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| Minnesota Pollution Control Agency (MPCA), 520 Lafayette Road North, St. Paul, MN 55155-4194 | Request for bid form  Commodities and/or non-professional technical service projects up to $50,000 for MPCA Contracts  Section 2  *Doc Type: Contract* |

**Vendor information**

|  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Name: | |  | | | | | | | | | | |
| Address: | | |  | | | | | | | | | |
| City: |  | | | | | | State: |  | | Zip code: | |  |
| Contact name: | | | |  | Phone: |  | | | Vendor quote no.: | |  | |

**Return solicitations to MPCA Contractor**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Name: | |  | | | | | |
| Address: | | |  | | | | |
| City: |  | | | State: |  | Zip code: |  |

**Must be received no later than**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Date (mm/dd/yyyy): |  | Time: |  |  |
| Responses must be received by the MPCA Contractor by the due date and time listed above. All responses will be time-stamped showing the date and time received. ***Late responses will not be considered.*** | | | | |

**Commodity and/or service requisition title**

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**Solicitation response instructions**

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| 1. | Read the entire solicitation including all terms, conditions, and specifications. All attached terms, conditions, and specifications apply to any subsequent award. Complete all applicable areas. |
| 2. | Solicitation responses must contain the signature of an authorized representative who is empowered to bind the Vendor in a contract. |
| 3. | Solicitation responses must be submitted on this form unless otherwise stated in the solicitation. |
| 4. | If commodity, delivery must be FOB destination. Freight charge to be included in unit price unless otherwise stated in the solicitation. Solicitation responses will be considered to be in strict compliance with the specifications and the Vendor will be held responsible therefore; unless the Vendor clearly indicates any deviation from the specifications. |
| 5. | The state of Minnesota reserves the right to reject any or all solicitation responses or portions thereof; to waive any irregularities or informalities in solicitation responses received; and to cancel the solicitation if it is considered to be in the State’s best interest. |
| 6. | Unless otherwise approved in writing by the State, Responder’s response pertaining to the sale of goods or general services will remain firm for 180 days, until it is accepted or rejected by the State. Solicitation responses may be modified or withdrawn prior to the time and date set forth above. After the time set forth above, no solicitation responses may be withdrawn or modified unless approved by the State. |
| 7. | Prices must be submitted in United States currency. |
| 8. | **Addenda to solicitation.** Changes to the solicitation will be made by written addendum. Any addendum issued will become part of the solicitation. Each responder must follow the directions on the addendum. All requests for clarification must be directed to the contact person. Only changes made via addendum will be valid. |
| 9. | **Award--item, group, total.** The award will be made to the lowest responsible vendor meeting the specifications and all terms and conditions. The state reserves the right to award items separately, by grouping items, or by total, whichever is deemed most advantageous to the state. |

**Certification**

I/We certify that we have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a solicitation response; that this solicitation response has been independently arrived at without collusion with any other vendor, competitor, or potential competitor; that this solicitation response has not been knowingly disclosed prior to the opening of solicitation responses to any other vendor or competitor; and that the above statement is accurate under penalty of perjury.

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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Company name (print): | | | | |  | | | | | | | | | | | | Signature: | | |  | | | | | |
| Mailing address (if different from above): | | | | | | | |  | | | | | | | | | | | | *(This document has been electronically signed.)* | | | | | |
| City: |  | | | | | | | | | | | | | | State: | | |  | | | | Zip code: | | |  |
| Contact name: | | |  | | | | | | | | Phone: | | |  | | | | | Discount terms: | | | | |  | |
| Delivery can be made: | | | |  | | | days or | | |  | | | weeks after receipt of order. | | | | | | | | | | | | |
| Payment terms: | |  | | | | days (discounts offered for less than 30 days will not be considered in making an award). | | | | | | | | | | | | | | | | | | | |
| Vendor’s quotation reference number (if any): | | | | | | | | |  | | | | | | | | | | | | | | | | |
| Contact name: | |  | | | | | | | | | | Phone: | | | |  | | | | | Fax: | |  | | |

***Terms and conditions are attached.***

**Terms and conditions**

**Indemnification, hold harmless, and limitation of liability.** 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 Subcontractor, Subcontractor’s reseller, any third party that has a business relationship with the Subcontractor, or Subcontractor’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.

