

**State of Minnesota  
Minnesota Multistate Contracting Alliance for Pharmacy**

**Request for Proposals  
Influenza Vaccine from Vaccine Distributors  
2010-2011**

**Proposal Due Date: November 24, 2009, 12:00 p.m. (noon), Central Time.**

The Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP) is requesting responses in order to establish contracts for supplying influenza vaccine to participating MMCAP Facilities.

**What is MMCAP?**

MMCAP is a voluntary group purchasing organization, managed by the Materials Management Division of the State of Minnesota's Department of Administration, and is comprised of primarily government-run health care facilities. It has 46 state members and over 6,000 member facilities. For more information, visit [www.mmcap.org](http://www.mmcap.org).

**Responses to this RFP will be used to establish contracts for influenza vaccine from vaccine distributors** for the 2010-2011 influenza season. MMCAP will maintain direct contracts with vaccine manufacturers, where available.

**INSTRUCTIONS FOR PROPOSAL PREPARATION**

**Documents Making Up the Complete Proposal**

1. "MMCAP Influenza Vaccine Proposal Response Sheet."
2. "Price Sheet" spreadsheet.

**To receive an electronic copy of the spreadsheet, send your request to [mn.multistate@state.mn.us](mailto:mn.multistate@state.mn.us).**

2. Exceptions to the attached MMCAP standard contract, if any (electronic copy included).

**Addenda and Oral Communication:**

MMCAP may modify this RFP prior to its proposal due date by issuing written addenda to all parties who have requested this RFP. Any oral communication concerning this RFP will not be binding, nor will it be cause for protesting any language of this procurement, nor will it in any way excuse the responder from its obligations.

**Questions:** Prospective responders who have any questions regarding this request for proposal may send them to [mn.multistate@state.mn.us](mailto:mn.multistate@state.mn.us) by November 11, 2009.

**Proposal Due Date:**

Submit **one original and three copies** of the complete proposal to:

MMCAP Influenza Vaccine Proposal  
Materials Management Division  
Minnesota Department of Administration  
50 Sherburne Avenue, Suite 112  
St. Paul, MN 55155

**Sealed proposals** must be received and time stamped by the Materials Management Division's receptionist not later than **2:00 p.m., Central Standard Time, on November 24, 2009**. **Late proposals will not be considered.** All costs incurred in responding to this RFP will be borne by the responder.

Extend prices two decimal places only. Pricing must be firm for the term of the contract, and must be available for all MMCAP member facilities.

Separate federal excise tax for vaccines in the proposed pricing.

Any alterations in cost figures on the hard copy of the Proposal Price Sheet will be rejected unless initialed in ink by the person responsible for or authorized to make decisions as to the price(s) quoted. Proof of authorization must be provided upon request. The use of correction fluid is considered an alteration.

**3. State Specific Requirements**

**A. STATE OF NEW YORK**

Please be aware that the State of New York "piggybacks" off of the MMCAP contract. This means that the State of New York requires a separately negotiated contract for the sale of influenza vaccine in its state. For further information or for a copy of the agreement, contact:

Jason Wilkie, Purchasing Officer  
New York State Office of General Services  
Division of Purchasing  
Esp Tower Bldg 37th Floor  
Albany, NY 12242  
Phone: 518.474.4723  
Email: jason.wilkie@ogs.state.ny.us

**B. STATE OF FLORIDA**

As referenced in 2. above, Vendors wishing to do business directly with the State of Florida may be required by Florida to comply with the provision set-forth below. Please indicate in your proposal if you agree to comply with the provision set forth below. If so, this provision will be included as an incorporated contract provision:

**1. Vendor Registration**

Each vendor doing business with the State for the sale of commodities or contractual services as defined in Section 287.012, F.S., shall register in the MyFloridaMarketPlace system, unless exempted under subsection 60A-1.030(3), F.A.C. Also, an agency shall not enter into an agreement for the sale of commodities or contractual services as defined in Section 287.012 F.S. with any vendor not registered in the MyFloridaMarketplace system, unless exempted by rule.

A vendor not currently registered in the MyFloridaMarketPlace system shall do so within 5 days after posting of intent to award. Information about the registration is available, and registration may be completed, at the MyFloridaMarketPlace website (link under Business on the State portal at <http://www.myflorida.com>). Those lacking internet access may request assistance from the MyFloridaMarketPlace Customer Service at 866-352-3776 or from State Purchasing, 4050 Esplanade Drive, Suite 300, Tallahassee, Florida 32399.

