

MINNESOTA STATE RFP TERMS AND CONDITIONS

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Requirements

- a. By submitting a response to the Request for Proposal (RFP), vendor accepts the standard terms and conditions, if a contract result. Much of the language included in the standard terms and conditions reflects the requirements of Minnesota law.
- b. Vendors requesting deviations from and exceptions to these Terms and Conditions, specifications, or the manner of this RFP must describe in detail, signed, and attached to the proposal submittal. A request must be accompanied by an explanation why the exception is being sought and what specific effect it will have on the Vendor’s ability to respond to the RFP or perform the contract. In the absence of such statement, Vendor will be deemed to have accepted all such Terms and Conditions, specifications, and the manner of the RFP. Vendor acknowledges that failure to raise an issue related to the Terms and Conditions, specifications, or manner of this RFP prior to the proposal submission deadline in the manner described constitutes a full and final waiver of that Vendor's right to raise the issue later in any action or proceeding relating to this RFP. Bemidji State University reserves the right to address nonmaterial requests for exceptions to the standard terms and conditions and contract language with the highest-scoring Vendor during contract negotiation.

Parties to the Contract

Parties to the contract(s) entered into as a result of this RFP will be the “State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities [on behalf of Bemidji State University]” and the successful Vendor(s).

Prohibited Pre-Payment

Minnesota Statutes § 16A.41, subd. 1, prohibits Bemidji State University from paying in advance, except under the limited circumstances described in Minn. Stat. § 16A.065.

Nonresident Aliens Taxes

Pursuant to 26 U.S.C. §1441, Bemidji State University is required to withhold certain federal income taxes on the gross compensation paid to nonresident aliens, as defined by Internal Revenue Code §7701(b). Bemidji State University will withhold all required taxes unless and until

Vendor submits documentation required by the Internal Revenue Service indicating that Vendor is a resident of a country with tax treaty benefits. Bemidji State University makes no representations regarding whether or to what extent tax treaty benefits are available to Vendor. To the extent that Bemidji State University does not withhold these taxes for any reason, Vendor agrees to indemnify and hold Bemidji State University harmless for any taxes owed and any interest or penalties assessed.

Entertainer Taxes

Pursuant to Minnesota Statutes 290.9201, Bemidji State University is required to withhold a two percent (2%) tax on the gross compensation, including reimbursable expenses, paid to non-Minnesota entertainers for any performance in Minnesota.

Reimbursements

Reimbursement for travel and subsistence expenses actually and necessarily incurred by Vendor as a result of the contract will be in no greater amount than provided in the current "[Commissioner's Plan](#)" promulgated by the Commissioner of Minnesota Management & Budget, available in Buyer Attachments section. Reimbursements will not be made for travel and subsistence expenses incurred outside Minnesota unless Vendor has received prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

Contract Termination

Bemidji State University may cancel the contract(s) entered into as a result of this RFP upon 30 days written notice, with or without cause.

Termination for Insufficient Funding

Bemidji State University may immediately terminate the contract(s) entered into as a result of this RFP, without penalty, if it does not obtain funding from the Minnesota Legislature or other funding source, or if funding cannot be continued at a level sufficient to allow for the payment of the services covered.

Liability

Vendor shall indemnify, save, and hold Bemidji State University, its representatives and employees harmless from any and all claims or causes of action, including all attorney's fees incurred by Bemidji State University arising from the performance of the contract(s) by Vendor or Vendor's agents or employees, entered into as a result of this RFP.

Governing Law

A contract(s) entered into as a result of this RFP, and any amendments and supplements thereto, entered into as a result of this RFP will be governed and interpreted under the laws of the State of Minnesota.

Venue and Jurisdiction

Venue for all legal proceedings arising out of the resulting contract(s), or breach thereof, will be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

Contract Assignment

A contract or any part hereof entered into as a result of this RFP may not be assigned, sublet, subcontracted, or transferred directly or indirectly without prior written consent of Bemidji State University.

Amendments

Any amendments to the resulting contract shall be in writing and shall be executed by the same parties who executed the original contract, or their successors in office.

For Software Related Service Contracts Only

End User License Agreements

This resulting contract will be the entire agreement between Bemidji State University (including Bemidji State University employees, students, and other end users) and Vendor. In the event that Vendor enters into terms of use agreements or other agreements or understandings, whether electronic, click-through, verbal or in writing, with Bemidji State University employees, students,

or other end users, such agreements will be null, void and without effect, and the terms of the contract with Bemidji State University will apply.