**Dispute resolution procedures.** Any issue a responder has with the Request for Bid (RFB) document, which includes, but is not limited to, the terms, conditions, and specifications, must be submitted in writing to the MPCA Contractor prior to the solicitation opening due date and time. Any issue a responder has with the Contract award must be submitted in writing to the MPCA Contractor within five working days from the time the intent to award or the Contract award date is made public. This public notice may be made by notification by letter or email or posted on the OSP website at <https://mn.gov/admin/osp/>. The MPCA Contractor will respond to any protest received that follows the above procedure. For those protests that meet the above submission requirements, the appeal process is, in sequence: MPCA Contractor, the MPCA Project Manager, and the Office of State Procurement.

# 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.

# Non-discrimination (in accordance with Minn. Stat. § 181.59). The Contractor will comply with the provisions of Minn. Stat. § 181.59.

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

**Severability.** If any provision of the Contract, including items incorporated by reference, is declared or found to be illegal, unenforceable, or void, then both the State and subcontractor will be relieved of all obligations arising under the provision; if the remainder of the Contract is capable of performance, it will not be affected by the declaration or finding and will be fully performed.

**Material Deviation.** The subcontractor 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 subcontractor of its proposed language shall not be viewed as an exception unless the subcontractor specifically states in the response that its proposed changes are intended to supersede the State’s terms and conditions.

***Subcontractors are cautioned that by taking any exception***

***they may be materially deviating from the Request for Bid.***

***If a subcontractor materially deviates from the general terms and conditions, special terms, conditions, and specifications, its response may be rejected.***

A material deviation is an exception to the RFB General or Special Terms and Conditions, and specifications that:

1. Gives the subcontractor taking the exception a competitive advantage over other subcontractors;

**or**

1. Gives the State something significantly different from that which the State requested.

**Identification of offer.** Responses shall indicate brand name, trademark, catalog number, model, etc., as applicable, on the response form for the products offered. If products offered are other than specified, the response should include descriptive literature with illustrations.

**Publicity.** Any publicity given to the program, publications or services provided resulting from a State Contract for goods or services, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors, shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Contract prior to its approval by the State. The responder 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. "Representations" include, but are not limited to publicity, advertisements, notices, press releases, reports, signs, and similar public notices.

**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 subcontractor. In the event the subcontractor is in default, the Contract is subject to immediate cancellation to the extent allowable by applicable law. In the event of cancellation, the subcontractor shall be entitled to payment, determined on a pro rata basis, for products, work or services satisfactorily received, performed, and accepted.

**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, riot 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.

**Default.** A Subcontract constitutes a binding contract. All commodities and/or services furnished will be subject to inspection and acceptance by the MPCA Contractor after delivery. No substitutions or cancellations are permitted without approval of the MPCA Contractor. Back orders, defaults in promised delivery, or failure to meet specifications in the Subcontract and/or the solicitation authorize the MPCA Contractor 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 responder. A Subcontractor may be removed from the State’s vendor list or suspended from receiving awards for consistent failure to comply with the terms and conditions of the Subcontract, or for failure to pay the State for the cost incurred on defaulted Subcontracts.

**State audits.** (Minn. Stat. § 16C.05, subd. 5). The books, records, documents, and accounting procedures and practices of the Subcontractor and its employees, agents, or subcontractors relevant to the Subcontract must be made available to and subject to examination by the Legislative Auditor and/or the State Auditor for a minimum of six years after the end of the Subcontract.

**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.” The MPCA Contractor is not required to pay the Contract Vendor for any goods and/or services provided without a written purchase order or other approved ordering document. In addition, all goods and/or services provided must meet all terms, conditions and specifications of the Contract and the ordering document and be accepted as satisfactory by the MPCA Contractor before payment will be issued.

