



State of Minnesota Professional and Technical Services Contract

SWIFT Contract No.:

This Contract is between the State of Minnesota, acting through the Department of Military Affairs, Facilities Management Office, Camp Ripley, 15000 Highway 115, Little Falls MN 56345-4173 ("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 Request for Proposal on May 2, 2022 for Consultant Services for Facility Condition Assessments (FCA) for Department of Military Affairs Minnesota Facilities (Project No. 22122) ("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

1. Term of Contract

1.1 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.

1.2 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.

2. 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 perform the duties specified in Exhibit C: Specifications, Duties, and Scope of Work, which is attached and incorporated into this Contract

3. Representations and Warranties

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

3.2 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.

3.3 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.

4. 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.

5. Consideration and Payment

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

5.1.1 Compensation. The Contractor will be paid _____.

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

5.2 Payment.

5.2.1 Invoices. Submit invoices to ng.mn.mnarnng.mbx.fmo-contracting@army.mil. Original hard copy may be mailed to the Facilities Management Office, Camp Ripley, 15000 Highway 115, Little Falls, MN 56345-4173. 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. Invoices must be submitted timely and in accordance with the breakdown of pricing contained in Exhibit D, which is attached and incorporated into this contract.

5.2.2 Retainage. Under Minn. Stat. § 16C.08, subd. 2 (10), no more than 90 percent of the amount due under this Contract may be paid until the final product of this Contract has been reviewed by the State. The balance due will be paid when the State determines that the Contractor has satisfactorily fulfilled all the terms of this Contract. Retainage is not required because of the professional services exception in Minn., Stat. 16C308, subd. 2(10).

5.2.3 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.

5.2.4 Federal funds. The Contractor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

6. Authorized Representative

The State's Authorized Representative is Mr. Bruce Jensen Facilities Management Office, Camp Ripley, 15000 Highway 115, Little Falls, MN 56345-4173, Telephone 320.616.6031, or his 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 successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the State.

7. 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 and Payment Schedule
- Exhibit E: Special Conditions for Contract Work Involving Federal Funds

1. State Encumbrance Verification

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

Print name: Cody Samler
Signature: _____
Title: Contract Specialist Date: _____
SWIFT Contract No.: _____

2. Contractor

The Contractor certifies that the appropriate person(s) have executed the Contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

Print name: _____
Signature: _____
Title: _____ Date: _____

4. State Agency

**Department of Military Affairs
With delegated authority**

Print name: Major General Shawn P. Manke
Signature: _____
Title: Adjutant General Date: _____

4. Commissioner of Administration

As delegated to The Office of State Procurement

Print name: _____
Signature: _____
Title: _____ Date: _____

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 in the same format as the sample invoice form submitted with the solicitation response and approved as an attachment with the Contract, unless an alternative format is approved in writing by the Contract Administrator. Each invoice should at a minimum include:

- Customer name
- State Contract number field
- Service description
- Explanation of work performed per charge indicated on the invoice

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.

5.1 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.

5.2 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 nonpatented 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. IT Accessibility Standard.

Contractor acknowledges and is fully aware that the State of Minnesota (Executive branch state agencies) has developed IT Accessibility Standard effective September 1, 2010. The standard entails, in part, the Web Content Accessibility Guidelines (WCAG) and Section 508 which can be viewed at: <https://mn.gov/mnit/government/policies/accessibility/>.

The Standards apply to web sites, software applications, electronic reports and output documentation, training delivered in electronic formats (including, but not limited to, documents, videos, and webinars), among others. As upgrades are made to the software, products, or subscriptions available through this Contract, the Contractor agrees to develop functionality which supports accessibility. If any issues arise due to nonconformance with the above-mentioned accessibility Standards, the Contractor agrees to provide alternative solutions upon request at no additional charge to the State.

