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|  | <b>Ramsey/Washington<br/>Recycling &amp; Energy</b> | Ramsey/Washington<br>Recycling & Energy<br>100 Red Rock Road<br>Newport, MN 55055 |
|   | <b>Request For Bids</b>                             |   |

**Materials and/or Service:** Gutter and Downspout Replacement and Modifications

**Responses must be received by 4:00 p.m. Central Time on August 1, 2024**

**Mailing, Third-Party Carrier (FedEx, UPS, etc.) and Hand-Submitted Proposals Address:**

Attn: James Redmond  
 Ramsey/Washington Recycling & Energy  
 100 Red Rock Road  
 Newport, MN 55055

All bid responses must be received by Ramsey/Washington Recycling & Energy (R&E) at the specified location by the date and time cited above. Late bid responses will not be considered. The mere fact that the bid response was dispatched will not be considered; the firm must ensure that the bid response is actually delivered. Regardless of cause, late qualification responses will not be accepted and will automatically be disqualified from further consideration. It shall be the Offeror's sole risk to assure delivery at the designated office by the designated time. Late bid responses will not be opened and may be returned to the Offeror at the expense of the Offeror or destroyed if requested. Except for trade secrets and confidential information which the Offeror identifies as proprietary, all responses will be open for public inspection after the contract award. Vendors are advised to carefully read the entire Bid Package. Bid responses that do not comply with all Instructions contained herein may be disqualified.

**BIDDERS ARE STRONGLY ENCOURAGED TO READ THE ENTIRE BID.**

All communications concerning this bid must be directed to the person identified within this bid in Table 02. Communications with other R&E staff, Ramsey or Washington County staff, and/or R&E Contractors may disqualify you from the evaluation process.

## Gutter and Downspout Replacement and Modifications Project

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## 1.0 RFB Introduction and Background

### 1.1. Bid Description and Process

Terms and Conditions governing this bid, including applicable insurance requirements, are included as a part of this document. Ramsey/Washington Recycling & Energy has no obligation to place an order as a result of this inquiry. This Request for Bids (RFB) is intended to solicit bids from proposers capable of meeting the Ramsey/Washington Recycling & Energy's (R&E) need for Bulk Waste Residual Load Out Project ("Project").

R&E expressly reserves the right to amend or withdraw this bid at any time and to reject any or all bid responses. R&E reserves the right to waive any minor irregularities in the bid process.

This RFB and the selected bid response(s) to this RFB will be incorporated into the contract resulting from this bid; provided, however, that the contract may contain terms different from or in addition to this RFB and the successful proposal. For purposes of this RFB, the term "vendor," "contractor," "offeror," "bidder" and "proposer" are considered to have the same meaning.

### 1.2. About Ramsey/Washington Recycling & Energy and the Project

The Ramsey/Washington Recycling & Energy (R&E) is a public joint powers board between Ramsey and Washington Counties. The R&E is responsible for administering, on the behalf of the two counties, solid waste resource recovery activities and programs to reduce the land disposal of waste.

The Recycling & Energy Center (R&E Center) is a Refuse Derived Fuel (RDF) processing facility in Newport, Minnesota. The facility has been in commercial operation since 1987, and was developed in a partnership between Ramsey and Washington Counties and Northern States Power Company (NSP). The facility processes mixed municipal solid waste into five streams: ferrous metals, non-ferrous metals, RDF, process residue, and non-processible bulky waste. The facility currently processes over 400,000 tons of municipal solid waste per year, generating up to 340,000 tons of RDF for use at power plants in Red Wing and Mankato, Minnesota.

Project consists of the following:

Demolition and installation of gutters at the R&E Facility as described in Attachment 5.

### 1.3. Purpose of RFB

Ramsey/Washington Recycling & Energy seeks a contractor to provide all supplies, equipment, material, labor and incidentals necessary for the Gutter and Downspout Replacement and Modifications Project at the R&E Center, 100 Red Rock Road, Newport, MN 55055 ("Building"). Existing gutters are causing leakage into the Facility and this project is expected to solve that.

### 1.4. Contract Term & Schedule

1.4.1. The anticipated term of the resulting Agreement shall begin as soon as possible and shall be completed by December 1, 2024.

### 1.5. Costs

1.5.1. The resulting contract will be a fixed bid price.

1.5.2. The bid response shall include all costs for supplies, materials, equipment, labor, and expenses necessary to perform the work.

**1.5.3.** The contractor is understood to have included in its response price any *applicable* State or Federal sales, excise or other tax on all materials, supplies and equipment that are to be utilized. Do not itemize tax separately.

**1.6. RFB Schedule of Events**

The following RFB Schedule of Events represents the best estimate of the schedule the R&E will follow. The R&E has performed extensive planning work and has planned to meet the dates described below. Vendors are encouraged to hold the demonstration dates listed. If a component of the schedule is delayed, it shall be anticipated that the remaining components will also be delayed by a similar number of days. Any significant change to the schedule will be published via RFB Addendum.

**Table 01: RFB Schedule of Events**

| Event                               | Estimated Date  |
|-------------------------------------|---|
| Request for Bids Released           | July 10, 2024   |
| Pre Bid Conference                  | July 22, 11:30 AM at 100 Red Rock Road, Newport, MN 55055 |
| Deadline for Questions From Vendors | July 26, 2024   |
| Deadline for Proposal Submissions   | August 5, 2024  |
| Contract Award Date                 | August 19, 2024   |
| Anticipated Construction Start Date | September 1, 2024   |

**1.7. Minimum Qualifications**

For bids to be evaluated and considered for award, bids must be deemed responsive. To be deemed responsive, the submitted bid documents shall conform in all material respects to the requirements stated by the RFB, and, bidders shall document and validate the capability to fully perform all requirements defined by the RFB.

**1.8. Incurred Expenses**

There is no express or implied obligation for R&E to reimburse responding firms for any expenses incurred in preparing bid responses to this Request for Bid and R&E will not reimburse responding firms for these expenses, nor will R&E pay any subsequent costs associated with the provision of any additional information or presentation, or to procure a contract for these services.

**1.9. Questions and Inquiries**

It shall be the responsibility of the Proposer to inquire about any portion of the RFB that is not fully understood and susceptible to more than one interpretation. Written inquiries are required. All questions concerning the RFB must reference the page number, section heading, and paragraph, if applicable. Questions may be submitted via email and Proposers shall insert “Gutter and Downspout Replacement and Modifications Project RFB Question” in the subject line. Oral communications will not be accepted. The following table provides the primary contact information.

**Table 02: Point of Contact**

| Point of Contact                                 |
|--|
| James Redmond<br>jredmond@recyclingandenergy.org |

Questions and inquiries related to this RFB, including questions and inquiries related to technical issues are to be submitted in writing via email and directed to the Point of Contact using the contact information in Table 02 above. Proposers shall not contact any other R&E staff, Washington and Ramsey County Staff, or R&E Contractors with any questions or inquiries. Unauthorized contact with any personnel of R&E other than staff listed in Table 02, may be cause for rejection of the Proposer’s response. The decision to reject a Proposal is solely that of the R&E.

In accordance with the RFB Schedule of Events in Section 1.4, all questions must be received in writing no later than the date listed in Table 01. Questions and answers will be issued in accordance with Section 1.12, Amendments and Addenda.

**1.10. Clarification and Discussion of Proposals**

R&E may request clarifications and conduct discussions with any vendor who submits a bid response. Failure of a vendor to respond to such a request for additional information or clarification may result in rejection of the vendor’s proposal.

**1.11. Pre Bid Response Conference**

A non-mandatory pre bid response conference will be held as listed in Table 01. The purpose of the conference is to discuss the bid and allow vendors to see the site and ask questions. Questions and answers will be transcribed and posted on R&E’s website in the form of an addendum. Should a prospective bidder not attend the conference, an in-person interview may be required prior to contract award.

**1.12. Amendments and Addenda**

All clarifications and RFB revisions will be documented in an addendum and published to R&E’s website, <http://morevaluelesstrash.com/>. R&E will attempt to publish periodic addenda on a timely basis. Questions received less than ten days prior to the date for opening may not be answered.