**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 postconsumer recycled content of 30% or greater. If any descriptive marketing materials are silent as to any or all of these requirements (e.g., ADA compliance, functions utilizing 30% recycled content paper), the Contract Vendor agrees that the customer can assume the product meets or exceeds the State requirements.

**Government data practices.** The Subcontractor 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 Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor 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 Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the State. The State will give the Contractor 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 Contractor or the State.

The Contractor 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 Contractor subcontracts any or all of the work to be performed under the Contract, the Contractor shall retain responsibility under the terms of this paragraph for such work.

**Hazardous substances.** To the extent that the goods to be supplied to the State by the Contractor contain or may create hazardous substances, harmful physical agents, or infectious agents, as set forth in applicable State and federal laws and regulations, the Contractor must provide the State with Material Safety Data Sheets regarding those substances. A copy must be provided upon request. Goods and containers supplied to the State must be labeled in compliance with state and federal laws, rules, and regulations.

These terms apply to goods supplied under this contract:

## Products Containing Triclosan Banned. The Contractor must comply with Minn. Stat. § 145.945.

## Products Containing Certain Types of Polybrominated Diphenyl Ether Banned. The Contractor must comply with Minn. Stat. § 325E.385-325E.388).

## Coal Tar Sealant Use and Sale Prohibited. The Contractor must comply with Minn. Stat. § 116.202.

## Products Containing Mercury. The Contractor must comply with Minn. Stat. 116.92.

**Environmentally responsible purchases**. Wherever practicable, the State encourages environmentally responsible purchasing.

**Dates.** Dates are listed in the sequence of month/date/year. Times shown are based on the Central Time Zone, USA.

**Addenda to the solicitation.** Changes to the solicitation will be made by written addendum. Any addendum issued will become part of the solicitation. Each responder must follow the directions on the addendum. All requests for clarification must be directed to the contact person listed in the solicitation. Only changes made via addendum will be valid.

**Condition and packing.** Packaging and packing, if not specifically stated in the RFB document or specifications, must conform to the best commercial practices and ensure delivery in good condition. Goods must be marked and packing slips included to permit checking shipments against purchase orders and invoices.

**Specifications.** Responses will be held to strict compliance with the specifications. If a response deviates from the specifications, the deviation must be clearly noted and the State reserves the right to reject the response. All specifications are for new items unless otherwise noted in the RFB document. Alternate responses offering lower quality will not be considered. The State reserves the right to reject any or all responses that are not an approved equal.

**Acting in cases of doubtful responsibility.** If the Manager of Acquisitions, on the basis of available evidence, concludes that a particular vendor appears to be insufficiently responsible to ensure adequate performance, the response may be rejected.

**Nonresponsive offers.** Responses that do not comply with the RFB will be considered nonresponsive and will be rejected.

**Delivery.** The responder is to state the delivery time offered in the space provided on Page 1 of the RFB. When delivery time is an important factor, it will be stated in the solicitation, and may be 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. If delivery is not made within that time frame, the State reserves the right to purchase necessary quantities from alternate sources and charge any price premium to the subcontractor.

**State of Minnesota**

**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 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 State Procurement as being a veteran-owned or service-disabled veteran-owned small business;

**or**

1. The principal place of business is in Minnesota **and** the United States Department of Veterans Affairs 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. (Supported By Documentation)

Statutory requirements and appropriate documentation must be met **by the solicitation response due date and time** to be awarded the veteran-owned preference.

**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 State Procurement 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 United States Department of Veteran’s Affairs verifies my company as being a veteran-owned or service-disabled veteran-owned small business. (Supported By Attached Documentation)

|  |  |  |  |
| --- | --- | --- | --- |
| 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.**

**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 in the solicitation for award information.

**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 that the responder’s 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.

