

MINNESOTA STATE LOTTERY
REQUEST FOR BID (RFB)
FOR A PRICE CONTRACT

Scratcher

DUE DATE: November 16, 2009

TIME: 4:00 p.m. Central Time

MINNESOTA STATE LOTTERY
2645 Long Lake Road
Roseville, Minnesota 55113

REQUEST FOR BID (RFB) FOR A PRICE CONTRACT

Contact Person: Susie Kivi, Buyer Date: October 30, 2009

Phone: 651.635.8105 Fax: 651.635.8105

Due Date: November 21, 2009, 4:00 p.m. Central Time, USA.

Sealed responses must be received in the Minnesota State Lottery, at the address shown above, and date- and time-stamped in not later than the date and time stated above. LATE RESPONSES WILL NOT BE CONSIDERED.

All attached General RFB Terms and Conditions, Specifications, and Special Terms and Conditions are part of this RFB and will be incorporated into any Contract(s) entered into as a result of this RFB.

All responses to this RFB must be prepared as stated herein and properly signed. Address all correspondence and inquiries regarding this RFB to the Buyer named above. This is a request for responses to an RFB and is not a purchase order.

DELIVERY AND PAYMENT TERMS: Delivery offered: _____ days After Receipt of Order.

Payment Terms: Net 30

Should its response be accepted by the State within 90 days from the due date, the undersigned responder agrees to furnish and deliver any or all items ordered by the entities in accordance with its response and the terms and conditions of this RFB. The responder agrees that the terms of its response will remain open until it is accepted or rejected by the State. If the response is accepted, it will become part of a legal and binding Contract between the responder and the State of Minnesota. The Contract will be in force upon full execution by the responder and the State.

Name of Vendor:

Vendor E-Mail:

Address:

Phone: _____ Fax: _____ Date: _____

Authorized Signature:

Typed name of signer: _____ Title: _____

Signer must be authorized to contractually obligate the vendor.

Type or print clearly the name of the person who prepared the response:

Targeted Group Vendor: _____ Yes _____ No

GENERAL TERMS AND CONDITIONS

1. **TIME OF SUBMISSION.** All sealed responses must be received by the Minnesota State Lottery by the due date and time. All responses will be time-stamped showing the date and time received. **LATE RESPONSES WILL NOT BE CONSIDERED.**
2. **ALTERATIONS OR ERASURES.** An alteration or erasure of any price contained in the 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.**
3. **AUTHORIZED SIGNATURE.** The response must be fully and properly executed by an officer or other authorized representative of the responder. If the responder is a corporation, a secretarial certificate or the corporate minutes showing that the signing officer has authority to contractually obligate the corporation should be furnished. Where the corporation has designated an attorney in fact, the power of attorney form should be furnished. If the responder is a partnership, a letter of authorization should be furnished signed by one of the general partners. A sole proprietor must sign the response. Proof of authority of the person signing the response must be furnished upon request.
4. **FACSIMILE OR E-MAIL RESPONSES.** Neither facsimile nor e-mail responses will be considered unless specifically authorized by the State in the RFB document.
5. **ACCEPTANCE OR REJECTION OF RESPONSES.** The State reserves the right to accept or reject any or all responses, or parts of responses, and waive any informalities.
6. **ADDENDA TO THE RFB.** Changes to the RFB will be made by written addendum. Any addenda issued will become part of the RFB. Each responder must follow the directions on the addendum. All requests for clarification must be directed to the contact person listed in the RFB.
7. **RESPONDER ERRORS.** Prior to the opening of sealed responses any responder may withdraw its response by notifying the Buyer in writing of the desire to withdraw, by appearing in person at the Minnesota State Lottery (MSL) and withdrawing the response, or by telegraphic writing or facsimile received by the buyer, requesting withdrawal of the response.

Subsequent to the opening of sealed responses, a responder may withdraw a response only upon showing that an obvious error exists in the response. The showing and request for withdrawal must be made in writing to the buyer within a reasonable time after the opening of the response and prior to the State=s detrimental reliance on the response.
8. **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.
9. **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.