For vendors located outside of the United States, please contact Vendor Registration Customer Service at 866-352-3776 (8 a.m. - 5:30 p.m. Eastern Time) to register.

**2. Transaction Fee**

The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057(23), Florida Statutes (2002), all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor

Quarter 2	October 1 <sup>st</sup> – December 31 <sup>st</sup>	<u>February 15<sup>th</sup></u>
Quarter 3	January 1 <sup>st</sup> – March 31 <sup>st</sup>	<u>May 15<sup>th</sup></u>
Quarter 4	April 1 <sup>st</sup> – June 30 <sup>th</sup>	<u>August 15<sup>th</sup></u>
-----	-----	<u>30 calendar days following the termination of this Statewide Contract for any reason</u>

b. The Quarterly Sales Report must be in Excel spreadsheet format and must contain the following fields: Vendor Part Number/SKU, Item Description, Customer Name, NIGP Code, Unit of Measure (Packaging), Volume Quantity, Order Date, Date Delivered, List Price, Contract Price, Total Contract Spend, Total Admin Fee Owed Off Contract Price.

c. At the end of each state fiscal quarter as defined above, Contractor shall prepare the Quarterly Sales Report. In the event no sales have occurred, the Contractor must complete and submit the Quarterly Sales Report, indicating no sales have occurred. No later than the date identified above as the “Contractor’s Payment Due Date” for each fiscal quarter, Contractor shall remit a check payable to DOAS for the Fees, which check shall include the note “administrative fee” and the contract number. Contractor shall remit the check together with the Quarterly Sales Report to:

Department of Administrative Services  
**Finance & Administration Division**  
Finance and Administration Division Director  
Sloppy Floyd Building  
200 Piedmont Avenue, S.E.  
Suite 1820, West Tower  
Atlanta, Georgia 30334-9010

At the same time, Contractor shall also submit a second copy of the Quarterly Sales Report to the DOAS Issuing Officer. By submission of these reports and corresponding Contractor payments, Contractor is certifying their correctness. DOAS, at its sole discretion, may also accept payment of Fees from the Contractor via electronic funds transfer (EFT).

d. Auditing and Contract Close Out. All sales reports and Fee payments shall be subject to audit by the State. Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the State and all Fees throughout the term of the Statewide Contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Contractor shall permit the Auditor of the State of Georgia or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Statewide Contract, wherever such records may be located during normal business hours. Contractor shall not impose a charge for audit or examination of the Contractor’s books and records. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

MMCAP reserves the right to make multiple awards.

MMCAP reserves the right to reject any or all proposals or parts of proposals and to waive informalities. Proposals that do not comply with the mandatory provisions of this RFP may be considered nonresponsive and may be rejected.

## GENERAL PROPOSAL TERMS AND CONTRACT CONDITIONS

### **Conflicts of Interest:**

The responder must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals. The list should indicate the name of the entity, the relationship, and a discussion of the conflict.

### **Disposition of Responses:**

All materials submitted in response to this RFP will become property of the State of Minnesota and will become public record after the evaluation process is completed and an award decision made.

MMCAP will not consider the prices submitted by the responder to be proprietary or trade secret materials.

Responses to this RFP will not be open for public review until MMCAP decides to pursue a contract and that contract is awarded.

### **Sample Contract:**

Responder(s) awarded a contract will be required to execute MMCAP's standard contract, which is attached for your reference (a copy which you may use is available by sending a request to [mn.multistate@state.mn.us](mailto:mn.multistate@state.mn.us)). Much of the language reflects requirements of Minnesota statutes and cannot be altered.

Numerous and/or onerous exceptions that contradict Minnesota law may result in your proposal being disqualified from further review and evaluation. Only those exceptions indicated in your proposal to the RFP will be available for discussion or negotiation.

To take exception to contract language, clearly indicate in the contract document what language is to be stricken and what language is to be added. Use the Microsoft Word "Track Changes" feature. **DO NOT MAKE FORMATTING CHANGES.** The altered contract document must be submitted on a separate diskette or CD in Microsoft Word, labeled "      (Vendor's Name)       Contract Exceptions."

**Do not attach your boilerplate contract. Any exceptions must be clearly written and specific to a given contract article; also provide suggested alternative language.**

### **Contingency Fees Prohibited:**

Pursuant to Minn. Stat. § 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

### **Laws and Regulations:**

All products proposed and furnished must comply fully with the laws in the states in which the products are sold and federal laws and regulations.