Only questions and answers documented in an addendum shall be binding. Bidders shall acknowledge each addendum issued on the Bid Response Form (Attachment 1) which shall be signed and returned with bidders’ responses. R&E reserves the right to revise the RFB prior to the deadline for bid submissions listed in Table 1. Revisions shall be documented in an addendum and published to the R&E website.

## 2.0 Instructions for Bidders

### 2.1. Advertisement for Bid (or Public Notice?)

R&E uses its website, [Vendor - Ramsey/Washington Recycling & Energy Ramsey/Washington Recycling & Energy \(recyclingandenergy.org\)](http://Vendor - Ramsey/Washington Recycling & Energy Ramsey/Washington Recycling & Energy (recyclingandenergy.org)) to release all competitive bids and associated addenda. Construction-related bids shall be published in R&E's official newspaper for three weeks. All other advertising or publishing requirements applicable to the purchase shall be published in R&E's official newspaper for at least two weeks. Public notice of the bids shall include a reasonable time to allow for receipt of bid responses.

### 2.2. Instructions for Bidders

#### 2.2.1. General Instructions

It will be the sole responsibility of the Bidder to submit its bid to the R&E before the closing deadline. Late bids will not be considered and will be returned unopened to the Bidder.

The R&E reserves the right to reject any or all bids or parts of bids, to accept part or all of bids on the basis of considerations other than lowest cost, and to create a project of lesser or greater expense than described in this RFB or the respondent's reply based on the component prices submitted.

R&E reserves the right to cancel this RFB or to change its scope if it is considered to be in the best interest of the R&E. The R&E reserves the right to waive irregularities in the bid content or to request supplemental information from Bidders.

Bidders must address all information specified by this RFB. All questions must be answered completely. R&E reserves the right to verify any information contained in the Vendor's RFB response and to request additional information after the RFB response has been received.

R&E may make such investigations as it deems necessary to determine the ability of the Vendor to furnish the services outlined herein, and the Vendor shall furnish to R&E all such information and data for this purpose as R&E may request. R&E reserves the right to reject any quote if the evidence submitted by or the investigation of such Vendor fails to satisfy R&E that such Vendor is properly qualified to carry out the obligations of the contract.

Marketing brochures included as part of the main body of the RFB response will not be considered. Such material must be submitted only as attachments and must not be used as a substitute for written responses. In case of any conflict between the content in the attachments and a vendor's answers in the body of the quote, the latter will prevail.

The deadline for bid responses is established in Section 1.6, RFB Schedule of Events. Bid responses received at the R&E after this deadline will not be accepted and will be returned to Proposer. Late qualifications will not be opened and may be returned to the Offeror at the expense of the Offeror or destroyed if requested.

Bidders shall submit one (1) hard copy of the bid response and one (1) electronic copy in a PDF format on a flash drive. The original shall be submitted in a sealed envelope, with the RFB title on the outside, to the mailing address listed in Table 03. Faxed, emailed, and oral bid responses will not be considered. The Contractor’s name and base bid will be read at the public opening.

The mailing addresses for Proposals is contained in the following table.

**Table 03: Proposal Mailing Address**

| R&E Mailing Address   |
|---|
| Attn: James Redmond<br>Ramsey/Washington Recycling & Energy<br>100 Red Rock Road<br>Newport, MN 55055 |

The following table contains the organization guidelines for Proposal responses.

**Table 04: Bid Checklist**

| RFB Attachment Number | Bid Section   | RFB Section Number |
|-----------------------|---|--------------------|
| -                     | Signed Cover Letter   | 2.3                |
| 1                     | Completed Bid Response Form (attached)                              | 2.4                |
| 2                     | Contractor Information and Reference Form (attached)                | 2.5                |
| 1                     | Description of Contractor’s Cost                                    | 2.7                |
| -                     | Bid Bond  | 2.8                |
| -                     | Work Examples   | 2.9                |
| -                     | Exceptions to Terms and Conditions                                  | 2.10               |
| 3                     | Application for Designation of Trade Secret Information (attached)  | 2.10               |
| 4                     | Responsible Contractor Verification and Certification of Compliance |                    |

### **2.3. Cover Letter**

The first section of the Proposal should be the Cover Letter. The Cover Letter shall be signed by an authorized representative of the company such as the owner, partner, or in the case of a corporation, the President, Vice President, Secretary, or other corporate officer(s).

The Cover Letter must provide the following:

- i. Identification of the proposing company, including name, address and telephone number;
- ii. Name, title, address, telephone and fax numbers, and email address of contact person during period of Bid evaluation;
- iii. A summary of the company's background and history;
- iv. A summary of claims brought against the proposer, subcontractors, and proposed project team members;
- v. During the past five years related to their goods and/or services, including the date, description of the claim, and the resolution of the claim, on company letterhead. Even if there have been no claims, a statement must be provided;
- vi. A brief summary of the Bid contents;
- vii. A statement to the fact that the proposal shall remain valid for a period of not less than 60 days from the date of submittal; and
- viii. Signature of a person who is authorized to sign contracts for the company.

The Cover Letter shall be printed on the company's letterhead.

A signature on the Cover Letter hereby provides the R&E acknowledgement and acceptance of the "Conditions" and the execution of same during the discharge of any succeeding contract. It shall be clearly understood that by submitting a bid in response to this RFB, a Bidder shall be deemed to have accepted all specifications, terms, and general conditions and requirements set forth in these specifications, terms, general conditions, and requirements unless otherwise clearly noted and explained in this RFB.

### **2.4. Bid Response Form**

The second section of the Proposal should be a completed Bid Response Form - Attachment 1. The bid response form will include a Estimated Bid Price by Division form. The amounts provided shall be generally those anticipated for the contract amounts and will form the basis for the Schedule of Values. This form is REQUIRED to be submitted with the Bid Response Form.

### **2.5. Contractor Information and Reference Form**

The third section of the Proposal should be a completed Contractor Information and Reference Form – Attachment 2.

### **2.6. Description of Contractor's Cost**

The fifth section of the bid response is the Estimated Bid Price by Division. The contractor shall provide estimated costs that total the lump sum bid amount. The amounts provided shall be generally those anticipated for the contract amounts and will form the basis for the Schedule of Values. This form is REQUIRED to be submitted with the Bid Response Form.



## **2.7. Work Examples**

The seventh section shall contain three (3) examples of finished products similar to those types requested in this RFB.

## **2.8. Application for Designation of Trade Secret Information**

The ninth section of the Proposal should be a completed Application for Designation of Trade Secret Information – Attachment 3, if applicable.

The bid response shall not be contingent on R&E accepting the contractor's claim that certain data is Trade Secret Information within the meaning of Minnesota Statute Section 13.37, subd. 1(b)

County review of data identified as Trade Secret Information will not occur unless and until such time as an appropriate request for the data is made by a third party

At such time as an appropriate request for data identified in a response as Trade Secret Information is made, R&E will provide the responder with notice of the request for the Trade Secret Information

## 3.0 General Bid Standard Terms and Conditions

### 3.1. Selection

A written Notice of Intent to Award shall be sent to the responsible contractor offering the lowest price for the work or goods described in this bid.

If award is noted to be made on an aggregate basis, any bid response that fails to include pricing for all items will be rejected.

If a specification identifies alternates, at the discretion of R&E, award may be made using the base price only, or the base price plus one, some or all alternates to determine low price.

### 3.2. Notice of Intent Award

The following must be submitted in response to the Notice of Intent to Award within 10 business days:

- i. W-9
- ii. Certificate of Insurance
- iii. Performance and Payment Bonds in the amount of 100% of the total contract. Checks are not accepted in lieu of a Bond
- iv. Copies of apprenticeship agreements currently in effect for the bidder and subcontractor whose portion of the work is \$100,000 or more or certificates of registration for the bidder and subcontractors whose portion of the work is \$100,000 or more, whichever is applicable. To the extent a contractor and/or subcontractor whose portion of the work is \$100,000, or less, do not participate in the Apprenticeship program, the bidder and each such subcontractor MUST submit statements to that effect.

Successful proposers are advised not to begin work or enter into subcontracts relating to the project until both the successful proposer and the R&E sign the contract.