When updates or upgrades are made to the products or services available through this Contract, the Contractor agrees to document how the changes will impact or improve the product's or service's accessibility and usability. This documentation, upon request, must be provided to the State in advance of the change, occurring within an agreed upon timeframe sufficient for the state to review the changes and either approve them or request a remediation plan from the Contractor. Contractor warrants that its Products comply with the above-mentioned accessibility Standards and agrees to indemnify, defend, and hold harmless the State against any claims related to non-compliance of Contractor's Product with the above-mentioned accessibility Standards. If agreed-upon updates fail to improve the product or service's accessibility or usability as planned, the failure to comply with this requirement may be cause for contract cancellation or for the State to consider the Contractor in default.

26. **Nonvisual Access Standards.**

Pursuant to Minn. Stat. § 16C.145, the Contractor must comply with the following nonvisual technology access standards to the extent required by law:

- That the effective interactive control and use of the technology, including the operating system applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;
- That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;
- That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired; and
- Executive branch state agencies subject to Section 16E.03, subdivision 9, are not required to include nonvisual technology access standards developed under this Section in contracts for the procurement of information technology.

These standards do not require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

27. **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.

28. **Vaccination/Testing Requirements**

- 28.1 **Applicability.** This section applies to Contractor's employees or subcontractors who are performing contracted work in the following types of project settings: indoors with regular in-person contact with State agency employees or members of the public; and outdoors with substantial and/or regular in-person, non-socially distanced contact with State agency employees or members of the public ("Covered Individuals").
- 28.2 **Requirements.** In accordance with HR/LR Policy #1446, Covered Individuals must be fully vaccinated against COVID-19 as defined in the policy or submit to testing at least once a week.
- 28.3 **Compliance.** Contractor is responsible for the following:
- 28.3.1 Tracking and maintaining proof of vaccination status for vaccinated Covered Individuals;
 - 28.3.2 Ensuring Covered Individuals who are not vaccinated are tested on a weekly basis;

28.3.3 Monitoring test results and ensuring that Covered Individuals with positive test results do not access the State workplace to perform contractual services until the Covered Individual has been medically cleared; and

28.3.4 Ensuring its Covered Individuals do not access the location where the contracted work is occurring if the Covered Individual is not in compliance with the requirements stated in item 28.2 Requirements, above.

28.4 **Reporting.** Upon request, Contractor shall provide the State with documentation demonstrating compliance with these requirements. Contractor shall maintain documentation for a minimum of thirty (30) days past the end date of the contract.

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.

- 2.1 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.
- 2.2 Insurance certificate holder should be addressed as follows

State of Minnesota
Department of Military Affairs
MN Army National Guard-Camp Ripley
15000 Hwy. 115
Little Falls, MN 56345

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:

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

- \$2,000,000 – per occurrence
- \$2,000,000 – annual aggregate
- \$2,000,000 – annual aggregate – applying to Products/Completed Operations

The following coverages shall be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal and Advertising Injury
- Blanket Contractual Liability
- Products and Completed Operations Liability
- Other; if applicable, please list _____
- **State of Minnesota named as an Additional Insured**, to the extent permitted by law

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

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

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

Evidence of Subcontractor insurance shall be filed with the Contractor.

4.3 **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.

4.4 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:

\$2,000,000 - per claim or event
\$2,000,000 - annual aggregate

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

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

4.5 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.

4.6 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

5. Project Overview

The Department of Military requests proposals to provide Facility Condition Assessments (FCA) on MN Army National Guard buildings using the US Army Corps of Engineer (USACE) BUILDER SMS (Sustainment Management System) process. The US Department of Defense has directed that all buildings which are federally supported require a Facility Condition Assessment at least once every five years and re-assessed once every five years thereafter. This project (with the exclusion of newly constructed buildings) will involve the reassessment of facilities within the MN Army National Guard inventory.

Services include project management, on-site inspection and assessment, and applicable reporting using the USACE's BUILDER SMS (hereinafter BUILDER).