### **RFP Costs:**

Costs incurred with responding to this RFP are entirely the responsibility of the responder and will not be chargeable to the State of Minnesota or any agency thereof.

**A.** No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

**B.** If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.

**C.** The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

**D.** This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**4) Affidavit of Noncollusion:**

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

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

**B.** That the attached response covering the contract for pharmaceutical and related products has been arrived at by the responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other supplier of materials, supplies, equipment or services described in the Request for Proposals, designed to limit fair or open competition;

**C.** That the contents of the RFP response have not been communicated by the responder or its employees or agents to any person not an employee or agent of the responder and will not be communicated to any such persons prior to the official opening of the responses; and

**D.** That I have fully informed myself regarding the accuracy of the statements made in this affidavit.

**If the Responder does not agree to these certifications the response will be rejected.**

Authorized Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and sworn to me this \_\_\_\_ day of \_\_\_\_\_.

Notary Public  
My commission expires

Customer Name  
 Customer Number  
 Order Number  
 Bill to Address  
 Bill to City  
 Bill to State  
 NDC  
 Product Name  
 Pack Size  
 Contract Price  
 Quantity Ordered (in packs)  
 Quantity Shipped  
 Extended Price (Quantity \* Price)  
 Ship Date  
 Tracking Number

Within 30 days of Vendor's final shipment, Vendor must submit to MMCAP a final sales report to Mn.MMCAP@state.mn.us. The report must be in an Excel spreadsheet per the format in Attachment A, which is attached and incorporated.

2.8.2 Distributor(s) must be able to supply to the MMCAP Office accurate monthly sales data on or before the 10th day of the second subsequent month (e.g., June's data will be due July 10). This data MUST include the following for every transaction between the distributor and the MMCAP Facility:

<b>Required Data Field Full Name</b>
MMCAP-assigned facility ID
MMCAP Facility Name
Blank Field
Vendor-assigned Account number for the MMCAP Facility
Invoice Number
Invoice Line Number
Purchase Order Number
Invoice date (mmdccyy)
Buyer name or equivalent of buyer ID for person submitting the invoices
Vendor's (distributor) SKU item number
NDC of purchased product in 5-4-2 format as stored in First DataBank, Inc.
Label Name
Unit Dose
Pack Size
Unit
Case Size
Dose
Strength
Route
Unit Price (99999.9999)
Quantity ordered (not Vendor repackaged or re-bundled quantity)(999999.9999)
Quantity shipped (not Vendor repackaged or re-bundled quantity) (999999.9999)
Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (99999999.999)