### 3.3. Public Notice

R&E uses its website, [Vendor - Ramsey/Washington Recycling & Energy Ramsey/Washington Recycling & Energy \(recyclingandenergy.org\)](http://Vendor - Ramsey/Washington Recycling & Energy Ramsey/Washington Recycling & Energy (recyclingandenergy.org)) to release all competitive bids and associated addenda. Construction-related bids shall be published in R&E's official newspaper for three weeks. All other advertising or publishing requirements applicable to the purchase shall be published in the R&E's official newspaper for at least two weeks. Public notice of the bids shall include a reasonable time to allow for receipt of bid responses.

### 3.4. Negotiations and Contract Execution

The R&E reserves the right to negotiate the final terms and conditions of the contract to be executed. In the event the R&E and the vendor are unable to agree upon all contract provisions, the R&E reserves the right to cease negotiations, and to move on to select another vendor, or to reject all Proposals.

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### **3.5. Contracting Ethics**

- 1) It is a breach of ethical standards for any person to offer, give, or agree to give any R&E official, employee, agent or volunteer, or by R&E Policy, for any R&E employee, or Committees, Commissions, and Boards person to solicit, demand, accept, or agree to accept from another person or agency, a gratuity or an offer of employment whenever a reasonable prudent person would conclude that such consideration was motivated by an individual, group, or corporate desire to obtain special, preferential, or more favorable treatment than is normally accorded the general public.
- 2) The Vendor shall not assign any interest in this contract and shall not transfer any interest in the same without the prior written consent of the R&E.
- 3) The Vendor shall not accept any private client or project that may place it in ethical conflict during its representation of the R&E.

### **3.6. No Obligation, Right of Rejection, and Multiple Award**

The inquiry made through this RFB implies no obligation on the part of the R&E.

The R&E reserves the right to reject any proposal, in whole or in part. Proposals received from debarred or suspended vendors will be rejected. The R&E may reject any proposal that is not responsive to all of the material and substantial terms, conditions, and performance requirements of this RFB.

The R&E further reserves the right to award all, part, or none of the services included in this RFB or a Proposer's proposal.

The R&E reserves the right to reject any proposal determined to be non-responsive. The R&E also reserves the right to refrain from making an award if it determines it to be in its best interest.

If only one bid response is received, an award may be made to the single Contractor if R&E finds, in its sole discretion, that the price submitted is fair and reasonable, and that either other Contractors had reasonable opportunity to respond, or there is not adequate time for re-bid.

### **3.7. Bidder's Certification**

By signature on the Bid, the proposer certifies that it complies with:

- i. The laws of the State of Minnesota and is licensed to conduct business in the State of Minnesota;
- ii. All applicable local, state and federal laws, codes and regulations;
- iii. All terms, conditions, and requirements set forth in this RFB;
- iv. A condition that the proposal submitted was independently arrived at, without collusion; and,
- v. A condition that the offer will remain open and valid for the period indicated in this bid; and any condition that the firm and/or any individuals working on the contract do not have a possible conflict of interest.

If any proposer fails to comply with the provisions stated in this paragraph, the R&E reserves the right to reject the proposal, terminate the contract, or consider the proposer in default.

### **3.8. Offer Held Firm**

Proposals must remain open and valid for at least 60 days from the deadline specified for submission of proposals. In the event award is not made within 60 days, the R&E will send a written request to all proposers deemed susceptible for award asking proposers to hold their price firm for a longer specified period of time.

### **3.9. Amendment/Withdrawal of Proposals**

Proposers may amend or withdraw proposals prior to the deadline set for receipt of proposals. No amendments will be accepted after the deadline unless they are in response to a request of the R&E. After the deadline, proposers may make a written request to withdraw proposals and provide evidence that a substantial mistake has been made. The R&E may permit withdrawal of the proposal upon verifying that a substantial mistake has been made.

### **3.10. Clarification of Proposals**

In order to determine if a Bid is reasonably susceptible for award, communications by the Point of Contact identified in Table 02 or the proposal Evaluation Committee are permitted with any proposer to clarify uncertainties or eliminate confusion concerning the contents of a bid and determine responsiveness to the RFB requirements. Clarifications may not result in a material or substantive change to the Bid. The initial evaluation may be adjusted because of a clarification under this section.

### **3.11. Rights to Submitted Material**

It shall be understood that all proposals, responses, inquiries, or correspondence relating to or in reference to this RFB, and all reports, charts and Bid or referencing information submitted in response to this RFB, shall become the property of the R&E, and will not be returned. The R&E will use discretion with regard to disclosure of proprietary information contained in any response, but cannot guarantee information will not be made public. As a government entity, the R&E is subject to making records available for disclosure.

### **3.12. Contract Negotiation**

After final evaluation, the R&E may negotiate with the offerors of the highest-ranked bid. Negotiations, if held, will be within the scope of the RFB and limited to those items that would not have an effect on the ranking of bids. If any bidder fails to negotiate in good faith, the R&E may terminate negotiations and negotiate with the offeror of the next highest-ranked bid.

If contract negotiations are commenced, the R&E anticipates conducting negotiations remotely through electronic communications and teleconferences, beginning on a date and time to be determined.

If contract negotiations are held in person, they will be held at R&E offices, and the offeror will be responsible for all costs including its travel and per diem expenses.

### **3.13. Failure to Negotiate**

If the selected proposer:

- i. Fails to provide the information required to begin negotiations in a timely manner;
- ii. Fails to negotiate in good faith;
- iii. Indicates it cannot perform the contract within the budgeted funds available for the project; or,
- iv. If the proposer and the R&E, after a good-faith effort, cannot come to terms; then

The R&E may terminate negotiations with the proposer initially selected and commence negotiations with the next highest-ranked proposer. At any point in the negotiation process, the R&E may, at its sole discretion, terminate negotiations with any or all proposers.

### **3.14. Non-Collusion Statement**

Proposers shall complete and sign the non-collusion statement and include it with their proposal.

Contractors shall not enter into an agreement, participate in any collusion, or otherwise take any action in restraint of free competition in connection with this bid or any contract which may result from its acceptance, including actions involving other contractors, competitors, R&E staff, R&E Board Members, Ramsey County, or Washington County staff. Evidence of such activity will result in rejection of the bid response.

## **4.0 General Project Requirements**

See Attachment 5 for Project Scope and Technical Requirements.

## **5.0 General Agreement/Contract Terms and Conditions**

### **5.1 Contract Term**

The Agreement shall be effective upon execution through project completion with no options for renewal. Supplies, Equipment, Materials may not be delivered and/or Labor Services may not begin until the contract has been fully executed. An expired contract cannot be extended or renewed.

### **5.2 Contract Pricing**

#### **5.2.1 Schedule of Values**

Before the first application for payment, the Contractor shall submit to the Owner a Schedule of Values allocated to various portions of the Work. The Contractor shall be prepared to substantiate its accuracy. With Owner approval, this Schedule of Values will be used as a basis for reviewing the Contractor's application for payment.

### **5.3 Contract Approval**

This RFB does not, by itself, obligate the R&E to award a contract. The R&E's obligation will commence following the R&E's approval of a contract. Upon written notice to the vendor, the R&E may set a different starting date for the contract. The R&E will not be responsible for any work done by the vendor, even work done in good faith, if it occurs prior to the contract start date set by the R&E.

### **5.4 Contract Dispute**

In the event of contract dispute, dispute proceedings will be held in the State of Minnesota. Mediation will be a mandatory first step in the event of a dispute, prior to any legal action as set forth in the contract.

### **5.5 Possession of Firearms on R&E Premises**

Unless specifically required by the terms of this contract, no provider of services pursuant to this contract, including but not limited to employees, agents or subcontractors of the (Vendor or Contractor, depending upon which term is used) shall carry or possess a firearm on R&E premises or while acting on behalf of the R&E pursuant to the terms of this agreement. Violation of this provision shall be considered a substantial breach of the Agreement; and, in addition to any other remedy available to the R&E under law or equity. Violation of this provision is grounds for immediate suspension or termination of this contract.

## 5.6 Indemnification and Hold Harmless

The Vendor does hereby agree that it will defend, indemnify, and hold harmless the R&E, its agents, officers and employees against any and all liability, loss, damages, costs and expenses which the R&E Board, its officers or employees may hereafter sustain, incur or be required to arising out of the negligent or willful acts or omissions or intentional acts of the Vendor, its agents, officers or employees or subcontractors or independent contractors in the performance of this Agreement.