**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:

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

The Subcontractor 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 Office of State Procurement that shall include a description of the action the Subcontractor 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 Subcontract. In the event the Subcontractor was aware of an organizational conflict of interest prior to the award of the Subcontract and did not disclose the conflict to the MPCA Contract Manager, the State may terminate the Subcontract for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms “Subcontract,” “Subcontractor,” and “MPCA Contract Manager” modified appropriately to preserve the State’s rights.

**Conflict of terms.** In the event of any conflict between General Terms and Conditions and any Specifications, the Specifications govern**.**

**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.

**Inquiries.** Direct all correspondence, inquiries, legal questions, general issues, or technical issues regarding this solicitation to the contact name on page 1 of the solicitation.

**Competition in responding.** The State desires and encourages free and open competition among responders. Whenever and wherever possible, the State’s specifications and the General Terms and Conditions will be designed to accomplish this objective, consistent with the necessity to satisfy the State’s needs and while obtaining best value. 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. Suggestions from responders regarding the requirements of the RFB procedures are welcome and will be given careful consideration.

**Statement of non-collusion.** By signing this solicitation I/we certify that we have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a solicitation response; that this solicitation response has been independently arrived at without collusion with any other vendor, competitor, or potential competitor; that his solicitation response has not been knowingly disclosed prior to the opening of solicitation responses of any other vendor or competitor; and that the above statement is accurate under penalty of perjury.

**Antitrust.** The subcontractor 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.

**Certification regarding federal debarment, suspension, ineligibility, and voluntary exclusion.** A contract resulting from this solicitation may be a covered transaction for purposes of federal debarment and suspension regulations. By submission of its response, the responder certifies that neither it, nor its principals or subcontractors, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. The responder further certifies that it will include this provision in any subcontracts resulting from this solicitation. If the responder knowingly renders an erroneous certification, in addition to remedies available to the Minnesota Department of Administration, the Federal Government may pursue available remedies, including but not limited to suspension or debarment.

**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. 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 price figure is crossed out and the correction is initialed by the person signing the response. This includes, but is not limited to, correction fluid and typewriter correction tape.

**Subcontractor payment.** In accordance with Minn. Stat. § 16A.1245, the MPCA Contractor shall, within ten days of receipt of payment from the State, pay all Subcontractors and suppliers having an interest in the Subcontract their share of the payment for undisputed services provided by the Subcontractors or suppliers. The MPCA Contractor is required to pay interest of one and one-half percent per month or any part of a month to the Subcontractor on any undisputed amount not paid on time to the Subcontractor. The minimum monthly interest penalty payment for an unpaid, undisputed balance of $100 or more will be $10. For an unpaid balance of less than $100, the amount will be the actual penalty due. A Subcontractor that takes civil action against the MPCA Contractor to collect interest penalties and prevails will be entitled to its costs and disbursements, including attorney’s fees that were incurred in bringing the action. The MPCA Contractor agrees to take all steps necessary to comply with said statute. A consultant is a Subcontractor under the Subcontract. In the event the MPCA Contractor fails to make timely payments to a Subcontractor or supplier, the State may, at its sole option and discretion, pay a Subcontractor or supplier any amounts due from the MPCA Contractor and deduct said payment from any remaining amounts due the MPCA Contractor. Before any such payment is made to a Subcontractor or supplier, the State shall provide the MPCA Contractor written notice that payment will be made directly to a Subcontractor or supplier. If there are no remaining outstanding payments to the MPCA Contractor, the State shall have no obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

**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 subcontractor and in the possession of the Contract Vendor or their authorized agent.

**Award of related contracts**. In the event the State has or undertakes or awards supplemental contracts for work related to the Subcontract, or any portion thereof, the MPCA Contractor and Subcontractor shall cooperate fully with all other Contractors and the State in all such cases

**Award of successor contracts.** In the event the State undertakes or awards a successor contract for work related to the Subcontract, or any portion thereof, the current MPCA Contractor and Subcontractor shall cooperate fully during the transition with all other Contractors and the State in all such cases.