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

RESPONDERS ARE CAUTIONED THAT BY TAKING ANY EXCEPTION THEY MAY BE MATERIALLY DEVIATING FROM THE REQUEST FOR BID. IF A RESPONDER 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:

- a. Gives the responder taking the exception a competitive advantage over other responders, or
- b. Gives the State something significantly different from that which the State requested.

11. SAMPLES. Required. Must be submitted with your completed bid. If not with your bid, your bid will be disqualified. Samples are to be furnished at no charge. Except for those destroyed or mutilated in testing, samples will be returned to the responder, at its expense, if requested in the response.

12. 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 Special Terms and Conditions, 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 Contract Vendor.

13. PRICES. Prices shall remain firm for the initial term of the Contract unless otherwise stated in the Special Terms and Conditions. A unit price and a total for the quantity must be stated for each item quoted. In case of an error in the total price, the unit price will prevail. Prices must be quoted in United States currency.

a. TRANSPORTATION. All prices shall be FOB Destination, prepaid and allowed (with freight included in the price), to the ordering agency's receiving dock or warehouse unless otherwise stated in the Special Terms and Conditions. Price reductions must be passed on immediately to the State whenever they become effective. In those situations in which the Deliver-to address has no receiving dock or agents, the Contract Vendor must be able to deliver to the person specified on the PO.

b. PRICE DECREASES. During the life of the Contract, any or all temporary price reductions, promotional price offers, introductory pricing, or any other offers or promotions that provide prices lower than or discounts higher than those stated in the Contract, must be given immediately to the entities eligible to purchase from the Contract. Invoices for goods ordered or shipped or services performed during the decrease, or promotion, must immediately reflect such pricing.

c. PRICE INCREASES. After the initial term of the Contract, a price increase may be allowed based upon a demonstrable industrywide or regional increase in the Contract Vendor's costs. Documentary evidence must be submitted prior to a proposed price increase. The amount of any increase is not to exceed 10 percent for any commodity/service over the life of the Contract. The exact amount of increase, if any, will be governed by the validity of the documentary evidence submitted. No price increase will be effective until approved by the Buyer and set forth in a fully executed amendment to the Contract.

14. **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 ANet 30 days.@ The ordering entity 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 from the appropriate purchasing entity. 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 ordering entity before payment will be issued.

15. **CASH DISCOUNT TERMS.** Discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date of receipt of the invoice, receipt of shipment or date of acceptance, whichever is later. If testing is performed, however, then the date shall be the date of acceptance of the goods or services.

16. **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.

17. **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 Contract Vendor, 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 MSL.

The Contract Vendor shall make no representations of the State=s opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Contract without the prior written consent of the MSL. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

18. **TAXES. DO NOT INCLUDE** sales tax in pricing. The State of Minnesota holds Direct Payment Permit 1114 and pays tax directly to the Department of Revenue unless otherwise stated in the Special Terms and Conditions.

19. **ACTING IN CASES OF DOUBTFUL RESPONSIBILITY.** If the MSL, 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.

20. **NONRESPONSIVE OFFERS.** Responses that do not comply with the RFB will be considered nonresponsive and will be rejected.

21. **COPYRIGHT.** The responder 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 composition, secret process, patented or nonpatented invention, article or appliance furnished or used in the performance of the Contract.

22. **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 Special Terms and Conditions, 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.** The buyer or delegate may enter into negotiation with the low-tied responders when the MSL deems such action to be in the best interest of the State.
- b. **TG/ED PREFERENCE.** In accordance with Minn. Stat. ' 16C.16, Subds. 6 and 7, eligible certified targeted group (TG) businesses will receive a 6 percent preference and certified economically disadvantaged (ED) businesses will receive a 6 percent preference, except for construction which will receive a 4 percent preference, on the basis of award for this RFB. The preference is applied only to the first \$500,000 of the response. Eligible TG businesses must be currently certified by the Materials Management Division prior to the solicitation opening date and time. To verify TG eligibility and certification or ED certification, refer to the MMD web site at www.mmd.admin.state.mn.us under AVendor Information, @ or call the division=s Helpline at 651.296.2600.
- c. **VETERAN-OWNED/SERVICE DISABLED VETERAN-OWNED PREFERENCE.** In accordance with Laws of Minnesota, 2009, Chapter 101, Article 2, Section 56, eligible certified veteran-owned and eligible certified service-disabled veteran-owned small businesses will receive a 6 percent preference on the basis of award for this RFB. The preference is applied only to the first \$500,000 of the response.