## 5.7 Insurance Requirements

The proposer and its subcontractors or independent contractors agree that in order to protect itself, as well as the R&E Board under the indemnity provisions set forth above, it will at all times during the term of this Agreement, keep in force the following insurance protection with the minimum limits specified:

- Commercial General Liability including contractual liability coverage in the amount of the \$5,000,000 per occurrence. R&E Board shall be added to the policy as an additional insured on a primary and non-contributory basis with respect to the ongoing and completed operations of the proposer providing coverage at least as broad as ISO forms CG 2010 and CG 2037. Coverage under the policy shall include XCU coverage.
- If contract involves design work, Professional liability in the amount of \$5,000,000 per occurrence is required.
- Commercial Automobile Liability coverage with combined single limits of not less than \$2,000,000. R&E Board shall be added to the policy as an additional insured on a primary and non-contributory basis.
- Workers' Compensation in statutory amount and Employers liability in the amount of \$1,000,000.

A following-form umbrella/excess policy over the primary liability insurance coverages is an acceptable method to provide the required insurance limits.

The above policies shall contain a clause or endorsement that waives the right of subrogation against R&E Board.

Property insurance coverage for the project shall be covered by the R&E Board's property policy. The bidder is responsible for the deductible of \$100,000 under this policy for damage to the work and materials during construction. Furthermore, R&E Board shall not be liable to the Bidder for any damage sustained by or to the equipment owned by the bidder its agents, employees or subcontractors in the work contemplated by this Agreement unless due to the R&E Board's gross negligence.

Prior to the effective date of this Agreement, the proposer will furnish the R&E with a current and valid proof of insurance certificate indicating insurance coverage in the amounts required by this agreement. This certificate of insurance shall be on file with the R&E throughout the term of the agreement. As a condition subsequent to this agreement, the proposer shall insure that the certificate of insurance provided to the R&E will at all times be current. The parties agree that failure by the proposer to maintain

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a current certificate of insurance with the R&E shall be a substantial breach of the contract and payments on the contract shall be withheld by the R&E until a certificate of insurance showing current insurance coverage in amounts required by the contract is provided to the R&E.

Any policy obtained and maintained under this clause shall provide that it shall not be cancelled, materially changed, or not renewed without thirty days' notice thereof to the R&E. Policies shall provide for ten (10) days notice to Additional Insured for cancellation due to non-payment of premium.

## **5.8 Termination**

The R&E may immediately terminate this Agreement if any proceeding or other action is filed by or against the Contractor seeking reorganization, liquidation, dissolution, or insolvency of the Contractor under any law relating to bankruptcy, insolvency or relief of debtors. The Contractor shall notify the R&E upon the commencement of such proceedings or other action.

If the Contractor violates any material terms or conditions of this Agreement the R&E may, without prejudice to any right or remedy, give the Contractor, and its surety, if any, thirty (30) calendar days' written notice of its intent to terminate this Agreement, specifying the asserted breach. If the Contractor fails to cure the deficiency within the thirty (30) day cure period, this Agreement shall terminate upon expiration of the cure period.

The R&E may terminate this Agreement without cause upon giving at least thirty (30) calendar days' written notice thereof to the Contractor. In such event, the Contractor shall be entitled to receive compensation for services provided in compliance with the provisions of this Agreement, up to and including the effective date of termination.

## **5.9 Merger**

It is understood and agreed that the entire agreement of the parties is contained herein and this Agreement supersedes all oral agreements and negotiations between the parties relating to this subject matter. All items referred to in this Agreement are incorporated or attached and deemed to be a part of the Agreement.

## **5.10 Conflict of Interest**

Proposer shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which in any manner affect Proposer or the services and/or items to be provided, specifically and not limited to any laws relating to conflicts of interest. Failure to comply with any applicable laws, including the provisions of the Act, may result in: i) the forfeiture by Proposer of all benefits of the Contract; ii) the retainage by R&E of all services performed by Proposer and iii) the recovery by the R&E of all consideration, or the value of all consideration, paid to Proposer pursuant to any awarded contract.

## **5.11 Pending and Recent Litigation**

Proposers must disclose any pending or recent litigation they are involved in as a company. Recent is defined as the past five years. Information provided should include the timeline of the litigation history, the subject of the litigation, and the current status of the litigation. Proposals must also disclose any pending litigation of any third- party partners in the proposal.

## **5.12 Contract Modifications**

Any material alteration, modification or variation shall be reduced to writing as an amendment and signed by the parties. Any alteration, modification or variation deemed not to be material by agreement of the R&E and the Contractor shall not require written approval.

### 5.13 Contractor Debarment, Suspension, and Responsibility

Federal Regulation 45 CFR 92.35 prohibits the R&E from purchasing goods or services with federal money from vendors who have been suspended or debarred by the federal government. Similarly, Minnesota Statutes, Section 16C.03, subdivision 2, provides the Commissioner of Administration with the authority to debar and suspend vendors who seek to contract with the R&E. Vendors may be suspended or debarred when it is determined through a duly authorized hearing process, that they have abused the public trust in a serious manner.

### 5.14 Performance

All services performed by the Vendor pursuant to this Agreement shall be performed to the satisfaction of the R&E, as determined at the sole discretion of its authorized representative, and in accord with all applicable federal, state, and local laws, ordinances, rules and regulations. Services not performed in accordance with the terms and conditions of RFB and contract shall be considered a material breach and shall be cause for immediate termination by R&E. The Vendor shall not receive payment for work found by the R&E to be unsatisfactory, or performed in violation of federal, state, or local law, ordinance, rule or regulation. In the event of work found by the R&E to be unsatisfactory, the R&E shall provide Vendor with written notice describing the work found to be unsatisfactory in any reasonable respect and thirty (30) days to correct the unsatisfactory service performed. Vendor shall work with the R&E to correct the unsatisfactory service to R&E's mutual satisfaction within thirty (30) days of said notice. If service is not corrected to the satisfaction of the R&E, it shall be considered a material breach and shall be cause for be immediate termination by R&E.

### 5.15 Prevailing Wage (Construction and Labor)

Contractors and all subcontractors of the Contractor shall conform to the labor laws of the State of Minnesota, and all other laws, ordinances, and legal requirements affecting the work in and Minnesota. The minimum wage rate per hour to be paid for each classification of work shall be the union wage rate in the locality of the project for those classifications over which unions have jurisdiction and the local prevailing rate for those classifications of work in the localities over which unions do not have jurisdiction.

The terms "prevailing wage", "minimum wage rate per hour", and "prevailing rate" as used in the contract, shall mean "prevailing wage rate" as defined in Minnesota Statutes §177.42.

Pursuant to Minnesota Statutes §§177.41 to 177.44 and corresponding Rules 5200.1000 to 5200.1120, all construction contracts funded in whole or in part by state funds are subject to the prevailing wages as established by the Minnesota Department of Labor and Industry.

Specifically, all Contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties.

The Contractor shall post the applicable prevailing wage rates, hourly basic rates, and prevailing hours of labor, at a conspicuous location accessible by workers at the location of the Work. The Contractor shall physically include the requirements of the article and the schedules set forth in Attachment D in applicable agreements and contracts with Subcontractors, agents, or other persons doing or contracting to do all or any part of the Work under the Agreement. Incorporation of prevailing wage rates by reference in such agreements and contracts is not acceptable.

### 5.16 Performance and Payment Bonds

The Contractor shall furnish a Performance and Payment bond, both meeting the following conditions:

- i. Issued by a bonding company licensed to do business in Minnesota.
- ii. On the current list of Companies Holding Certificates of Authority as acceptable Sureties on Federal Bonds and as acceptable reinsuring companies as published in Circular 570 (Amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department
- iii. All bonds signed by an agent must be accompanied by a certified copy of the authority to act.



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- iv. Duly executed, notarized and updated Acknowledgment of both the Principal and Surety and the Surety's Power of Attorney must be attached to each of the two required bonds.
  - v. Bond amounts shall not exceed the single bond limit for the Contractor's bonding company as set forth in the Federal Register current as of the bid date.
  - vi. Checks are not accepted in lieu of a Bond.