**Site visit.** If required in the solicitation and/or specifications all vendors shall visit the site of the project, take their own measurements and verify all specifications and conditions pertinent to the project in order to ensure its proper completion. Ignorance of site conditions will not be the basis for any change order request.

**Request for clarification.** If a subcontractor discovers any significant ambiguity, error, conflict, discrepancy, omission or other deficiency in the RFB, it shall immediately notify the MPCA Contractor in writing, as specified in the introduction, of such error and request modification or clarification of the document.

**Laws and regulations.** All duties performed 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.

**Licenses.** The State reserves the right to reject a response if the responder fails to provide the State adequate documentation of any required license. The State reserves the right to verify any required license prior to final award and at any time during the work.

**Taxes.** Do **not** add sales tax to the prices being offered. Unless otherwise instructed by the State, agencies will pay all applicable taxes directly to the Department of Revenue. Per Department of Revenue Tax Fact Sheet 142, State agencies are not required to submit an ST3 form to their suppliers. See the Minnesota Department of Revenue website at [http://www.revenue.state.mn.us](http://www.revenue.state.mn.us/).

**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, then pursuant to Minn. Stat. §§ 177.41 to 177.44 and corresponding Minn. R. 5200.1000 to 5200.1120, this contract is subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties. Applicability: The prevailing wage applies to a contract or work under a contract, under which: 1) only one trade or occupation is required to complete it and the project is greater than $2,500; or 2) the estimated total cost of completing the project is greater than $25,000. For questions regarding the prevailing wage laws, contact the Department of Labor and Industry at 651-284-5091.

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

a. **Low-tied responses.** Low-tied responses will be referred to the director of OSP. The director or delegate may enter into negotiation with the low-tied responders when the director deems such action to be in the best interest of the State.

# b. 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 a 12% percent 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/](https://mn.gov/admin/business/vendor-info/oep/) or call the Division’s Helpline at 651-296-2600.

**Change Orders.** The MPCA Contractor may make minor changes within the general scope of work by issuing a written Change Order, duly approved and executed by the MPCA Contractor, Subcontractor, and MPCA Project Manager.

The Subcontractor is required to provide the documentation to justify the change request. The MPCA Contractor will not compensate the Subcontractor for cost overruns. The increase must be necessary due to materially different work conditions, which could not have been predicted, from available material and data. In no case shall the Contract, plus the Change Order exceed $50,000.00.

**Proof of insurance.** Upon notification of award, and within seven (7) calendar days of notification, the awarded Subcontractor must provide a certificate of insurance with the coverage and amounts called for in the RFB. Any subcontract awarded will not be executed until the certificate of insurance has been received and verified by the MPCA Contractor that the certificate of insurance meets all the insurance requirements in the RFB. The State reserves the right to rescind the subcontract award if the Subcontractor does not provide the certificate of insurance within the required time.

***Note to Mpca Contractors:***

*No work shall begin until a contract is signed between the MPCA Contractor and Subcontract.*

*At a minimum, solicitations for services should require the standard General Liability, Commercial Auto Liability and Worker’s Compensation insurance provisions. Proof of insurance is not required for the purchase of commodities. See* ***Definitions*** *on page 7.*

***Deviation from******Minimum Limits in the******Standard Insurance Provisions.*** *The MPCA Contractor should use the standard insurance provisions/requirements listed in the General Insurance Requirements below. However, if the MPCA can justify that the benefit to the State exceeds the risk, the MPCA may deviate from the minimum insurance limits normally required in a solicitation for services.* ***A previously approved deviation may not be automatically used on future solicitations for the service; each solicitation requires its own justification and written approval by the MPCA Agency Head, MPCA Assistant Commissioner or MPCA Deputy Commissioner.***

*The written documentation supporting that the benefit to the State exceeds the risk and the written approval from the MPCA Agency Head, MPCA Assistant Commissioner, or MPCA Deputy Commissioner must be maintained in the solicitation file for audit.*

***Deviation******Limit for Services****. The MPCA Agency Head, MPCA Assistant Commissioner, or MPCA Deputy Commissioner may only approve a deviation from the minimum limits in the General Insurance Requirements for the purchase of services up to $50,000.*

**General insurance requirements**

**A**. The Contractor shall not commence work under the contract until they have obtained the minimum level of insurance described below and the state of Minnesota has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract. Contractors under this contract can provide applicable services to the state of Minnesota, herein referred to as Owner.