Eligible veteran-owned and eligible service-disabled veteran-owned small businesses should complete the Veteran-Owned/Service Disabled Veteran-Owned Preference Form in this solicitation, and include the required documentation. Only eligible, certified, veteran-owned/service disabled small businesses that provide the required documentation, per the form, will be given the preference.

Eligible veteran-owned and eligible service-disabled veteran-owned small businesses must be currently certified by the U.S. Department of Veterans Affairs prior to the solicitation opening date and time to receive the preference.

Information regarding certification by the United States Department of Veterans Affairs may be found at <http://www.vetbiz.gov>.

23. **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.

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

25. **LAWS AND REGULATIONS.** Any and all services, articles or equipment offered and furnished must comply fully with all local, State, and federal laws and regulations, including Minn. Stat. ' 181.59 prohibiting discrimination.

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

27. 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 Contract Vendor 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.

28. SURVIVABILITY. The following rights and duties of the State and responder will survive the expiration or cancellation of the resulting Contract(s). These rights and duties include, but are not limited to the paragraphs on Indemnification and Hold Harmless, State Audits, Government Data Practices, Governing Law, Jurisdiction and Venue, Intellectual Property Indemnification, and Publicity.

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

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

31. PURCHASE ORDERS. The State requires that there will be no minimum order requirements or charges to process an individual purchase order unless otherwise stated in the special terms. The PO number must appear on all documents (e.g., invoices, packing slips, etc.).

32. CANCELLATION OF THE CONTRACT. The Contract may be cancelled by the State or the Buyer at any time, with or without cause, upon 30 days= written notice to the Contract Vendor. In the event the Contract Vendor is in default, the Contract is subject to immediate cancellation to the extent allowable by applicable law. In the event of cancellation, the Contract Vendor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

33. 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.

34. 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 a 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.

35. STATE AUDITS (Minn. Stat. ' 16C.05, Subd. 5). The books, records, documents, and accounting procedures and practices of the Contract Vendor and its employees, agents, or subcontractors relevant to the Contract must be made available to and subject to examination by the Legislative Auditor and/or the State Auditor for a minimum of six years after the end of the Contract.

36. DISPUTE RESOLUTION PROCEDURES. Any issue a responder has with the RFB document, which includes, but is not limited to, the terms, conditions, and specifications, must be submitted in writing to the Buyer 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 Buyer within five working days from the time the Contract award is made public. The State will respond to any protest received that follows the above procedure.

37. NOTICE TO RESPONDERS. Pursuant to Minn. Stat. ' 270C.65, Subd. 3, Contract Vendors are required to provide their Federal Employer Identification Number or Social Security Number. This information may be used in the enforcement of federal and State tax laws. Supplying these numbers could result in action to require a Contract Vendor to file tax returns and pay delinquent tax liabilities. These numbers will be available to federal and State tax authorities and State personnel involved in the payment of State obligations.

38. RISK OF LOSS OR DAMAGE. The State is relieved of all risks of loss or damage to the equipment during periods of transportation, installation, and during the time the equipment is in possession of the State, unless and until such time as unencumbered title for the goods is vested in the State and the goods are in exclusive possession of the State.

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

The State agrees that Contractor, its principals, members and employees shall not be liable to the State for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to the goods provided or services performed hereunder for an aggregate amount in excess of \$10,000,000 or the contract amount, whichever is greater. This limitation of liability does not apply to damages for personal injury or death, or to Contractor's obligation to indemnify, defend and hold the State harmless against intellectual property infringement claims under paragraphs 23 and 64 of this Agreement. This indemnification does not include liabilities caused by the State's gross negligence or intentional wrong doing of the State.