BACKGROUND: The intent of this Request For Proposal (RFP) is to provide guidance on the sustainment process of BUILDER. This sustainment phase will improve building inspection data and the facility management business processes. BUILDER was developed by U.S. Army Corps of Engineers - Engineer Research Development Center - Construction Engineering Research Laboratory (USACE-ERDC- CERL). BUILDER is a software application for building asset lifecycle management. BUILDER stores real property building information and more detailed system inventory is modeled and/or collected which identifies building components and their key life-cycle attributes such as the age, material and capacity. Inspections are then performed on the various components to determine engineering based objective and repeatable Condition Index (CI) measures which relate the general physical health of the asset. Functionality assessments can be performed to evaluate user requirement changes, compliance and obsolescence issues. This provides a comprehensive picture of the overall performance of building assets and their key components. With information about condition, functionality, and remaining service life, BUILDER guides the development of short and long-range work plans based on sound investment strategies, prioritization criteria, and budget constraints.

BUILDER consolidates a variety of building-related management issues into a single decision-support package. The system gives functional managers and decision-makers access to building inventory, current building condition indices, probability-based condition prediction models, and functionality-based mission, compliance, and obsolescence issues. It also employs knowledge based inspection scheduling process.

It is our intent to award the entire work to one contractor. Due to funding constraints, the initial contract will be executed for a one-year time frame to include the first Phase Scope of Work (Camp Ripley). An Amendment will be executed to incorporate the next Phase's Scope of Work. The end result is anticipated to be an original contract with four Amendments (not to exceed five years). The scope of work will include the following geographical locations broken down into Phases:

- Phase One: Camp Ripley
- Phase Two: North locations
- Phase Three: Central locations
- Phase Four: Metro locations
- Phase Five: South locations

Specific locations requiring FCAs are identified in the Excel MN Army National Guard 5 Year Assessment Plan, available on the following site: <http://minnesotanationalguard.ng.mil/requests-for-proposal>.

Upon original contract execution and subsequent Amendments, all FCAs within that Phase shall be completed within eight (8) months.

6. Tasks

Provide all personnel, equipment, supplies, facilities, transportation, tools, travel, materials, supervision and other items and non-personal services necessary to implement BUILDER.

Tasks and work provided include but is not limited to:

- 6.1 Conduct initial meeting to verify goals and objectives.
- 6.2 Confirm schedule for FCAs.
- 6.3 Review existing conditions and obtain existing documents and/or building drawings.
- 6.4 Conduct and provide assessment in accordance with the USACE BUILDER Assessment process as set forth in:
 - 6.4.1 BUILDER Assessment Manual located at:
<http://www.sms.erdc.dren.mil/Products/BUILDER/Downloads>.
 - 6.4.2 MN Army National Guard 5 Year Assessment Plan, available on the following site:
<http://minnesotanationalguard.ng.mil/requests-for-proposal>.
- 6.5 Facilitate and attend up to two (2) post contract execution conferences (kick-off meeting and completion meeting). Periodic in-progress review includes monthly teleconference call to discuss the upcoming site schedule, potential issues, data review discussion and any other issues. Provide meeting minutes from these meetings to the State's Authorized Representative within 3 days of the completion of each meeting and teleconference.
- 6.6 Present a draft Project Management Plan for review three days prior to the kick-off meeting. This plan includes, but is not limited to, the following: Calibration Plan (methodology for ensuring quality control of data collection, assessment and input; schedule for completion of assessments; schedule for deliverables/tasks in this RFP; quality control plan; and methodology for providing status reports.
- 6.7 Develop a work action plan to include, at a minimum, planned inspection schedule, assessment team organization chart, list and qualifications of field team members (experience/training), safety plan, inventory, inspection process, and facilities proposed for templates.
- 6.8 Populate/update the building system inventory of components into the latest version of BUILDER SMS for the designated buildings in accordance with the latest BUILDER Manual located on the CERL website at <http://www.sms.erdc.dren.mil/Products/Builder/Downloads>.
- 6.9 Perform baseline/updated on-site visual inspections of building components inventoried using BUILDER methodology. Inspector will utilize the Direct Rating Assessment method supplemented with specific Distresses observed and documented when the component-section is given any rating lower than Green minus (G-). The specific 23 BUILDER distresses and their associated definitions are found in the BUILDER SMS Condition Assessment Manual. In addition, all visible deficiencies shall include pictures to be recorded in the BUILDER database. A representative photograph of any assessment given less than G- will be attached to each specific assessment. The photograph will clearly capture the assessed distress with enough detail to represent the distress to the viewer. All photographs taken during the site assessment will be copied to a DVD and submitted as part of the contract Deliverables. The photographs will be named with sufficient detail to allow the viewer to understand the intent of the photo.
- 6.10 Input inventory and inspection data to Web Based version of BUILDER.

