the scope of this Contract, and any derivatives of that intellectual property.

11.1.3 “Works” means all inventions, improvements, discoveries (whether or not patentable), 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.

11.2 Ownership. The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under this Contract. The Documents shall be the exclusive property of the State and all such 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.” The Contractor assigns all right, title, and interest it may have in the Works and the Documents to the State. 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.

11.3 Pre-existing Intellectual Property. Each Party shall retain ownership of its respective Pre-Existing Intellectual Property. The Contractor grants the State a perpetual, irrevocable, non-exclusive, royalty free license for Contractor’s Pre-Existing Intellectual Property that are incorporated in the products, materials, equipment, deliverables, or services that are purchased through the Contract.

11.4 Obligations.

11.4.1 Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of this Contract, the Contractor will immediately give the State’s Authorized Representative written notice thereof, and must promptly furnish the State’s Authorized Representative with complete information and/or disclosure thereon.

11.4.2 Representation. The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the 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 the Works and Documents. The Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities.

11.4.3 Indemnification. Notwithstanding any other indemnification obligations addressed within this Contract, 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 the 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.

12. Copyright.

The Contractor shall save and hold harmless the State of Minnesota, its officers, agents, servants and employees, from liability of any kind or nature, arising from the use of any copyrighted or noncopyrighted compositions, secret process, patented or non-patented invention, article or appliance furnished or used in the performance of the Contract.

13. Contractor's Documents.

Any licensing and maintenance agreement, or any order-specific agreement or document, including any pre-installation, linked or "click through" agreement that is allowed by, referenced within or incorporated within the Contract whenever the Contract is used for a State procurement, whether directly by the Contractor or through a Contractor's agent, subcontractor or reseller, is agreed to only to the extent the terms within any such agreement or document do not conflict with the Contract or applicable Minnesota or Federal law, and only to the extent that the terms do not modify, diminish or derogate the terms of the Contract or create an additional financial obligation to the State. Any such agreement or document must not be construed to deprive the State of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applicable to this Contract or afforded to the State by Minnesota law. A State employee's decision to choose "accept" or an equivalent option associated with a "click-through" agreement does not constitute the State's concurrence or acceptance of terms, if such terms are in conflict with this section.

14. State Audits.

Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State, the State Auditor, or Legislative Auditor, as appropriate, for a minimum of six years from the expiration or termination of this Contract.

15. Diverse Spend Reporting.

If the total value of the Contract may exceed \$500,000, including all extension options, Contractor must track and report, on a quarterly basis, the amount paid to diverse businesses both: 1) directly to subcontractors performing under the Contract, and 2) indirectly to diverse businesses that provide supplies/services to your company (in proportion to the revenue from this Contract compared to Contractor's overall revenue). When this applies, Contractor will register in a free portal to help report the Tier 2 diverse spend, and the requirement continues as long as the Contract is in effect.

16. Publicity and Endorsement.

16.1 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, information posted on corporate or other websites, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

16.2 Endorsement. The Contractor must not claim that the State endorses its products or services.

17. Debarment by State, its Departments, Commissions, Agencies, or Political Subdivisions.

Contractor certifies that neither it nor its principals is presently debarred or suspended by the Federal government, the State, or any of the State's 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.

18. Federal Funds.

18.1 Compliance with Federal Requirements. Federal money will be used or may potentially be used to pay for all or part of the goods, construction or services under the Contract. The Contractor is responsible for compliance with all federal requirements imposed on the funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

18.2 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.

19. 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.

20. Certification of Nondiscrimination (in accordance with Minn. Stat. § 16C.053).

If the value of this Contract, including all extensions, is \$50,000 or more, Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

21. Non-discrimination (in accordance with Minn. Stat. § 181.59).

The Contractor will comply with the provisions of Minn. Stat. § 181.59.

22. 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 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.

23. Affirmative Action Requirements.

The State intends to carry out its responsibility for requiring affirmative action by its contractors.

23.1 Covered Contracts and Contractors. 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 principal place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600.

23.2 General. Minn. R. 5000.3400-5000.3600 implements 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, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.

23.3 Disabled Workers. The Contractor must comply with the following affirmative action requirements for disabled workers.

AFFIRMATIVE ACTION FOR DISABLED WORKERS

23.3.1 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.

23.3.2 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.

23.3.3 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.

23.3.4 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. 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.

23.3.5 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.

23.4 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.

23.5 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.