40. DEFAULT. A State purchase order constitutes a binding Contract. All commodities furnished will be subject to inspection and acceptance by the ordering entity after delivery. No substitutions or cancellations are permitted without written approval of the State contracting agency. Back orders, failure to meet delivery requirements, or failures to meet specifications in the purchase order and/or the Contract authorizes the ordering entity to cancel the Contract or purchase order, or any portion of it, purchase elsewhere, and charge the full increase in cost and administrative handling to the defaulting Contract Vendor. In the event of default, the State reserves the right to pursue any other remedy available by law. A Contract Vendor may be removed from the vendors list, suspended or debarred from receiving a Contract for failure to comply with terms and conditions of the Contract, or for failure to pay the State for the cost incurred on the defaulted Contract.

41. NONCOLLUSION CERTIFICATIONS. The responder shall complete and submit the Affidavit of Noncollusion.

42. DISPOSITION OF RESPONSES. All materials submitted in response to this RFB will become property of the State and will become public record after the evaluation process is completed and an award decision made. If the responder submits information in response to this RFB that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minn. Stat. ' 13.37, the responder must:

- a. clearly mark all trade secret materials in its response at the time of the response is submitted,
- b. include a statement with its response justifying the trade secret designation for each item, and
- c. defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments awarded against the State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the State=s award of a contract. In submitting a response to the RFB, the responder agrees that this indemnification survives as long as the trade secret materials are in possession of the State. The State is required to keep all the basic documents related to its contracts, including responses to RFBs, for a minimum of seven years.

The State will not consider the prices submitted by the responder to be trade secret materials.

43. GOVERNMENT DATA PRACTICES. The Contract Vendor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (and where applicable, if the State contracting party is part of the judicial branch, with the Rule of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State to the Contract Vendor and all data provided to the State by the Contract Vendor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contract Vendor in accordance with this Contract that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).

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

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

44. REQUEST FOR CLARIFICATION. If a responder discovers any significant ambiguity, error, conflict, discrepancy, omission or other deficiency in the RFB, it shall immediately notify the Buyer, as specified in the introduction, of such error and request modification or clarification of the document.

45. ENTIRE AGREEMENT. A written Contract (including the contents of the RFB and the Contract Vendor=s response incorporated therein by reference) and any written addenda thereto constitute the entire agreement of the parties.

46. STATE AGENCY CONTRACT USE. The State intends to use the RFB and resulting Contract to meet its needs for goods and services purchased under the authority of the MSL. An exception will be made when the MSL or authorized delegate determines that the State will achieve its Abest value@ by utilizing alternative procurement methods as specified in Minn. Stat. Ch. 16C or other authorizing law.

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

- ! a Contract Vendor is unable or potentially unable to render impartial assistance or advice to the State;
- ! the Contract Vendor=s objectivity in performing the work is or might be otherwise impaired; or
- ! the Contract Vendor has an unfair competitive advantage.

The Contract Vendor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the MSL that shall include a description of the action the Contract Vendor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Contract. In the event the Contract Vendor was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the Buyer, the State may terminate the Contract for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms AContract,@ AContract Vendor,@ and AAMS@ modified appropriately to preserve the State=s rights.

48. AMENDMENTS. The State reserves the right to make changes to the Contract, when mutually agreed to by the State of Minnesota and the Contract Vendor, if the changes are within the general scope of the Contract. The changes to the Contract will be made by Contract amendment. An approved Contract amendment means one approved by the authorized signatories of the Contract Vendor and the State as required by law.

49. PUBLIC INFORMATION. Once the information contained in the responses is deemed public information, interested parties may request to obtain the public information

50. PRODUCTS CONTAINING CERTAIN TYPES OF POLYBROMINATED DIPHENYL ETHER BANNED. By signing and submitting a response to this solicitation, Contractor/Responder certifies that they have read and will comply with Laws of Minnesota, 2007, Chapter 57 (to be codified at Minn. Stat. §§ 325E.385-325E.388) as provided below.

325E.385 PRODUCTS CONTAINING POLYBROMINATED DIPHENYL ETHER.

Subdivision 1. Definitions. For the purposes of sections 325E.386 to 325E.388, the terms in this section have the meanings given them.

Subd. 2. Commercial decabromodiphenyl ether. "Commercial decabromodiphenyl ether" means the chemical mixture of decabromodiphenyl ether, including associated polybrominated diphenyl ether impurities not intentionally added.

Subd. 3. Commissioner. "Commissioner" means the commissioner of Pollution Control Agency.