Intellectual Property Infringement

Vendor represents and warrants that its software and any related systems and/or services related to its software (collectively, the “Software”) furnished by Vendor to Bemidji State University will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party. Vendor will, at its expense, defend any suit brought against Bemidji State University, and will indemnify Bemidji State University against an award of damages and costs (including reasonable attorney fees, court costs, and appeals), made against Bemidji State University by settlement or final judgment of a court that is based on a claim that the use of Vendor’s Software infringes an intellectual property right of a third party.

Required Data Collection and Disclosure

As a condition of the contract(s) entered into as a result of this RFP, Vendor(s) will be required by Minn. Stat. §270C.65 to provide a social security number, a federal tax identification number or Minnesota tax identification number. This information may be used in the enforcement of federal and state tax laws. These numbers will be available to federal and state tax authorities and state personnel involved in approving the contract and the payment of state obligations. Supplying these numbers could result in action to require Vendor to file state tax returns and pay delinquent state tax liabilities. The resulting contract will not be approved unless these numbers are provided.

If you are an independent contractor, Minn. Stat. §256.998 requires the state to report your name, address and social security number to the New Hire Reporting Center of the Minnesota Department of Human Services unless your contract is for less than two months in duration with gross earnings of less than \$250.00 per month. This information may be used by state or local child support enforcement authorities in the enforcement of state and federal child support laws.

Workers’ Compensation

The Vendor will certify it is in compliance with Minnesota Statutes §176.181, subd. 2 pertaining to workers’ compensation insurance coverage. The Vendor’s employees and agents will not be considered Bemidji State University employees. Any claims that may arise under the Minnesota Workers’ Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way Bemidji State University’s obligation or responsibility.

State Audit

The books, records, documents and accounting practices and procedures of Vendor relevant to the resulting contract(s) must be available for audit purposes to Bemidji State University and the Legislative Auditor's Office for a minimum of six (6) years after the termination/expiration of the contract.

Minnesota Government Data Practices Act

The requirements of Minnesota Statutes § 13.05, subd. 11 will apply to the contract(s) entered into as a result of this RFP. Vendor must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by Bemidji State University in accordance with the contract and as it applies to all data created, gathered, generated, or acquired in accordance with the resulting contract.

All materials submitted in response to this RFP will become property of Bemidji State University and will become public record after the evaluation process is completed. Pursuant to the statute, completion of the evaluation process occurs when Bemidji State University has completed negotiating the contract with the selected Vendor. If Vendor submits information in response to this RFP that it believes to be trade secret materials as defined by the Minnesota Government Data Practices Act, Vendor must:

- Mark clearly all trade secret materials in its response at the time the response is submitted;
- Include a statement with its response justifying the trade secret designation for each item;
- Defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the State of Minnesota, Bemidji State University Colleges and Universities, its agents and employees, from any judgments or damages awarded against the State or Bemidji State University in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the award of a contract. In submitting a response to this RFP, the Vendor agrees this indemnification survives as long as the trade secret materials are in possession of Bemidji State University.

Bemidji State University will not consider the prices submitted by the Vendor or contract documents proposed by the Vendor to be proprietary or trade secret materials.

FERPA School Official Requirement

In the event the contract(s) entered into as a result of this RFP allows the selected Vendor(s) access to any private student data, the selected Vendor(s) agree to be designated a “school official” with “legitimate educational interests” in Bemidji State University’s data, as those terms have been defined under the Family Educational Rights and Privacy Act (“FERPA”) and its implementing regulations, and Vendor will agree to abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. The selected Vendor will agree to use Bemidji State University’s data only for the purpose of fulfilling its duties under the resulting contract or for Bemidji State University’s benefit, and will not monitor or share such data with or disclose it to any third party except as required by law, or authorized in writing by Bemidji State University.

Ownership of Materials and Intellectual Property Rights

- a. Bemidji State University shall own all rights, title and interest in all of the materials conceived or created by the Vendor, or its employees or subcontractors, either individually or jointly with others and which arise out of the performance of the resulting contract, or were created and paid for under the resulting contract, including any inventions, reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer based training modules, electronically, magnetically or digitally recorded material, and other work in whatever form (hereinafter “Materials”). The Vendor shall assign Bemidji State University all rights, title and interest to the Materials. The Vendor shall, upon request of Bemidji State University, execute all papers and perform all other acts necessary to assist Bemidji State University to obtain and register copyrights, patents or other forms of protection provided by law for the Materials. The Materials created under the resulting contract by the Vendor, its employees or subcontractors, individually or jointly with others, shall be considered “works made for hire” as defined by the United States Copyright Act. All of the Materials, whether in paper, electronic, or other form, shall be remitted to Bemidji State University by the Vendor, its employees and any subcontractors, and the Vendor shall not copy, reproduce, allow or cause to have the Materials copied, reproduced or used for any purpose other than performance of the Vendor’s obligations under this contract without the prior written consent of Bemidji State University’s authorized representative.
- b. The Vendor shall warrant that Materials produced or used under the resulting contract do not and will not infringe upon any intellectual property rights of another, including, but not limited to, patents, copyrights, trade secrets, trade names, and service marks and names. The Vendor shall indemnify and defend, to the extent permitted by the Attorney General, Bemidji State University at the Vendor’s expense from any action or claim brought against Bemidji State University to the extent that it is based on a claim