24. Equal Pay Certification.

If required by Minn. Stat. §363A.44, the Contractor must have a current Equal Pay Certificate prior to Contract execution. If Contractor's Equal Pay Certificate expires during the term of this Contract, Contractor must promptly re-apply for an Equal Pay Certificate with the Minnesota Department of Human Rights and notify the State's Authorized Representative once the Contractor has received the renewed Equal Pay Certificate. If Contractor claims to be exempt, the State may require Contractor to verify its exempt status.

25. Survival of Terms.

The following clauses survive the expiration or cancellation of this Contract: Indemnification; State Audits; Government Data Practices; Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue; and Data Disclosure. Any other Contract term that expressly states or by its nature shall survive, shall survive.

Exhibit B: Insurance Requirements

1. Notice to Contractor.

1.1 The Contractor is required to submit Certificates of Insurance acceptable to the State as evidence of insurance coverage requirements prior to commencing work under this Contract.

1.2 Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of this Contract, unless otherwise specified in this Contract

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

1.4 The State reserves the right to immediately terminate this 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.

2. Notice to Insurer.

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

Insurance certificate holder should be addressed as follows:

Minnesota State Retirement System
Attention Kris Wenner, Contract Manager
60 Empire Drive, Suite 300
St. Paul, Minnesota 55103-3000

Or send by email to:

Kris.wenner@msrs.us

3. Additional Insurance Conditions.

The following apply to the Contractor, or the Contractor's subcontractor:

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

3.2 If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State 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;

3.3 Contractor is responsible for payment of Contract related insurance premiums and deductibles;

3.4 If Contractor is self-insured, a Certificate of Self-Insurance must be attached;

3.5 Contractor's policy(ies) shall include legal defense fees in addition to its policy limits with the exception of professional liability.

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

3.7 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. Coverages. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

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 – each occurrence

\$2,000,000 – General Aggregate

\$2,000,000 – 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
- **State of Minnesota named as an Additional Insured**, to the extent permitted by law

4.1 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 combined single limit each accident

In addition, the following coverages should be included: Owned, Hired, and Non-owned Automobile.

Evidence of Subcontractor insurance shall be filed with the Contractor.

4.2 Workers' Compensation Insurance. Statutory Compensation Coverage. Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State, 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 Minn. Stat. § 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State, 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 with a certificate of insurance.

4.3 Professional Liability, Errors, and Omissions. 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. Insurance **minimum** limits are as follows:

\$ 5,000,000 Each Occurrence

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.

4.4 Network Security and Privacy Liability Insurance (or equivalent). The coverage may be endorsed on another form of liability coverage or written on a standalone policy. Contractor shall maintain insurance to cover claims which may arise from failure of Contractor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data including but not limited to confidential or private information, transmission of a computer virus or denial of service. Insurance minimum limits are as follows:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

The following coverage shall be included: State of Minnesota named as an Additional Insured unless the coverage is written under a Professional Liability policy.

4.5 Cyber Liability. The coverage each incident is as follows:

\$5,000,000 each incident

4.6 Privacy Liability Insurance (or equivalent). The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The Contractor shall maintain insurance to cover claims which may arise from failure of the Contractor to ensure the security of not public data stored on the State's documents, including but not limited to paper, microfilms, microfiche, magnetic computer tapes, cassette tapes, photographic negatives, photos, hard disks, floppy disks, and carbon sheets, while in the Contractor's care, custody, and control. Insurance minimum limits are as follows:

\$2,000,000 - Per Occurrence

\$2,000,000 - Annual Aggregate

The following coverage shall be included: State of Minnesota named as an Additional Insured unless the coverage is written under a Professional Liability policy.

4.7 Property of Others Insurance (or equivalent). The Contractor shall maintain a Property insurance policy covering "All Risk" of direct physical loss or damage, or equivalent, including the perils of theft, flood, transit, earthquake, and pollution clean-up expense for property owned by the state that is in the Contractor's care, custody, and control. Any deductible shall be the sole responsibility of the Contractor. Insurance **minimum** limits are as follows: The Contractor is solely responsible for the coverage equal to that of the actual cash value of state-owned property in the Contractor's care, custody, and control at any given point in time.

Exhibit C: Specifications, Duties, and Scope of Work

After the contract has been awarded to the selected contractor, the Specifications, Duties, and Scope of Work will be updated and will become part of the actual, executed contract. This is a sample for the proposal.