Monthly Usage Report - Fixed Length Fields

Required Data Field Full Name	Field Name	Data Type	Format (note decimals are to be included)	Size	Nulls	Begin Column	End Column
MMCAP-assigned facility ID	MMCAP_id	Alpha Numeric		7	1	1	7
MMCAP Facility Name	MMCAP_Name	Alpha Numeric		30	1	8	37
Vendor Distribution Center Code	DistributionCenter	Alpha Numeric		3	1	38	40
Vendor-assigned Account number for the MMCAP Facility	VendAccountNo	Alpha Numeric		10	1	41	50
Invoice Number	InvoiceNumber	Alpha Numeric		15	1	51	65
Invoice Line Number	InvoiceLineNo	Alpha Numeric		4	1	66	69
Purchase Order Number	poNumber	Alpha Numeric		15	1	70	84
Invoice date (mmddccyy)	InvoiceDate	numeric	mmddccyy	8	1	85	92
Buyer name or equivalent of buyer ID for person submitting the invoices	BuyerName	Alpha Numeric		20	1	93	112
Vendor's (distributor) SKU item number	SKU	Alpha Numeric		13	1	113	125
NDC of purchased product in 5-4-2 format as stored in First DataBank, Inc.	NDC	Alpha Numeric	999999999	11	1	126	136
Label Name	LabelName	Alpha Numeric		40	1	137	176
Unit Dose	UD	numeric	9	1	1	177	177
Pack Size	Pack_Size	numeric	99999.999	9	1	178	186
Unit	Unit	Alpha Numeric		2	1	187	188
Case Size	Case_Size	numeric	9999	4	1	189	192
Dose	D	Alpha Numeric		10	1	193	202
Strength	STR	Alpha Numeric		10	1	203	212
Route	RT	Alpha Numeric		10	1	213	222
Unit Price (99999.9999)	UnitPrice	numeric	99999.9999	10	1	223	232
Quantity ordered (not Vendor repackaged or re-bundled quantity)(999999.9999)	QuantityOrdered	numeric	999999.9999	11	1	233	243
Quantity shipped (not Vendor repackaged or re-bundled quantity) (999999.9999)	QuantityShipped	numeric	999999.9999	11	1	244	254
Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (99999999.999)	ExtendedPrice	numeric	99999999.999	13	1	255	267
Type of transaction (MMCAP contract purchase, other contract purchase (340B,PHS), not on contract purchase) 1=contract item, 2=other contract, 3=not on contract	Sale Type	Alpha Numeric		1	1	268	268
Bill to Address 1	billtoaddress1	Alpha Numeric		30	1	269	298
Bill to City	billtocty	Alpha Numeric		20	1	299	318
Bill to State (2 alpha postal code)	billtostate	Alpha Numeric		2	1	319	320
Bill to Zip (standard 5-4 format, no dash necessary)	billtozip	Alpha Numeric		9	1	321	329
Ship to Address 1	shiptoaddress1	Alpha Numeric		30	1	330	359
Ship to City	shiptocty	Alpha Numeric		20	1	360	379
Ship to State (2 alpha postal code)	shiptostate	Alpha Numeric		2	1	380	381
Ship to Zip (standard 5-4 format, no dash necessary)	shiptozip	Alpha Numeric		9	1	382	390
Service Fee (9999.9999)	ServiceFee	numeric	9999.9999	9	1	391	399
MMCAP Contract Number (MMSxxxxx)	contractnumber	Alpha Numeric		10	1	400	409
Admin fee for not-on-contract items (9999.9999)	AdminFee	numeric	9999.9999	9	1	410	418
Credit Indicator (C for credit)	CreditIndicator	Alpha Numeric		1	1	419	419
MMCAP Assigned Wholesaler Code (AmeriSource-Bergen=0401, Cardinal Health=0301, Morris-Dickson=0701)	WholeCode	Alpha Numeric		4	0	420	423
Manufacture Name (MFG Name)	MfgName	Alpha Numeric		40	1	424	463
Class of Trade	ClassofTrade	Alpha Numeric		4	1	464	467
340b Purchase	340b	Alpha Numeric		1	1	468	468

of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees.

**CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES SHALL BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.**

### 2.12.3 STATE OF GEORGIA

**ADMINISTRATIVE FEE AND QUARTERLY SALES REPORTING.** Pursuant to H.B. 312 and Official Code of Georgia Annotated Section 50-5-51 (10), DOAS has the authority to collect moneys, rebates, or commissions payable to the State that are generated by supply contracts established pursuant to Code Section 50-5-57. Pursuant to this authority, DOAS has identified certain statewide contracts which will include administrative fees, which are "pass through" fees paid by the state customer in addition to the cost of the vendor's goods or services. These administrative fees are used by DOAS to fund various initiatives, including the administration of existing and new statewide contracts, training, and technology. Pursuant to this Amendment, DOAS hereby imposes an administrative fee on this Statewide Contract, as defined below:

ADMINISTRATIVE FEE	
Administrative Fee Percentage:	Two Percent (2%)
Effective Date:	January 1, 2009

By executing this Amendment, the parties agree that the administrative fee identified in the table above has been included in new contract pricing, which new contract pricing has been approved by DOAS and will become effective upon the Effective Date identified in the Administrative Fee Table above. The administrative fee (hereinafter, "the Fee") will be collected by Contractor on all sales pursuant to this Statewide Contract placed on or after the "Effective Date" defined in the Administrative Fee Table. The Fee shall be remitted by Contractor to DOAS as further described below.