The bonds shall each be in the amount of 100% of the contract price. The term "contract", as used herein, shall include the original agreement plus all subsequent change orders and/or amendments. The contract price to which the principal is bound shall be the amount as reflected by the terms of the contract.

The bonds shall cover the faithful performance of the Contract and the payments of all obligations arising thereunder. The Agreement will not be signed until R&E has received the proper bonds specified under this clause.

Bonds shall indemnify R&E for any loss sustained by R&E on account of or by reason of the acts of the Contractor or the acts of anyone else directly or indirectly employed by the Contractor in the performance of the Work for the Project.

#### **5.17 Subcontractors**

The proposer shall not enter into any subcontract for performance of any services contemplated under this agreement nor novate or assign any interest in the agreement without the prior written approval of the R&E. Any assignment or novation may be made subject to such conditions and provisions as the R&E may impose. If the proposer intends to use subcontractors, the proposer must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

If a proposal with subcontractors is selected, the proposer must provide the following information concerning each prospective subcontractor within five working days from the date of the R&E's request:

- i. Complete name of the subcontractor
- ii. Complete address of the subcontractor
- iii. Type of work the subcontractor will be performing
- iv. Percentage of work the subcontractor will be providing
- v. Evidence, as set out in the relevant section of this RFB, that the subcontractor is registered and, if applicable, holds a valid State of Minnesota business license
- vi. A written statement, signed by each proposed subcontractor, that clearly verifies that the subcontractor is committed to render the services required by the contract and
- vii. A copy of the prime-contractor/sub-contractor contract verifying the prime-contractor has the sole responsibility for any and all services under this RFB and is financially liable, without exception, to the R&E for all services contracted by the proposer under this RFB

The proposer's failure to provide this information, within the time set, may cause the R&E to consider its proposal non-responsive and reject it. The substitution of one subcontractor for another may be made only at the discretion and prior written approval of the R&E's Project Manager or contract administrator designated by the R&E. If the proposer subcontracts the obligations under this agreement, the proposer shall be responsible for the performance of all obligations by the subcontractors.

#### **5.18 Non-Discrimination Clause**

During the performance of this Agreement, the Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, disability, age, marital status, or status with regard to public assistance. The Contractor will take affirmative action to ensure that all employment practices are free of such discrimination. Such employment practices include, but are not limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Contractor agrees to comply with the nondiscrimination provision set forth in Minnesota Statute 181.59. The Contractor's failure to comply with section 181.59 may result in cancellation or termination of the agreement, and all money due or to become due under the contract may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

#### **5.19 Compliance with Law**

The Contractor will comply with all applicable local, state, and Federal laws, ordinances and regulations in the performance of the Agreement. The contract, amendments, and supplements will comply with and be governed by all laws of the State of Minnesota. Any violation shall constitute a material breach of the executed Agreement. All actions brought under this agreement shall be brought exclusively in Minnesota State Courts of competent jurisdiction with venue in R&E.

#### **5.20 Force Majeure**

Neither Party shall be in default by reason of any failure in performance of the contract if such failure arises out of causes beyond their reasonable control and without the fault or negligence of said Party including, unforeseeable acts of nature; terrorism or other acts of public enemy; war and epidemics or quarantine restrictions.

If either Party is delayed at any time in the progress of the work governed by the contract by force majeure, the delayed Party shall notify the other Party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in the notice. The notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this provision. The delayed Party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed Party from performing in accordance with this contract.

#### **5.21 Policy Compliance**

The Bidder shall, as a condition of being awarded this Agreement, require each of its agents, officers and employees to abide by the R&E's policies prohibiting sexual harassment, firearms and smoking, as well as all other reasonable work rules, safety rules or policies regulating the conduct of persons on R&E property at all times while performing duties pursuant to this Agreement. The Proposer agrees and understands that a violation of any of these policies or rules constitutes a breach of the Agreement and sufficient grounds for immediate termination of the Agreement by the R&E.

#### **5.22 Public Information**

It shall be understood that all Proposals, responses, inquiries or correspondence relating to or in reference to this RFB, and all reports, charts and Proposal or referencing information submitted in response to this RFB shall become the property of the R&E, and will not be returned. The R&E will use discretion with regard to disclosure of proprietary information contained in any response, but cannot guarantee information will not be made public. As a governmental entity, the R&E is subject to making records available for disclosure pursuant to applicable public record disclosure laws, and Proposers, including the Proposer ultimately awarded the contract, shall cooperate in complying with such public disclosure laws at no additional cost to the R&E. In the event any Proposer designates materials within its RFB response confidential and/or proprietary and therefore not subject to release pursuant to public record disclosure laws, and if the R&E, its employees, and/or its officials are then named in or subjected to legal action based on its refusal to disclose such materials designated confidential and/or proprietary by the Proposer, Proposer agrees to indemnify, hold harmless, and defend the R&E in any such action brought against it regarding the R&E's refusal to release such Proposer-designated materials pursuant to a public records request.

### **5.23 Audits, Reports, Records and Monitoring Procedures/Records Availability & Retention**

Pursuant to Minn. Stat. section 16C.05 subd. 5, the proposer will:

- Maintain records which reflect all revenues, costs incurred and services provided in the performance of this Agreement.
- Agree that the R&E, the State Auditor, or legislative authority, or any of their duly authorized representatives at any time during normal business hours, and as often as they may deem reasonably necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., and accounting procedures and practices and involve transactions relating to this agreement. The proposer agrees to maintain and make available these records for a period of six (6) years from the date of the termination of this agreement.

### **5.24 Data Practices**

All data collected, created, received, maintained, or disseminated for any purpose by the activities of the proposer, because of this agreement shall be governed by the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (Act), as amended and the Rules implementing the Act now in force or as amended. The proposer is subject to the requirements of the Act and Rules and must comply with those requirements as if it is a governmental entity. The remedies contained in section 13.08 of the Act shall apply to the proposer.

### **5.25 Interpretation of Agreement; Venue**

The Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this Agreement shall be venued in the appropriate State or Federal District Court in Ramsey County, Minnesota.

The provisions of this Agreement are severable. If any part of this Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement.

### **5.26 Clean Up**

The Contractor shall at all times keep County premises free from accumulation of waste materials or rubbish caused by its operations.

### **5.27 Protection of Persons and Property**

The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, County employees and other persons who may be affected; the Contractor's work and materials and equipment which are under the care, custody and control of the Contractor or any of the Contractor's subcontractors; and other property at the project site or adjacent thereto.

Unless otherwise directed by R&E's Authorized Representative, the Contractor shall promptly remedy damage or loss to property caused in whole or in part by the Contractor, its employees, officers, or subcontractor(s), or anyone directly employed by any of them, or by anyone for whose acts any of them may be liable.

### **5.28 Title Risk of Loss**

Title to goods and/or all associated documentation shall pass to R&E upon payment by R&E for goods and/or associated documentation; or for construction projects, upon incorporation of the goods into the Project.

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R&E shall be relieved from all risks of loss or damage to goods, and/or all documentation prior to the

time title passes to R&E as described above. The Contractor shall not be responsible for loss or damage to goods and/or documentation occasioned by negligence of R&E or its employees.

### **5.29 Submittals**

No portion of the work requiring submission of a shop drawing, drawing, manufacturer's literature, test data or other information, or a sample shall be commenced until the submittal has been approved by R&E.

### **5.30 Changes in Work**

Changes in the Work may be accomplished after execution of the contract by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in the Contract Documents. A change in the Work that affects the project cost or schedule may be made only by Change Order.

A Change Order shall be based upon agreement between R&E and the Contractor; a Construction Change Directive may be issued by R&E without the agreement of the Contractor; an order for a minor change in the Work may be issued by the Contractor alone.

Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

#### **Change Orders**

A Change Order is a written instrument prepared by the Contractor and signed by R&E and the Contractor stating their agreement upon all of the following:

- a change in the Work;
- the amount of the adjustment, if any, in the contract price; and
- the extent of the adjustment, if any, in the Project Schedule.

No work consistent with the changes in the Change Order shall commence until the Change Order has been reduced to writing and signed by both parties.