6.11 After the inventory and inspection data is uploaded to the BUILDER's Web Based version, perform data analysis to include preparation of a ten year unconstrained work plan, including "Scenarios" to project repair and replacement work requirements for up to ten years.

6.12 At the conclusion of each location assessment, data collection, and data upload/analysis, consolidate the information into a draft Location Report that is formatted and organized by location. A report will be completed for each of the 5 Regions in Minnesota (Camp Ripley, Metro, North, South, and Central). Location Reports shall meet the following section requirements and site specific aspects. At a minimum, each section shall contain a narrative of data evaluated, findings, and results. The Location Report shall be outlined as follows:

6.12.1 Section 1 – Executive Summary: Executive narrative summarizing means, methods, analysis and findings of the survey. Summarizes approach taken in order to conduct the assessment. Identifies building components assessed. Provides a summary of reporting conditions, findings as a result of the assessment, and recommendations.

6.12.2 Section 2 – Facility Summary Report: Numeric and graphical roll-up of BUILDER FCA data that provides a clear summation or holistic picture of FCA results for all assessed assets, grouped by each roll-up level. Individual Building Reports that provide detailed facility data concerning site characteristics and specifics pertaining to each facility system condition and recommendations.

6.12.3 Section 3 – Facility System Condition Summary Report. Numeric and graphical roll-up of BUILDER FCA data that provides a clear summation or holistic picture of facility systems within each facility. Each assessed system shall also be augmented with a written narrative that, at a minimum, shall include general information and status. Each assessed item coded 'Red' shall be represented with a photograph in this report.

6.12.4 Section 4 – Worst First: Sorting of all facilities using the PI score in order of worst to best conditions.

6.12.5 Section 5 – Detailed Work Action Report: Complete listing of all related work actions as recommended within BUILDER. This list shall be sorted by priority (BUILDER will determine priority).

M. Prepare three (3) copies of final report and digital (pdf) copies of all FCAs.

6.13 Optional/Desired Tasks:

6.13.1 Option #1: Provide up to 3 days of training per phase on site for MN Army National Guard personnel. Training includes but is not limited to, BUILDER database management, field collection process according to the Army BUILDERTM SMS Inventory and Assessment Guide, digital field collection tools, and post data collection analysis. Selected firm will also provide annual digital field data collection equipment, materials, and software application compatible with BUILDER SMS.

6.13.2 Option #2: Provide BUILDER data analysis using business intelligence software to provide ARNG with insight into the BUILDER data and other infrastructure related information provided from ARNG. Software such as Microsoft's Power BI can handle large data sets and provide various options to visualize the data and integrate with related real property datasets to support an integrated approach to developing a capital investment strategy over various planning horizons.

6.14 Upon completion, provide:

- a. Final Report
- b. Prepare three (3) copies of Final Report and digital (pdf) copies of FCA
- c. Final completion memorandum validating all data has been entered into BUILDER

The contract will begin on the date stated in the contract or upon full execution of the contract, whichever is later, and will be completed within one (1) year with the option to extend four (4) additional one-year periods.