that all or part of the Materials infringe upon the intellectual property rights of another. The Vendor shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs and damages, including, but not limited to, reasonable attorney fees arising out of this contract, amendments and supplements thereto, which are attributable to such claims or actions. If such a claim or action arises, or in the Vendor's or Bemidji State University's opinion is likely to arise, the Vendor shall, Bemidji State University's discretion, either procure for Bemidji State University the right or license to continue using the Materials at issue or replace or modify the allegedly infringing Materials. This remedy shall be in addition to and shall not be exclusive to other remedies provided by law.

Accessibility

If the resulting contract includes any end-user-facing human interface, such as an end-user device software component or web site form, file upload system, etc. Vendor shall warrant that the products or services to be provided under the resulting contract comply with the accessibility guidelines of Section 508 of the Rehabilitation Act of 1973 as amended, and the [Web Content Accessibility Guidelines](#) (WCAG) 2.0.

If the resulting contract includes any end-user-facing human interface, such as an end-user device software component, web pages or site, video or audio playback, file upload system, mobile device components, etc., Vendor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention and Vendor further agrees to indemnify and hold harmless Bemidji State University from any claim arising out of its failure to comply with the aforesaid requirements.

Bemidji State University, at its discretion, may at any time test Vendor's products or services covered by the resulting contract to ensure compliance with Section 508 and WCAG 2.0. Testing that results in findings of non-compliance, will result in a 25% reduction in the total cost of the products and/or services covered by the resulting contract if the non-compliance is not corrected within 30 days of being reported to Vendor in writing. All withheld amounts will be paid to Vendor upon correction of the non-compliance and acceptance by Bemidji State University. Said acceptance not to be unreasonably withheld.

Failure to comply with these requirements will constitute a breach and be grounds for termination of this resulting contract and a pro-rated refund of fees paid from Bemidji State University for the remainder of original contract period.

Physical and Data Security

In the event the contract(s) entered into as a result of this RFP allows the selected Vendor(s) access to any nonpublic data as defined in the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (“Bemidji State University Data”), Vendor agrees to the following terms:

- a. Vendor will comply with all applicable state, federal and local laws and regulations, including but not limited to the laws under Minnesota Statute Chapters 13 relating to confidentiality of information received as a result of the contract and will protect such data using commercially-acceptable standards, no less rigorously than it protects its own confidential information. Vendor agrees that it, its officers, employees, and agents will be bound by such confidentiality laws and that it will establish procedures for safeguarding the information. Vendor agrees to notify its officers, employees, and agents of the requirements of confidentiality and of the possible penalties imposed by violation of these laws. Vendor agrees that neither it, nor its officers, employees or agents will disclose or make public any information received by Vendor on behalf of Bemidji State University.
- b. Vendor must recognize Bemidji State University’s sole and exclusive right to control the use of Bemidji State University Data. Vendor further agrees it will make no use of any of the described information, for either internal or external purposes, other than that which is directly related to the performance of the contract.
- c. Vendor agrees it will indemnify and hold harmless the State of Minnesota and Bemidji State University and Bemidji State University from any and all liabilities and claims resulting from the unauthorized disclosure by Vendor, its officers, employees or agents of any information required to be held confidential under the provisions of the contract(s) entered into as a result of this RFP. Vendor must return all source data to the “Authorized Representative” to be identified in the resulting contract.
- d. Network Security. To the extent applicable to Vendor’s performance under the Agreement, Vendor agrees at all times to maintain network security that, at a minimum, includes: network firewall provisioning, intrusion detection, regular third-party penetration testing and vulnerability scanning. Vendor will ensure that such security measures are regularly reviewed and revised to address evolving threats and vulnerabilities.
- e. Patching: Vendor agrees to maintain secure environments that are patched and up-to-date with all appropriate security updates no less than the standards set forth in [Operating Instructions 5.23.1.5](#).
- f. Data Encryption. Vendor agrees to encrypt all data in transit and implement security controls to protect data at rest using commercially reasonable and industry accepted measures such as encryption.
- g. Application Security. Vendor agrees to use industry standard practices (including regular static and dynamic scanning) at all times to provide, maintain and support its offering

with subsequent updates, upgrades, and bug fixes such that Vendor's offering is, and remains secure from those vulnerabilities as described in:

- The [Open Web Application Security Project's](#) (OWASP) "Top Ten Project" and
 - The [CWE/SANS Top 25 Programming Errors](#) and
 - Other generally recognized and comparable industry practices or standards.
- h. Password Protection: Vendor agrees that any device or computer that resides at any Bemidji State University facility, has access to a Bemidji State University network, or stores any non-public data is equipped with strong and secure password protection in compliance with [Operating Instructions 5.23.1.1](#);
- i. Data Re-Use: Vendor agrees that any and all data exchanged will be used expressly and solely for the purpose enumerated in the Agreement. Bemidji State University Data will not be distributed, repurposed or shared across other applications, environments, or business units of Vendor. Vendor further agrees that no Bemidji State University Data of any kind will be transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by Bemidji State University.
- j. Data Return or Destruction: Vendor agrees that, upon completion, termination, or cancellation of the Agreement, all Bemidji State University Data will be remitted, without charge, in a mutually agreeable format and media, to Bemidji State University. The foregoing sentence does not apply if Bemidji State University's Chief Information Security Officer or delegate authorizes in writing Vendor to erase, destroy, and render unreadable the data and Vendor certifies in writing that these actions have been completed within thirty (30) days of the termination of the Agreement or within seven (7) days of the request of an agent of Bemidji State University, whichever comes first; and
- k. Reporting of Suspected and Actual Breaches. For this and following subsections, "breach" has the meaning given to it under the applicable Minnesota (Minn. Stat. § 13.055 Subd. 1(a)) or federal law. Immediately upon discovery of confirmed or suspected breach of Bemidji State University Data, Vendor will notify Bemidji State University by telephone and email. In no event will the report be made more than one (1) business day after Vendor knows or reasonably suspects a breach has or may have occurred. In the event of a suspected breach, Vendor will Bemidji State University informed regularly of the progress of its investigation until the uncertainty is resolved.
- l. Costs Arising from Breach. In the event of a breach by Vendor or its staff, or any other event requiring notification under applicable law, Vendor agrees to promptly reimburse all costs to Bemidji State University arising from such breach, including but not limited to costs of notification of individuals, establishing and operating call center(s), credit monitoring and/or identity restoration services, time of Bemidji State University personnel responding to the breach, civil or criminal penalties levied against Bemidji

State University, attorney's fees, court costs, etc. Any breach may be grounds for immediate termination of the resulting contract by Bemidji State University.

Payment Card Industry Data Security

If the resulting contract involves the storage, processing, or transmittal of payment card data, Vendor agrees to establish security procedures to protect cardholder data and comply with the Payment Card Industry Data Security Standards (PCI DSS). Vendor agrees to notify Bemidji State University within 30 days if either Vendor establishes that it is not PCI-compliant or Vendor is notified by a Qualified Security Assessor or Vendor's acquiring bank that Vendor is not PCI-compliant. Vendor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of cardholder data. In the event of a breach of any of Vendor's security obligations or other event requiring notification under applicable law, Vendor agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend Bemidji State University Colleges and Universities and Bemidji State University and its trustees, officers, and employees from and against any claims, damages, or other harm related to such a breach. Vendor agrees to notify Bemidji State University's authorized representative within 24 hours in the event of unauthorized release of cardholder data.

Publicity

Any publicity given to the program, publications, or services provided by the Vendor from any resulting contract, including, but not limited to, notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor or its employees individually or jointly with others, or any subcontractors shall identify Bemidji State University as the sponsoring agency and shall not be released prior to receiving the approval of Bemidji State University's authorized representative.

Insurance Requirements

The selected Vendor(s) will be required to submit an ACORD Certificate of Insurance to the Bemidji State University's authorized representative prior to execution of the contract. The selected Vendor may not commence work under the contract until they have obtained all the insurance described below. Vendor shall maintain such insurance in force and effect throughout the term of the resulting contract Bemidji State University reserves the right to immediately terminate the resulting contract if Vendor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against Vendor. All insurance policies must be

available for inspection by Bemidji State University and copies of policies must be submitted Bemidji State University authorized representative upon written request.