### Construction Change Directives

A Construction Change Directive is a written order prepared and signed by R&E, directing a change in the Work prior to agreement on adjustment, if any, in the project cost or schedule or both.

### Minor Changes in the Work

The Contractor shall have authority to make minor changes in the Construction Documents and construction consistent with the intent of the Contract Documents when such minor changes do not involve adjustment in the project cost or extension of the Project Schedule. The Contractor shall promptly inform R&E, in writing, of minor changes in the Construction Documents and construction.

## **5.31 Maintenance of Record Drawings at Site and Shop Drawings**

The Contractor shall maintain at the site for R&E one record copy of the drawings, specifications, product data, samples, shop drawings, addenda, Change Orders and other modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to R&E upon completion of construction as a record of the Work as constructed prior to final payment

## **5.32 Schedule Progress**

If, in the opinion of R&E, the Contractor falls behind the progress schedule, or if it appears that the Contractor will not achieve Substantial Completion in accordance with the agreed upon schedule, the Contractor shall take any and all steps necessary to improve the progress to assure Substantial Completion in accordance with the schedule, at no additional cost to R&E.

R&E may require the Contractor to submit for approval and at no additional cost to R&E, such supplementary progress schedules as may be deemed necessary to demonstrate the manner in which the approved progress schedule or date of Substantial Completion will be regained.

Failure of the Contractor to comply with the requirements of this subparagraph shall be grounds for determination that the Contractor is not performing the work with such diligence as will ensure completion within the time specified in the contract between R&E and the Contractor. Upon such determination, R&E may terminate the Contractor's right to proceed with the work, or any separable part thereof, in accordance with other applicable provisions of the Contract or may obtain the services required to bring the project into compliance with the schedule at the Contractor's cost.

## **5.33 Application for Payments**

### **5.33.1 Application of Payments**

Prior to the end of each given month, the Contractor shall submit to R&E an itemized, typed, Application for Payment for operations completed through the 25th day of that month in accordance with the schedule of values. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as R&E may require, such as copies of requisitions from Subcontractors and material suppliers and reflecting a five percent (5%) retainage. Any interest earned on amounts retained by R&E will not accrue to the benefit of the Contractor. Within thirty (30) days of receipt of Application for Payment to Contractor, R&E shall make payment to Contractor.

**5.33.2** Payment of interest and disputes regarding payment shall be governed by the provisions of Minnesota Statutes §471.425.

**5.33.3** The Owner may withhold payment in whole or in part to the extent necessary to protect itself from loss on account of any of the following causes; violation of any of the terms of the Contract Documents; defective work not remedied; reasonable evidence indicating potential filing of claims by other parties against the Contractor or Owner; failure of the Contractor to make payments to Subcontractors, material suppliers; or damage to the Owner or any other party.

**5.33.4** When any of the above grounds for which payment is being withheld is removed, payment shall be made for the amount withheld.

**5.33.5 Final Completion and Final Payment; Project Closeout**

At the time of project close out, the contractor shall submit IC-134 forms and contractor affidavit (Contractor Affidavit form will be provided to the contractor for completion prior to Project Closeout). Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to R&E: (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which R&E or its property might in any way be responsible, have been paid or otherwise satisfied; (2) consent of surety, if any, to final payment; (3) submission of two copies of Operation & Maintenance Manuals with provided warranty documentation for products and two copies of as-built plans identifying modifications to original plans and; (4) if required by R&E, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by R&E. If any Subcontractor refuses to furnish a release or waiver required by R&E, the Contractor may furnish a bond satisfactory to R&E to indemnify it against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to R&E all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. Before final payment is made, the Contractor shall also make a satisfactory showing that it has complied with the provisions of Minn. Stat. § 290.92 requiring the withholding of state income tax from wages paid to the Contractor's employees for work performed under the contract. Receipt by R&E of a certificate of compliance from the Commissioner of Revenue will satisfy this requirement. The Contractor has been advised that before the certificate can be issued Contractor must first place on file with the Commissioner of Revenue, an affidavit stating that Contractor has complied with the provisions of Minn. Stat. § 290.92. Unless the Contractor has presented an affidavit to the Architect showing that all claims against Contractor by reason of the contract have either been paid or satisfactorily secured, final payment may be withheld or a sufficient amount may be retained there from to cover the unpaid lienable claims.

**5.35. Payment for Uncorrected Work**

If the Owner directs the Contractor not to correct Work that has been damaged or that has not been performed in accordance with the Contract Documents, an equitable deduction from the Contract Price shall be made by means of a Change Order to compensate the Owner for the uncorrected Work.

**5.36. Payment for Rejected Work and Materials**

The removal of Work and Materials rejected and the re-execution of acceptable Work by the Contractor shall be at the expense of the Contractor, and they shall pay the cost of replacing the Work of other Contractor's destroyed or damaged by the removal of the rejected Work or Materials and the subsequent replacement of acceptable Work.

**5.37. Payment for Increased or Decreased Quantities**

Whenever the quantity of any item of Work as given in the Bid shall be increased or decreased by means of a Change Order, unless the Change Order provides otherwise, payment for such item will be made on the basis of actual quantity completed, at the Agreement unit price for such item.

**5.38. Payment for Extra Work**

Written notice of claims for payments for extra Work ("Extra Work") shall be given by the Contractor within three (3) days after receipt of a Field Order from the Owner's Representative to proceed with the Extra Work and the written notice shall be made before any Extra Work is commenced by the Contractor, except in emergency situations endangering life or property. No claim for payment for the Extra Work shall be valid unless the written claim is made in the manner required by this section. The Contractor shall submit to the Owner itemized estimate sheets showing all labor and material and items of cost of the Extra Work. If the Owner approves proceeding, a Change Order for the Extra Work shall be issued specifying an extension of the Contract Time, if any, and one of the following methods of payments; unit prices or combinations of unit prices which formed the basis of the original Agreement; a lump sum based on the Contractor's estimate, approved by the Owner's Representative and accepted by the Owner; or actual cost plus overhead and profit as follows described below for force account work.

**5.39. Payment for Samples, Testing of Materials, and Compaction Testing**

**5.39.1.**

Unless stated otherwise in the Contract Documents, testing of samples and Materials furnished shall be arranged and paid for by the Owner, unless said tests fail, in which case they shall be paid for by the Contractor. Compaction testing will be conducted and paid for by the Owner, unless said tests fail, in which case the Contractor shall pay for them.

**5.39.2.**

Submit samples for review of kind, color, pattern, and texture for a check of these characteristics with other elements and for a comparison of these characteristics between submittal and actual component as delivered and installed. Transmit samples that contain multiple, related components such as accessories together in one submittal package. Maintain sets of approved samples at Project site, available for quality-control comparisons throughout the course of construction activity. Sample sets may be used to determine final acceptance of construction associated with each set. Submit manufacturer's color charts consisting of units or sections of units showing the full range of colors, textures, and patterns available. Submit one full set(s) of available choices where color, pattern, texture, or similar characteristics are required to be selected from manufacturer's product line. Owner's Representative will return submittal with options selected.

**5.40. Warranty**

The Contractor warrants that it has the legal right to provide the goods and services identified in this Agreement and further warrants that the goods and services provided shall be in compliance with the provisions of this Agreement.

**5.41. Ownership of Work Product**

**5.42.1.**

The Contractor agrees that all right, title, and interest in all material that Contractor shall

conceive or originate, either individually or jointly with others, and which arises out of the performance of this Agreement, are the property of R&E and are by this Agreement assigned to R&E along with ownership of any and all copyrights in the material.

**5.42.2.**

Where applicable, works of authorship created by Contractor for R&E in performance of this Agreement shall be considered "works made for hire" as defined in the U.S. Copyright Act. Contractor shall, upon the request of R&E, execute all papers and perform all other acts necessary to assist R&E to obtain and register copyrights on such material.

**5.42.3.**

The Contractor warrants that any materials or products provided or produced by it in the performance of this Agreement will not infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. Contractor will defend, indemnify, and hold R&E harmless from any such third party claims.