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

**1. Workers’ Compensation Insurance:**

* 1. Statutory Compensation Coverage. Except as provided below, Contractor shall maintain Workers’ Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers’ Compensation insurance in accordance with the statutory requirements of the state of Minnesota, including Coverage B, Employer’s Liability.
  2. Coverage B – Employers’ Liability Minimum Limits of Liability:

$100,000 – Bodily Injury by Disease per employee

$500,000 – Bodily Injury by Disease aggregate

$100,000 – Bodily Injury by Accident

If Minn. Stat. § 176.041 exempts the Contractor from Workers’ Compensation insurance or if the Contractor has no employees in the state of Minnesota, the Contractor must provide a written statement, signed by the authorized signer of the Contract, stating the qualifying exemption that excludes the Contractor from 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 included herein and provide the Owner with a certificate of insurance.

Evidence of Subcontractor insurance shall be filed with the Contractor.

**2. Commercial general liability insurance:**

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

a. Minimum Limits of Liability:

$2,000,000 – per occurrence

$2,000,000 – annual aggregate

$2,000,000 – annual aggregate applying to Products/Completed Operations

b. Coverage:

Premises and Operations Bodily Injury and Property Damage

Personal and Advertising Injury

Blanket Contractual Liability

Products and Completed Operations Liability

Owner named as an Additional Insured – If work is going to be done on property that is not owned by the State, it is stipulated that the Property Owner must also be named as an Additional Insured if the Property Owner desires.

Other (Note: please list, if applicable)

Evidence of Subcontractor insurance shall be filed with the Contractor.

***If pollutants are not being transported, towed by, handled, stored, disposed of or processed in or upon a covered vehicle, then, the CA 9948 and the MCS 90 endorsements are not necessary and delete the following coverage in its entirety.***

**3. Commercial automobile liability insurance:**

The Contractor shall maintain insurance protecting the contractor 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.

* + 1. Minimum Limits of Liability:

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

* + 1. Coverage:

Owned Automobile

Non-owned Automobile

Hired Automobile

\*CA 9948 Endorsement – Pollution Liability – Broadened Coverage or equivalent

\*MCS 90 Endorsement

***\**** *Automobile liability insurance is not required if the subcontractor, its employees, and/or its sub-subcontractors will not be driving on State property or will not be using owned, hired, or non-owned vehicles to conduct business on behalf of the State.*

*CA 9948 is an endorsement that is attached to an Automobile Liability policy for Contractors that are handling pollutants. This endorsement extends the Automobile Liability policy to cover liabilities incurred as a result of the discharge, dispersal, seepage, migration, release or escape of pollutants that are part of the contract work, which are being transported, towed by, handled, stored, disposed of or processed in or upon a covered vehicle, if they are upset or overturned.*

*MCS-90 is an endorsement that is attached to the Automobile Liability policy of motor carriers, as set forth by the Motor Carrier Act of 1980. The endorsement assures compliance by the insured, within the limits stated therein, with Sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Highway Administration (FHWA) and the Interstate Commerce Commission (ICC).*

Evidence of Subcontractor insurance shall be filed with the Contractor.