- a. Quarterly Payment and Sales Reporting Requirements. The parties agree that the collected Fees and the corresponding Quarterly Sales Report, which identifies the total sales pursuant to this Statewide Contract for the corresponding fiscal quarter, shall be submitted by Contractor to DOAS. The total sales reported in the Quarterly Sales Report should be limited to sales in which the Contractor has received payment from the state customer. The Fees and the Quarterly Sales Report must be received by DOAS on or before the Contractor's Payment Due Date as defined in the table below:

the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

In no event shall Contractor retain any amount of money in excess of the compensation to which Contractor is entitled and all Fees owed DOAS shall be paid within thirty (30) calendar days of termination of this Statewide Contract for any reason.

g. Modifying or Canceling the Fee. DOAS reserves the right to modify and/or cancel the Fee at any time. Contractor shall immediately amend the Statewide Contract pricing to reflect any modification or cancellation of the Fee by DOAS. In addition, DOAS reserves the right to revise collection and reporting requirements in conjunction with implementation of an on-line procurement system.

h. Late Payment Fee. In the event DOAS does not receive the Contractor's payment of the Fees on or before the Contractor's Payment Due Date, the parties agree the Contractor must pay DOAS interest on the overdue Fees at a rate of eighteen percent (18%) per annum. Interest will be calculated as follows:

$$\begin{aligned} & (\text{Administrative Fee Amount Due}) \times (18\%) = X \\ & X / 365 \text{ (366 for leap years)} = Y \\ & Y \times (\text{Number of Days Payment is Late}) = \text{Interest Owed} \end{aligned}$$

For the purposes of this provision, payment of the Fees shall be considered received by DOAS on (1) the date of DOAS' receipt of the EFT confirmation or (2) the date DOAS receives the envelope containing a check for the correct amount of the administrative fee. In the event the Contractor does not submit full payment of the Fees owed, interest shall only be applicable to the portion of the Fees which is outstanding. In the event the Contractor makes an error and overpays, the Contractor is responsible for alerting DOAS in writing of the Contractor's discovery of the overpayment. DOAS will confirm whether an overpayment has occurred and refund the overpayment amount to the Contractor no later than thirty (30) days' following DOAS' receipt of written notice of the overpayment. DOAS will have no responsibility for interest or any other fees with respect to Contractor's overpayment of Fees.

g. Default. **THE PARTIES AGREE THE CONTRACTOR'S RESPONSIBILITY TO COLLECT AND REMIT THE ADMINISTRATIVE FEE ON BEHALF OF DOAS IS A SERIOUS RESPONSIBILITY AS THE CONTRACTOR IS HANDLING STATE FUNDS.** Accordingly, failure to comply with these contractual requirements shall constitute grounds for declaring Contractor in default and recovering procurement costs from Contractor in addition to all outstanding Fees and interest.

#### 2.12.4 ALL OTHER STATES

In the event any other state requires additional contract terms or conditions or collects a service or transaction fee or other type of administrative fee from the Vendor, those terms and conditions or fees must be amended into the MMCAP contract. For example, if a Member state requires a one percent (1%) service fee to be paid by the MMCAP-contracted Vendor, the Vendor must present the information to MMCAP and an amendment to the contract will be issued that will change the cost of the products to that state to include the 1% fee.

**3. Authorized Representatives.** MMCAP's Authorized Representative is the MMCAP Manager, Department of Administration, 50 Sherburne Avenue, St. Paul, MN 55155 (MMCAP Manager).  
The Vendor's Authorized Representative is \_\_\_\_\_.

#### **4. Assignment, Amendments, Waiver, and Contract Complete**

**4.1 Assignment.** Neither the Vendor nor MMCAP may assign or transfer any rights or obligations under this contract without the prior consent of the parties and a fully executed Assignment Agreement.

**4.2 Amendments.**

Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this contract.

**8.2 Endorsement.** The Vendor must not claim that MMCAP endorses its products or services.

**9. Governing Law, Jurisdiction, and Venue.** Minnesota law, without regard to its choice-of-law provisions, governs this contract. Venue for all legal proceedings out of this contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota. Except to the extent that the provisions of this Agreement are clearly inconsistent therewith, this contract will be governed by the Uniform Commercial Code (UCC) as adopted by the State of Minnesota. To the extent this contract entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the UCC except when to do so is unreasonable.

**10. Antitrust.** The Vendor hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this agreement resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

**11. Force Majeure.** Neither party to this contract will be held responsible for delay or default caused by product release by the United States Food and Drug Administration, fire, riot, acts of God and/or war, or raw material shortage that are beyond that party's reasonable control.

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

**13. Default and Remedies.** Either of the following constitutes cause to declare the contract or any order under this contract in default:

- (a) Nonperformance of contractual requirements; or
- (b) A material breach of any term or condition of this contract.

Written notice of default, and a reasonable opportunity to cure, must be issued by the party claiming default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages.

If the default remains after the opportunity for cure, the nondefaulting party may:

- (a) Exercise any remedy provided by law or equity;
- (b) Terminate the contract or any portion thereof, including any orders issued against the contract; or
- (c) Impose liquidated damages, as specified in the solicitation or contract.