- a. Workers' Compensation Insurance. Vendor must provide workers' compensation insurance for all its employees and, in case any work is subcontracted, Vendor shall require the subcontractor to provide workers' compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability, at limits not less than \$100,000.00 bodily injury by disease per employee; \$500,000.00 bodily injury by disease aggregate; and \$100,000.00 bodily injury by accident.
- b. Commercial General Liability. Vendor shall maintain a comprehensive commercial general liability insurance (CGL) policy protecting it from bodily injury claims and property damage claims which may arise from operations under the contract whether the operations are by Vendor or by a subcontractor or by anyone directly or indirectly employed under the contract. The minimum insurance amounts will be:
 - \$2,000,000.00 per occurrence
 - \$2,000,000.00 annual aggregate applying per project or location
 - \$2,000,000.00 annual aggregate applying to Products/Completed Operations

In addition, the following coverages shall be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Products and Completed Operations Liability
- Contractual Liability as provided in Insurance Services Office (ISO) form CG 00 01 04 13 or its equivalent
- Pollution Exclusion with standard exception as per Insurance Services Office (ISO) Commercial General Liability Coverage Form – CG 00 01 04 13 or its equivalent
- Independent Contractors (let or sublet work)
- Waiver of Subrogation in favor of Minnesota State Colleges and Universities
- Coverage will not contain any restrictive endorsement(s) excluding or limiting Broad Form Property Damage (BFPD) or Explosion, Collapse, Underground (XCU)

Name the following as Additional Insureds, to the extent permitted by law:

The Board of Trustees of the Minnesota State Colleges and Universities and its officers and members, to include Minnesota State, the State of Minnesota, officers and employees of the State of Minnesota, the Architect and its agents as additional named insured, to the extent permitted by law, for claims arising out of Vendor's

negligence or the negligence of those for whom Vendor is responsible for both ongoing and completed operations.

- c. Commercial Automobile Liability. Vendor shall maintain insurance protecting it from bodily injury claims and property damage claims resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations of vehicles under the contract, and in case any work is subcontracted, Vendor will require the subcontractors to maintain Commercial Automobile Liability insurance. The minimum insurance amounts will be:

- \$2,000,000.00 per occurrence Combined Single Limit (CSL) for bodily injury and property damage

In addition, the following coverages should be included:

- Owned, Hired, and Non-owned

- d. Errors and Omissions (E & O) Insurance.

Vendor shall maintain insurance protecting it from claims Vendor may become legally obligated to pay resulting from any actual or alleged negligent act, error or omission related to Vendor's services required under this contract. The minimum insurance amounts will be:

- \$2,000,000.00 per occurrence
- \$2,000,000.00 annual aggregate

Vendor shall submit a certified financial statement providing evidence Vendor has adequate assets to cover any applicable E & O policy deductible.

- e. Additional Insurance Conditions:

- Vendor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to Bemidji State University with respect to any claim arising out of Vendor's performance under the resulting contract.
- If Vendor receives a cancellation notice from an insurance carrier affording coverage herein, Vendor agrees to notify Bemidji State University within five (5) business days with a copy of the cancellation notice unless Vendor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to Bemidji State University.
- Vendor is responsible for payment of contract-related insurance premiums and deductibles.
- Vendor's policy(ies) shall include legal defense fees in addition to its liability policy limits.
- The insurance policies will be issued by a company or companies having an "A.M. Best Company" financial strength rating of A- (Excellent) or better and

authorized to do business in the State of Minnesota prior to execution of the resulting contract.

- An Umbrella or Excess Liability insurance policy may be used to supplement Vendor's policy limits to satisfy the full policy limits required by the resulting contract.

Workforce Certificates of Compliance and Human Rights Requirements

For all contracts, including renewals, estimated to be in excess of \$100,000, all responding Vendors are required to complete the Human Rights Certification Information and Workforce Certificate and submit it with the response. As required by Minnesota Rule 5000.3600, "It is hereby agreed between the parties that Minnesota Statutes §363A.36 and Minnesota Rule 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it." Copies of Minnesota Statutes §363A.36 and Minnesota Rules 5000.3400 - 5000.3600 are available at the [Office of the Revisor of Statutes](#). All responding Vendors shall comply with the applicable provisions of the Minnesota Human Rights law, Minnesota Statutes §363.A36. Failure to comply is grounds for rejection of the Vendor's proposal.

Equal Pay Certificate Application

If the response to this solicitation could be in excess of \$500,000, including renewal and extension options, the Vendor must obtain a Certificate of Equal Pay Application from the Minnesota Department of Human Rights (MDHR) or claim an exemption prior to contract execution. A vendor is exempt if it has not employed more than 40 full-time employees on any single working day in one state during the previous 12 months.

Please contact MDHR with questions at:

651-539-1100 (metro)

1-800-657-3704 (toll free)

711 or 1-800-627-3529 (MN Relay)

compliance.MDHR@state.mn.us