***Note: When project involves work with pollutants, the following coverage is required. If it has been determined that the project does not involve work with pollutants then delete the following coverage in its entirety.***

**4. Pollution liability insurance:**

The Contractor shall maintain Pollution Liability Insurance (or equivalent pollution liability coverage endorsed on another form of liability coverage, such as general liability or professional errors and omissions policy) and in case any work is subcontracted, the Contractor will require the subcontractor to provide Pollution Liability Insurance unless the requirement is noted below as waived in these specifications for specific types of work. Unless otherwise specified the insurance minimum limits of liability shall be as follows:

1. Minimum Limits of Liability:

$2,000,000 – Per Occurrence

$2,000,000 – Annual Aggregate

1. Coverage:

\*Policy will include non-owned disposal site Pollution Liability

Policy will not contain a lead exclusion

Owner named as an Additional Insured

***\*If Contractor or Subcontractor is not disposing of pollutants at non-owned sites, coverage for non-owned disposal sites is not necessary.***

Officers and employees of the state of Minnesota, the Architect and its agents shall be named as Additional Insured, to the extent permitted by law, for claims arising out of the Contractor’s negligence of the negligence of those for whom the Contractor is responsible for both ongoing and completed operations.

Evidence of Subcontractor insurance shall be filed with the Contractor.

***NOTE: Property of Others Insurance:***

*The MPCA Contractor and MPCA Project Manager should consider the value of the state-owned equipment in the subcontractor’s possession and determine whether they should require Property of Others coverage. For example; if the equipment is destroyed by fire while it is in the subcontractor’s possession, insurance ensures that the subcontractor will be able to reimburse the State for the cost of the equipment. A limit would need to be inserted below to represent the value of the property in the vendor’s possession. If property of others insurance is not needed then delete this coverage in its entirety.*

1. **Property of others insurance (or equivalent coverage):**

The Contractor shall maintain a Property insurance policy covering “All Risk” of direct physical loss or damage, or equivalent, including the peril of theft, transit, earthquake and pollution clean-up expense for property owned by **the State** that is in the vendor’s care, custody and control.

1. Minimum Limits of Liability:

The insurance minimum limit shall be ***($ - insert limit that represents value of property)*** per occurrence.

**C. Additional insurance conditions:**

1. Contractor’s policy(ies) shall be primary insurance to any other valid and collectible insurance available to the state of Minnesota with respect to any claim arising out of Contractor’s performance under this contract.
2. Contractor’s policy(ies) and Certificates of Insurance shall contain a provision that coverage afforded under the policies shall not be cancelled without at least thirty (30) days advanced written notice to the Owner.
3. Contractor is responsible for payment of Contract related insurance premiums and deductibles.
4. If Contractor is self-insured, a Certificate of Self-Insurance must be attached.
5. Include legal defense fees in addition to its liability policy limits.
6. The insurance company waives its rights to assert the immunity of the state as a defense to any claims made under this insurance.
7. 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.

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

**E.** The successful responder is required to submit Certificates of Insurance acceptable to the Owner as evidence of insurance coverage requirements prior to commencing work under the contract.

**F.** Failure of the Owner to obtain Certificates of Insurance for the policies required under this contract or renewals thereof shall not constitute a waiver by the Owner to the Contractor to provide such insurance.