**14. Certification.**

Vendor certifies that it is in compliance with the Food and Drug Administration's current "Good Manufacturing Practices" (cGMP) (as codified in 21 C.F.R. § 201-211) and the current United States Food, Drug, and Cosmetic Act.

**15. Data Disclosure.** In the event MMCAP obtains the Vendor's Federal Tax Identification Number, the Vendor consents to disclosure of its federal employer tax identification number to federal and State of Minnesota agencies and personnel involved in the payment of State of Minnesota obligations. These identification numbers may be used in the enforcement of federal and State of Minnesota laws that could result in action requiring the Vendor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

**16. Insurance Requirements**

Vendor will comply with the insurance requirements of MMCAP's contracted distributors. In the event Vendor solely sells its products to MMCAP member facilities, it is required to maintain the following insurance:

**16.1** Vendor will not commence work under the contract until it has obtained all the insurance described below and MMCAP has approved such insurance. Vendor shall maintain such insurance in force and effect throughout the term of the contract. Vendor is required to maintain and furnish satisfactory evidence of the following insurance policies:

The State intends to carry out its responsibility for requiring affirmative action by its Contractors.

**18.1 Covered Contracts and Contractors.** If the Contract exceeds \$100,000 and the contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

**18.2 Minn. Stat. § 363A.36.** Minn. Stat. § 363A.36 requires the Contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

**18.3 Minn. R. 5000.3400-5000.3600.**

**18.3.1 General.** Minn. R. 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.

**18.3.2 Disabled Workers.** The Contractor must comply with the following affirmative action requirements for disabled workers.

The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minnesota Statutes Section 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

**18.3.3 Consequences.** The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the State.

**18.3.4 Certification.** The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

State Of Minnesota – Affirmative Action Certification

If your response to this solicitation is or could be in excess of \$100,000, complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes 363A.36) certification requirement, and to provide documentation of compliance if necessary. **It is your sole responsibility to provide this information and—if required—to apply for Human Rights certification prior to the due date and time of the bid or proposal and to obtain Human Rights certification prior to the execution of the contract. The State of Minnesota is under no obligation to delay proceeding with a contract until a company receives Human Rights certification.**

**BOX A – For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months. All other companies proceed to BOX B.**

Your response will be rejected unless your business:

has a current Certificate of Compliance issued by the Minnesota Department of Human Rights (MDHR)

–or–

has submitted an affirmative action plan to the MDHR, which the Department received prior to the date and time the responses are due.

Check one of the following statements if you have employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- We have a current Certificate of Compliance issued by the MDHR. **Proceed to BOX C. Include a copy of your certificate with your response.**
- We do not have a current Certificate of Compliance. However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on \_\_\_\_\_ (date). [If the date is the same as the response due date, indicate the time your plan was received: \_\_\_\_\_ (time). **Proceed to BOX C.**
- We do not have a Certificate of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. **We acknowledge that our response will be rejected. Proceed to BOX C. Contact the Minnesota Department of Human Rights for assistance.** (See below for contact information.)

**Please note:** Certificates of Compliance must be issued by the Minnesota Department of Human Rights. Affirmative Action Plans approved by the Federal government, a county, or a municipality must still be received, reviewed, and approved by the Minnesota Department of Human Rights before a certificate can be issued.

**BOX B – For those companies not described in BOX A**

Check below.

- We have not employed more than 40 full-time employees on any single working day in Minnesota within the previous 12 months. **Proceed to BOX C.**

**BOX C – For all companies**

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of the responder. You also certify that you are in compliance with federal affirmative action requirements that may apply to your company. (These requirements are generally triggered only by participating as a prime or subcontractor on federal projects or contracts. Contractors are alerted to these requirements by the federal government.)

Name of Company: \_\_\_\_\_ Date \_\_\_\_\_

**STATE OF MINNESOTA  
AFFIDAVIT OF NONCOLLUSION**

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

1. That I am the Responder (if the Responder is an individual), a partner in the company (if the Responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Responder is a corporation);
2. That the attached proposal submitted in response to the \_\_\_\_\_ Request for Proposals has been arrived at by the Responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Responder of materials, supplies, equipment or services described in the Request for Proposal, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Responder's Firm Name: \_\_\_\_\_

Authorized Representative (Please Print) \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_