## Attachments

**Attachment 1** – Bid Response Form

**Attachment 2** – Contractor Information and Reference Form

**Attachment 3** – Contractor Application for Trade Secret Information

**Attachment 4** – Responsible Contractor Verification and Certification of Compliance

**Attachment 5** – General Scope and Requirements





**Attachment 1 Bid  
Response Form**

## Attachment 1 – Bid Response Form

**Bid Title: Gutter and Downspout Replacement and Modifications Project**

**The following shall be completed by the Contractor:**

Company Name:

Total Number of Bid Pages:

Total Number of Pages in Contractor's Bid Response:

Acknowledgement and Number of Bid Addenda Received:

**PLEASE READ THE FOLLOWING BEFORE COMPLETING THIS BID  
RESPONSE FORM**

The provisions of the bid document should be reviewed and understood before preparing a bid response. Unless the bid document provides otherwise, the bid response shall be the best price for all labor, equipment, materials and services for the project described in the bid document.

**Contract Price:**

**1. Bid**

**Price: \$\_\_\_\_\_**

### ACKNOWLEDGEMENT

By signing below, I certify that I understand, agree, and bind the Contractor to the provisions contained in the bid document for the above Bid, including the Bid and Contract Terms and Conditions and that I am authorized to submit this bid response on behalf of the Contractor.

### COLLUSION

By signing below, I certify that this bid response has been prepared without any collusion with other contractors, competitors, R&E employees, Washington or Ramsey County employees, or R&E Board Members and without taking any other action which will restrict competition or constitute fraud or collusion.

Name and Title of Authorized Contractor Representative:

Signature:

Date:

Bid Title: Gutter and Downspout Replacement and Modifications Project

ESTIMATED BID PRICE BY DIVISION

The following information is provided to document estimated costs per major specifications division. The contractor shall provide estimated costs that total the lump sum bid amount. The amounts provided shall be generally those anticipated for the contract amounts and will form the basis for the Schedule of Values. This form is REQUIRED to be submitted with the Bid Response Form

| Division    | Title                                     | Estimated Dollar Amount |
|-------------|---|-------------------------|
| DIVISION 00 | PROCUREMENT AND CONTRACTING REQUIREMENTS  |                         |
| DIVISION 01 | GENERAL REQUIREMENTS                      |                         |
| DIVISION 02 | EXISTING CONDITIONS                       |                         |
| DIVISION 03 | CONCRETE                                  |                         |
| DIVISION 04 | MASONRY                                   |                         |
| DIVISION 05 | METALS                                    |                         |
| DIVISION 06 | WOOD, PLASTICS AND COMPOSITES             |                         |
| DIVISION 07 | THERMAL AND MOISTURE PROTECTION           |                         |
| DIVISION 08 | OPENINGS                                  |                         |
| DIVISION 09 | FINISHES                                  |                         |
| DIVISION 10 | SPECIALTIES                               |                         |
| DIVISION 13 | SPECIAL CONSTRUCTION                      |                         |
| DIVISION 14 | CONVEYING EQUIPMENT                       |                         |
| DIVISION 21 | FIRE SUPPRESSION                          |                         |
| DIVISION 22 | PLUMBING                                  |                         |
| DIVISION 23 | HEATING, VENTILATING AND AIR CONDITIONING |                         |
| DIVISION 26 | ELECTRICAL                                |                         |
| DIVISION 28 | ELECTRONIC SAFETY AND SECURITY            |                         |
| DIVISION 31 | EARTHWORK                                 |                         |
| DIVISION 32 | EXTERIOR IMPROVEMENTS                     |                         |
| DIVISION 33 | UTILITIES                                 |                         |

Total: \_\_\_\_\_

(Note: the total must match the Lump Sum amount on the Bid Form)

**Attachment 2**  
**Contractor Information and Reference Form**

## Attachment 2 – Contractor Information and Reference Form

The R&E requires completion of this form for this bid. Failure to submit this completed form with the bid response will result in rejection of the Contractor's bid response.

### Company Information:

1. Contractor Name (as on file with the MN Secretary of State's Office, if applicable):
2. Name of CEO or Company President:
3. FEIN / Contractor Tax ID Number:
4. Minnesota Business Licenses Filing Number:
5. Local Telephone Number:
6. Toll Free Telephone Number:
7. Fax Number:
8. Email Address:
9. Address:
10. City:
11. State:
12. Zip Code:
13. Is your company a Certified Small Business Enterprise ("CERT SBE")?
14. If yes, what is your CERT SBE#?

### Bid Response Contact:

1. Name and Title of the person to contact for questions concerning this bid response:
2. Local Telephone Number:
3. Toll Free Telephone Number:
4. Fax Number:
5. Email Address:
6. Address:
7. City:
8. State:
9. Zip Code:

### Contract Mailing Address (if different from Company Information):

1. Contact Name and Title:
2. Local Telephone Number:
3. Toll Free Telephone Number:
4. Fax Number:
5. Email Address:
6. Address:
7. City:
8. State:
9. Zip Code:

**Reference Requirements:** Provide a minimum of three (3) references for work completed within the last five (5) years that is similar to what is requested in this bid.

1. First Reference

- Company Name:
- Contact Name and Title:
- Local Telephone Number:
- Toll Free Telephone Number:
- Email Address:
- Address:
- City:
- State:
- Zip Code:
- Description of Work Completed:

2. Second Reference

- Company Name:
- Contact Name and Title:
- Local Telephone Number:
- Toll Free Telephone Number:
- Email Address:
- Address:
- City:
- State:
- Zip Code:
- Description of Work Completed:

3. Third Reference

- Company Name:
- Contact Name and Title:
- Local Telephone Number:
- Toll Free Telephone Number:
- Email Address:
- Address:
- City:
- State:
- Zip Code:
- Description of Work Completed:

Name and Title of Authorized Contractor Representative:

Signature:

**Attachment 3**  
**Contractor Application for Trade Secret Information**



Date:

### **Attachment 3 – Contractor Application for Designation of Trade Secret Information**

**Bid Title** Bulk Waste Residual Load Out Project RFB

The submitted quote/bid/proposal includes trade secret information that we, the contractor, believe to be classified as nonpublic (relating to a non-person) or private (relating to a person) information under §13.37 of the Minnesota Government Data Practices Act.

As such, we are requesting that certain provisions of our quote/bid/proposal response, as indicated below, be treated as trade secret data and that any request for access to the trade secret data be handled in accordance with the provisions of the R&E's Purchasing Standard Terms and Conditions.

Section  
Page #  
Topic

We understand that a decision regarding this request will be made by the R&E prior to award. If this classification request is granted, in the event the designation of this information as trade secrets is challenged, we agree to defend, indemnify, and hold harmless the R&E against any claims related to the designation of this data as trade secrets data.

We further understand that the R&E considers markings of "confidential" or "trade secrets" in the bid response to be insufficient to classify information in a response. We agree to indemnify and hold R&E harmless from any damages arising out of the release of any materials or data unless they are specifically identified above.

Name and Title of Authorized Preparer

Signature

Date

**Attachment 4**  
**Responsible Contractor Verification and Certification of  
Compliance**

**Attachment 4**

**RESPONSIBLE CONTRACTOR VERIFICATION  
AND CERTIFICATION OF COMPLIANCE**

**PROJECT TITLE: Gutter and Downspout Replacement and Modifications **Project****

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| <p>Minn. Stat. § 16C.285, Subd. 7. <b>IMPLEMENTATION.</b> ... any prime contractor or subcontractor that does not meet the minimum criteria in subdivision 3 or fails to verify that it meets those criteria is not a responsible contractor and is not eligible to be awarded a construction contract for the project or to perform work on the project.</p> |  |
| <p>Minn. Stat. § 16C.285, Subd. 3. <b>RESPONSIBLE CONTRACTOR, MINIMUM CRITERIA.</b> "Responsible contractor" means a contractor that conforms to the responsibility requirements in the bid document for its portion of the work on the project and verifies that it meets the following minimum criteria:</p>  |  |
| <p>(1)</p>  | <p>The Contractor:</p> <ul style="list-style-type: none"> <li>(i) is in compliance with workers' compensation and unemployment insurance requirements;</li> <li>(ii) is currently registered with the Department of Revenue and the Department of Employment and Economic Development if it has employees;</li> <li>(iii) has a valid federal tax identification number or a valid Social Security number if an individual; and</li> <li>(iv) has filed a certificate of authority to transact business in Minnesota with the Secretary of State if a foreign corporation or cooperative.</li> </ul>   |
| <p>(2)</p>  | <p>The contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 177.24, 177.25, 177.41 to 177.44, 181.13, 181.14, or 181.722, and has not violated United States Code, title 29, sections 201 to 219, or United States Code, title 40, sections 3141 to 3148. For purposes of this clause, a violation occurs when a contractor or related entity:</p> <ul style="list-style-type: none"> <li>(i) repeatedly fails to pay statutorily required wages or penalties on one or more separate projects for a total underpayment of \$25,000 or more within the three-year period;</li> <li>(ii) has been issued an order to comply by the commissioner of Labor and Industry that has become final;</li> <li>(iii) has been issued at least two determination letters within the three-year period by the Department of Transportation finding an underpayment by the contractor or related entity to its own employees;</li> <li>(iv) has been found by the commissioner of Labor and Industry to have repeatedly or willfully violated any of the sections referenced in this clause pursuant to section 177.27;</li> </ul> |