The State reserves the right to add or delete specific buildings from this list in the event of building additions, demolitions, or major completed renovation projects. In the event of funding limitations, the State reserves the right to reduce the scope of work.

Awarded contractor must comply with security requirements at all locations, as outlined in the Notice to Proceed/Kick-Off meeting.

Responders are encouraged to propose additional tasks or activities if they will substantially improve the results of the project. These items should be separated from the required items on the cost proposal.

This request for proposal does not obligate the State to award a contract or complete the project, and the State reserves the right to cancel the solicitation if it is considered to be in its best interest.

7. Skills

All personnel provided by Contractor shall be fully qualified and authorized under State or local law to perform the services required by the contract.

All assessors must be trained through USACE in the BUILDER SMS roles required to complete the requirements of this contract.

Exhibit D: Breakdown of Costs

RESPONDER/FIRM NAME: _____

PHASE/LOCATION	SQUARE FEET	UNIT COST/SQUARE FOOT	TOTAL COST	OPTIONAL TASK #1	OPTIONAL TASK #2	
Phase One, Camp Ripley	2,829,569	\$	\$	\$	\$	
Phase Two, Metro	1,197,280	\$	\$	\$	\$	
Phase Three, South	457,145	\$	\$	\$	\$	
Phase Four, North	344,819	\$	\$	\$	\$	
Phase Five, Central	564,574	\$	\$	\$	\$	GRAND TOTAL
TOTAL	5,393,387	TOTAL	\$	\$	\$	

Reimbursable expenses such as, but not limited to, travel and subsistence, computer time, postage, telephone charges (both local and long distance) to be performed in connection with the project **must be included in the cost per square foot.**

Exhibit E: Special Conditions for Contract Work Involving Federal Funds

This Contract is incidental to the implementation of a Federal program and the Federal funding for this Contract is provided in whole or in part through a master cooperative agreement between the National Guard Bureau and the Minnesota Department of Military Affairs. Accordingly, Contractor is required to comply with and incorporate into its contracts with any subcontractors the following provisions in the performance of the Contract.

1. Reporting.

Contractor covenants and agrees to furnish all information and reports requested and needed by for the Minnesota Department of Military Affairs in order for the State to meet its requirements under the Federal program pursuant to Federal law and agreements.

2. Rights in Copyright and Data.

Contractor covenants and agrees to:

a. Grant the Government a royalty-free, nonexclusive and irrevocable right to:

(1) Reproduce, publish, or otherwise use for Federal purposes any work that is subject to copyright and that the Contractor develops, or acquires ownership of, under this Contract; and

(2) Authorize others to reproduce, publish, or otherwise use such work for Federal purposes.

b. Grant the Government the right to:

(1) Obtain, reproduce, publish, or otherwise use data produced under this Contract; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

c. Include in each subcontract it makes the requirements described in:

(1) Paragraphs a(1) and (2) of this Section, to provide for Government rights in any works subject to copyright that the subcontractor develops, or acquires ownership of, under this Contract; and

(2) Paragraphs b(1) and (2) of this Section, to provide for Government rights in any data that the subcontractor produces under this Contract.

3. Access to Records.

a. Contractor covenants and agrees to provide for access to any of the Contractor's books, documents, papers, and records that are directly pertinent to Contract, to enable and support audits, examinations, excerpts, and transcriptions. Contractor will provide access to those records for all of the following and their duly authorized representatives:

(1) Minnesota Department of Military Affairs;

(2) National Guard Bureau, including Inspector General for National Guard Bureau; and

(3) The Comptroller General of the United States.

b. Audit services contract for performance of an audit required by the Single Audit Act, as implemented by OMB in Subpart F of 2 CFR Part 200. Contractor covenants and agrees to provide for the access to audit documentation described in 2 CFR 200.517(b).