Subd. 4. Manufacturer. "Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a product containing polybrominated diphenyl ethers or an importer or domestic distributor of a noncomestible product containing polybrominated diphenyl ethers.

Subd. 5. Polybrominated diphenyl ethers or PBDE's. "Polybrominated diphenyl ethers" or "PBDE's" means chemical forms that consist of diphenyl ethers bound with bromine atoms. Polybrominated diphenyl ethers include, but are not limited to, the three primary forms of the commercial mixtures known as pentabromodiphenyl ether, octabromodiphenyl ether, and decabromodiphenyl ether.

Subd. 6. Retailer. "Retailer" means a person who offers a product for sale at retail through any means, including, but not limited to, remote offerings such as sales outlets, catalogs, or the Internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.

Subd 7. Used product. "Used product" means any product that has been previously owned, purchased, or sold in commerce. Used product does not include any product manufactured after January 1, 2008.

325E.386 PRODUCTS CONTAINING CERTAIN POLYBROMINATED DIPHENYL ETHERS BANNED; EXEMPTIONS.

Subdivision. 1. Penta- and octabromodiphenyl ethers. Except as provided in subdivision 3, beginning January 1, 2008, a person may not manufacture, process, or distribute in commerce a product or flame-retardant part of a product containing more than one-tenth of one percent of pentabromodiphenyl ether or octabromodiphenyl ether by mass.

Subd. 2. Exemptions. The following products containing polybrominated diphenyl ethers are exempt from subdivision 1 and section 325E.387, subdivision 2:

(1) the sale or distribution of any used transportation vehicle with component parts containing polybrominated diphenyl ethers;

(2) the sale or distribution of any used transportation vehicle parts or new transportation vehicle parts manufactured before January 1, 2008, that contain polybrominated diphenyl ethers;

(3) the manufacture, sale, repair, distribution, maintenance, refurbishment, or modification of equipment containing polybrominated diphenyl ethers and used primarily for military or federally funded space program applications. This exemption does not cover consumer-based goods with broad applicability;

(4) the sale or distribution by a business, charity, public entity, or private party of any used product containing polybrominated diphenyl ethers;

(5) the manufacture, sale, or distribution of new carpet cushion made from recycled foam containing more than one-tenth of one percent polybrominated diphenyl ether;

(6) medical devices; or

(7) the manufacture, sale, repair, distribution, maintenance, refurbishment, or modification of telecommunications equipment containing polybrominated diphenyl ethers used by entities eligible to hold authorization in the Public Safety Pool under Code of Federal Regulations, title 47, part 90.

In-state retailers in possession of products on January 1, 2008, that are banned for sale under subdivision 1 may exhaust their stock through sales to the public. Nothing in this section restricts the ability of a manufacturer, importer, or distributor from transporting products containing polybrominated diphenyl ethers through the state, or storing such products in the state for later distribution outside the state.

325E.388 PENALTIES. A manufacturer who violates sections 325E.386 to 325E.388 is subject to a civil penalty not to exceed \$1,000 for each violation in the case of a first offense. A manufacturer is subject to a civil penalty not to exceed \$5,000 for each repeat offense. Penalties collected under this section must be deposited in an account in the special revenue fund and are appropriated in fiscal years 2008 and 2009 to the commissioner to implement and enforce this section.

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
MATERIALS MANAGEMENT DIVISION
AFFIDAVIT OF NONCOLLUSION

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

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

2. That the attached response has been arrived at by the responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with any other vendor designed to limit fair or open competition;
3. That the contents of the RFB response have not been communicated by the responder or its employees or agents to any person not an employee or agent of the responder and will not be communicated to any other individual prior to the official opening of the responses; and
4. I certify that the statements in this affidavit are true and accurate.

Authorized Signature:

Date:

Firm Name:

Subscribed and sworn to me this _____ day of _____

Notary Public

My commission expires _____

STATE OF MINNESOTA
Minnesota State Lottery

TAXPAYER IDENTIFICATION

The Contract Vendor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number to federal and State tax agencies and State personnel involved in the payment of State obligations. These identification numbers may be used in the enforcement of federal and State tax laws which could result in action requiring the Contract Vendor to file tax returns and pay delinquent tax liabilities, if any (Minn. Stat. ' 270C.65).