(v) has been issued a ruling or findings of underpayment by the administrator of the Wage and Hour Division of the United States Department of Labor that have become final or have been upheld by an administrative law judge or the Administrative Review Board; or

(vi) has been found liable for underpayment of wages or penalties or misrepresenting a construction worker as an independent contractor in an action brought in a court having jurisdiction. Provided that, if the contractor or related entity contests a determination of underpayment by the Department of Transportation in a contested case proceeding, a violation does not occur until the contested case proceeding has concluded with a determination that the contractor or related entity underpaid wages or penalties;\*

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| (3) | The contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 181.723 or chapter 326B. For purposes of this clause, a violation occurs when a contractor or related entity has been issued a final administrative or licensing order;*  |
| (4) | The contractor or related entity has not, more than twice during the three-year period before submitting the verification, had a certificate of compliance under section 363A.36 revoked or suspended based on the provisions of section 363A.36, with the revocation or suspension becoming final because it was upheld by the Office of Administrative Hearings or was not appealed to the office;* |
| (5) | The contractor or related entity has not received a final determination assessing a monetary sanction from the Department of Administration or Transportation for failure to meet targeted group business, disadvantaged business enterprise, or veteran-owned business goals, due to a lack of good faith effort, more than once during the three-year period before submitting the verification;*   |
|     | * Any violations, suspensions, revocations, or sanctions, as defined in clauses (2) to (5), occurring prior to July 1, 2014, shall not be considered in determining whether a contractor or related entity meets the minimum criteria.  |
| (6) | The contractor or related entity is not currently suspended or debarred by the federal government or the state of Minnesota or any of its departments, commissions, agencies, or political subdivisions; and  |
| (7) | All subcontractors that the contractor intends to use to perform project work have verified to the contractor through a signed statement under oath by an owner or officer that they meet the minimum criteria listed in clauses (1) to (6).  |

Minn. Stat. § 16C.285, Subd. 5. **SUBCONTRACTOR VERIFICATION.**

A prime contractor or subcontractor shall include in its verification of compliance under subdivision 4 a list of all of its first-tier subcontractors that it intends to retain for work on the project.

If a prime contractor or any subcontractor retains additional subcontractors on the project after submitting its verification of compliance, the prime contractor or subcontractor shall obtain verifications of compliance from each additional subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification confirming compliance with subdivision 3, clause (7), within 14 days of retaining the additional subcontractors.

A prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier pursuant to subdivision 3, clause (7). A prime contractor and subcontractors shall not be responsible for the false statements of any subcontractor with which they do not have a direct contractual relationship. A prime contractor and subcontractors shall be responsible for false statements by their first-tier subcontractors with which they have a direct contractual relationship only if they accept the verification of compliance with actual knowledge that it contains a false statement.

Minn. Stat. § 16C.285, Subd. 4. **VERIFICATION OF COMPLIANCE.**

A contractor responding to a bid document of a contracting authority shall submit to the contracting authority a signed statement under oath by an owner or officer verifying compliance with each of the minimum criteria in subdivision 3 at the time that it responds to the bid document.

A contracting authority may accept a sworn statement as sufficient to demonstrate that a contractor is a responsible contractor and shall not be held liable for awarding a contract in reasonable reliance on that statement. Failure to verify compliance with any one of the minimum criteria or a false statement under oath in a verification of compliance shall render the prime contractor or subcontractor that makes the false statement ineligible to be awarded a construction contract on the project for which the verification was submitted.

A false statement under oath verifying compliance with any of the minimum criteria may result in termination of a construction contract that has already been awarded to a prime contractor or subcontractor that submits a false statement. A contracting authority shall not be liable for declining to award a contract or terminating a contract based on a reasonable determination that the contractor failed to verify compliance with the minimum criteria or falsely stated that it meets the minimum criteria.

**CERTIFICATION**

**By signing this document, I certify that I am an owner or officer of the company, and I swear under oath that:**

- 1) My company meets each of the Minimum Criteria to be a responsible contractor as defined herein and is in compliance with Minn. Stat. § 16C.285,**
- 2) I have included the FIRST-TIER SUBCONTRACTORS LIST with my company's bid response, and**
- 3) If my company is awarded a contract, I will also submit ADDITIONAL SUBCONTRACTORS LIST as required.**

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| <b>Authorized Signature of Owner or Officer:</b> | <b>Printed Name:</b> |
| <b>Title:</b>                                    | <b>Date:</b>         |
| <b>Company Name:</b>                             |                      |

NOTE: Minn. Stat. § 16C.285, Subd. 2, (c) If only one prime contractor responds to a bid document, a contracting authority may award a construction contract to the responding prime contractor even if the minimum criteria in subdivision 3 are not met.

**FIRST-TIER SUBCONTRACTORS LIST**

**SUBMIT WITH PRIME CONTRACTOR RESPONSE**

**PROJECT TITLE: Gutter and Downspout Replacement and Modifications Project**

Minn. Stat. § 16C.285, Subd. 5. A prime contractor or subcontractor shall include in its verification of compliance under subdivision 4 a list of all of its first-tier subcontractors that it intends to retain for work on the project.

| <b>FIRST TIER SUBCONTRACTOR NAMES<br/>(Legal name of company as registered with the Secretary of State)</b> | <b>Name of city where company home office is located</b> |
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**ADDITIONAL SUBCONTRACTORS LIST**

**PRIME CONTRACTOR TO SUBMIT AS SUBCONTRACTORS ARE ADDED TO THE PROJECT**

**PROJECT TITLE: Gutter and Downspout Replacement and Modifications Project**

This form must be submitted to the Project Manager or individual as identified in the bid document.

Minn. Stat. § 16C.285, Subd. 5. If a prime contractor or any subcontractor retains additional subcontractors on the project after submitting its verification of compliance, the prime contractor or subcontractor shall obtain verifications of compliance from each additional subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification confirming compliance with subdivision 3, clause (7), within 14 days of retaining the additional subcontractors...

| <b>ADDITIONAL SUBCONTRACTOR NAMES</b><br><b>(Legal name of company as registered with the Secretary of State)</b> | <b>Name of city where company home office is located</b> |
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| <b>ADDITIONAL SUBCONTRACTOR NAMES</b><br>(Legal name of company as registered with the Secretary of State) | <b>Name of city where company home office is located</b> |
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| <b>SUPPLEMENTAL CERTIFICATION FOR ADDITIONAL SUBCONTRACTORS LIST</b>  |                      |
|---|----------------------|
| <b>By signing this document I certify that I am an owner or officer of the company, and I swear under oath that:</b>  |                      |
| All additional subcontractors listed on <b>ADDITIONAL SUBCONTRACTORS LIST</b> have verified through a signed statement under oath by an owner or officer that they meet the minimum criteria to be a responsible contractor as defined in <b>Minn. Stat. § 16C.285.</b> |                      |
| <b>Authorized Signature of Owner or Officer:</b>  | <b>Printed Name:</b> |
| <b>Title:</b>   | <b>Date:</b>         |
| <b>Company Name:</b>  |                      |