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| ***ACORD*** **CERTIFICATE OF LIABILITY INSURANCE**  Example | | | | | | | | | | | | | **DATE (MM/DD/YY)**  Date Cert. Typed |
| PRODUCER  Agent/Broker Name & Address | | | | | | THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER, THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. | | | | | | | |
| INSUREERS AFFORDING COVERAGE | | | | | | | |
| INSURED  Contractor/Vendor Name & Address | | | | | | INSURER A: Name of Insurance Company | | | | | | | |
| INSURER B: “ “ “ | | | | | | | |
| INSURER C: “ “ “ | | | | | | | |
| INSURER D: “ “ “ | | | | | | | |
| INSURER E: “ “ “ | | | | | | | |
| COVERAGES | | | | | | | | | | | | | |
| THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OF CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. | | | | | | | | | | | | | |
| INSR  LTR | TYPE OF INSURANCE | | | POLICY NUMBER | POLICY EFFECTIVE  DATE(MM/DD/YY) | | POLICY EXPIRATION  DATE(MM/DD/YY) | LIMITS | | | | | |
| A | GENERAL LIABILITY | | | Policy Number | Effective date of policy | | Expiration date of policy | EACH OCCURENCE | | | | | $2,000,000 |
| ☒ COMMERCIAL GENERAL LIABILITY | | | FIRE DAMAGE (Any one fire) | | | | | $ |
| 🞎 CLAIMS MADE ☒ OCCUR | | | MED EXP (Any one person) | | | | | $ |
|  | | | PERSONAL & ADV INJURY | | | | | $2,000,000 |
| 🞎\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | | GENERAL AGGRREGATE | | | | | $2,000,000 |
| GENERAL AGGREGATE LIMIT APPLIES PER: | | | PRODUCTS-COMP/OP AGG | | | | | $2,000,000 |
| 🞎 POLICY 🞎 PROJECT 🞎 LOC | | |  | | | | |  |
| B | AUTOMOBILE LIABILITY | | | Policy Number | Effective date of policy | | Expiration date of policy | COMBINED SINGLE LIMIT | | | | | $2,000,000 |
| 🞎 ANY AUTO | | | (Ea accident) | | | | |  |
| ☒ ALL OWNED AUTOS | | | BODILY INJURY | | | | | $ |
| 🞎 SCHEDULED AUTOS | | | (Per person) | | | | |  |
| ☒ HIRED AUTOS | | | BODILY INJURY | | | | | $ |
| ☒ NON-OWNED AUTOS | | | (Per accident) | | | | |  |
| ☒ CA 99 48 Endorsement | | | PROPERTY DAMAGE | | | | | $ |
| ☒ MCS-90 Endorsement | | | (Per accident) | | | | |  |
|  | GARAGE LIABILITY | | |  |  | |  | AUTO ONLY-EA ACCIDENT | | | | | $ |
| 🞎 Any Auto | | | OTHER THAN | | | | EA | $ |
| 🞎 | | | AUTO ONLY: | | | | AGG | $ |
| C | EXCESS LIABILITY | | | Policy Number  (\*Excess/Umbrella may be used to supplement the GL & Auto limits, to satisfy policy limits requirements.) | Effective date of policy | | Expiration date of policy | EACH OCCURRENCE | | | | | $ \* |
| OCCUR 🞎 CLAIMS MADE | | | AGGREGATE | | | | | $ \* |
|  | | |  | | | | | $ |
| 🞎 DEDUCTIBLE | | |  | | | | | $ |
| 🞎 RETENTION $ | | |  | | | | | $ |
| D | WORKERS COMPENSATION AND  EMPLOYERS’ LIABILITY | | | Policy Number | Effective date of policy | | Expiration date of policy |  | WC STATU-  ORY LIMITS |  | OTH-  ER | |  |
| E.L. EACH ACCIDENT | | | | | $100,000 |
|  | | | E.L. DISEASE-EA EMPLOYEE | | | | | $100,000 |
| E.L. DISEASE – POLICY LIMIT | | | | | $500,000 |
|  | OTHER   * POLLUTION LIABILITY   🞎 CLAIMS MADE ☒ OCCUR | | | Policy Number  Includes non-owned disposal sites. No Lead Exclusion. | Effective date of policy | | Expiration date of policy | Each Occurrence  Aggregate | | | | | $2,000,000  $2,000,000 |
| **DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS**  The state of Minnesota is named as an Additional Insured on a primary and non-contributory basis under General Liability and Pollution Liability.  Insurance company waives it rights to assert the immunity of the state as a defense. | | | | | | | | | | | | | |
| **CERTIFICATE HOLDER** | | X | **ADDITIONAL INSURED; INSURER LETTER: \_\_** | | | **CANCELLATION** | | | | | | | |
| The state of Minnesota  Department of Administration  Office of State Procurement  50 Sherburne Ave.  St. Paul, MN 55155 | | | | | | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. | | | | | | | |
| AUTHORIZED REPRESETNATIVE | | | | | | | |

**Example**

**Correctly, completed certificate should include everything in this sample**