4. Records Retention.

a. Contractor covenants and agrees to provide for retention of all records that are directly pertinent to Contract for 3 years after Department of Military Affairs make final payment and all pending matters are closed.

b. Audit services contract for performance of an audit required by the Single Audit Act, as implemented by OMB in Subpart F of 2 CFR Part 200. Contractor covenants and agrees to provide for the retention of audit documentation described in 2 CFR 200.517(a).

5. Equal Employment Opportunity.

During the performance of this Contract, Contractor covenants and agrees to:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

d. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

f. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h. The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

6. Contract Work Hours and Safety Standards Act.

Contractor covenants and agrees to:

a. Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

c. Withholding for unpaid wages and liquidated damages. The Minnesota Department of Military Affairs shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such Contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

d. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

7. Subcontracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

a. Contractor covenants and agrees to take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible when subcontracting.

b. Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; and

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.

8. Byrd Amendment Anti-Lobbying Requirements.

a. Contractor covenants and agrees to comply with the restrictions on lobbying in 31 U.S.C. 1352, as implemented by DoD at 32 CFR part 28, and submit all disclosures required by that statute and regulation.

b. Contractor covenants and agrees to comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.

c. If Contractor is a nonprofit organization described in section 501(c)(4) of title 26, United States Code (the Internal Revenue Code of 1968), Contractor may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., chapter 26). If Minnesota Department of Military Affairs determines that Contractor has engaged in lobbying activities, Minnesota Department of Military Affairs will cease all payments to Contractor under this and other contracts and terminate the Contract unilaterally for material failure to comply with the award terms and conditions.

d. Contractors who apply or bid for an award of \$100,000 or more must sign and submit Attachment (Certification regarding Lobbying) to the Minnesota Department of Military Affairs prior to Contract execution.

9. Debarment and Suspension.

This clause is applicable to contracts for an amount equal or exceed \$25,000. Contractor covenants and agrees to comply with Subpart C of 2 CFR 180, as supplemented by Subpart C of 2 CFR Part 1125 by checking the Excluded Parties List System (EPLS) at www.sam.gov to verify subcontractor eligibility to receive subcontract resulting from this Contract. The Contractor shall not solicit offers from, nor award contracts to subcontractors listed in EPLS. This verification shall be documented in the Contractor's Contract files, and shall be subject to audit by the Minnesota Department of Military Affairs.

10. Clean Air and Water Requirements.

This clause is applicable to contracts for an amount greater than \$150,000. Contractor covenants and agrees to:

a. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401 7671q) and standards, orders, or regulations issued under this act.

b. Comply with applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. 1251 1387) and standards, orders, or regulations issued under this act.

11. Procurement of Recovered Materials.

Contractor covenants and agrees to comply with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6962, and Executive Order 12873, when purchasing the items designated in Environmental Protection Agency (EPA) regulations in 40 CFR Part 247, Subpart B with respect to work performed under the Contract.

12. Fly America Act Requirements.

Contractor covenants and agrees to comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the "Fly America Act," and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require that U.S. Government financed international air travel of passengers and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost sharing arrangement with a U.S. carrier, if such service is available.

13. Cargo Preference for United States Flag Vessels.

The Contractor covenants and agrees to comply with the following requirements of the Department of Transportation at 46 CFR 381.7, in regulations implementing the Cargo Preference Act of 1954:

a. Pursuant to Public Law 83–664 (46 U.S.C. 55305), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this Contract, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.

b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph a of this section must be furnished to both Minnesota Department of Military Affairs and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

14. Domestic Preferences for Procurement.

a. Contractor covenants and agrees, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

b. For purposes of this clause:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

15. Wage Rate Requirements. RESERVED

16. Copeland Act Prohibition on Kickbacks. RESERVED

17. Patents and Inventions. RESERVED