Firm Name: _____

Address: _____

Federal Employer ID Number or Social Security: _____

Minnesota State Tax ID Number: _____

Minnesota Vendor Registration Number: _____

If you are not registered as a vendor to the State, you may register online at www.mmd.admin.state.mn.us/mn02000.htm.

(Note: If approved, you will receive your vendor number three business days after you register.)

| | | |
|------------------------------------|-----|----|
| Are you a sole proprietorship? | Yes | No |
| Are you an independent contractor? | Yes | No |

VETERAN-OWNED/SERVICE DISABLED VETERAN-OWNED PREFERENCE FORM

In accordance with Laws of Minnesota, 2009, Chapter 101, Article 2, Section 56, eligible certified veteran-owned and eligible certified service-disabled veteran-owned small businesses will receive a 6 percent preference on the basis of award for this RFB. The preference is applied only to the first \$500,000 of the response.

Eligible veteran-owned and eligible service-disabled veteran-owned small businesses include certified small businesses that are majority-owned and operated by either (check the box that applies and attach the certification documents with your response):

(1) recently separated veterans, who are veterans as defined in Minn. Stat. §197.447, who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United States Department of Defense form DD-214 or by the commissioner of veterans affairs; or

Required Documentation:

- certification by the United States Department of Veterans Affairs as a veteran-owned small business
- discharge form (DD-214) dated on or after September 11, 2001 with condition honorable

(2) veterans who are veterans as defined in Minn. Stat. § 197.447, with service-connected disabilities, as determined at any time by the United States Department of Veterans Affairs.

Required Documentation:

- certification by the United States Department of Veterans Affairs as a service-disabled veteran-owned small business.

Eligible veteran-owned and eligible service-disabled veteran-owned small businesses must be currently certified by the U.S. Department of Veterans Affairs prior to the solicitation opening date and time to receive the preference.

Information regarding certification by the United States Department of Veterans Affairs may be found at <http://www.vetbiz.gov> .

Provide this form and the documentation above with your response. If you don't check a box above, or you don't provide the requested documentation, or you do not return this form, you will not be considered for this preference.

SPECIAL TERMS, CONDITIONS, AND SPECIFICATIONS

PREFACE STATEMENT. THE INFORMATION CONTAINED BELOW DESCRIBES THE SPECIAL TERMS, CONDITIONS AND SPECIFICATIONS APPLICABLE TO THE REQUEST FOR BID (RFB) AND SUBSEQUENT CONTRACT, AND IS IN ADDITION TO THE GENERAL TERMS AND CONDITIONS.

VENDOR CAPABILITIES

1. **REQUIRED CAPABILITIES.** The Contract Vendor must be able to provide the products called for in the solicitation document and deliver by the due date.
2. **DELIVERY REQUIREMENTS.** All deliveries will be palletized, not to exceed 66" high, on pallets not larger than 44" x 48" and all items should not exceed the size of the pallet. Bulk packages not exceeding fifty (50) pounds each. All pallets will be shrink wrapped. All packages will be clearly labeled identifying them by item number. Lottery reserves the right to reject shipments not meeting shipping specifications.

SPECIFICATIONS

1. 40,000 reclosable 1" x 6" fastener strips made of 3M #SJ-3560, no substitutes. With option to buy additional quantities. Packaged 20 per bag in cases that weigh no more than 50 pounds. Item number to be marked on the outside of each case with the number of fastener strips inside. Sample is required with your bid submission.

*2. PRICES.

| Line | Item | Quantity | Unit | Bid Price | Total Price |
|------|----------------------------|----------|------|-----------|-------------|
| 1 | Reclosable Fastener Strips | 40,000 | each | _____ | _____ |
| 2 | Additional Quantities | 10,000 | each | _____ | _____ |
| 3 | Additional Quantities | 20,000 | each | _____ | _____ |

DELIVERY REQUIRED BY NOVEMBER 23, 2009 or state earliest delivery date.

3. **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. 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.
4. **VENDOR TO CHARGE SALES TAX.** The Contract Vendor will charge sales tax to the State on the purchase orders for the goods or services offered in this Contract. Do not include tax in your price quote.