

Business Analyst Services Request for Proposal

1.1 Brief Summary and Purpose

The purpose of this Request for Proposal (RFP) is to acquire business analyst services to:

- Research and analyze current real estate recording practices in place in Minnesota public and private institutions and on the national level.
- Identify standards that take into consideration the legal, technological and operational needs for electronic real estate recording in the Minnesota public and private institutions including but not limited to the Recorder, Auditor and Treasurer and private industry groups including but not limited to lenders and title companies, as reflected in the 37 concerns listed in the ERERTF WorkPlan,.
- Develop best practice recommendations on workflow and business process.
- Provide a cost / benefit analysis for any and all recommendations.
- Provide functional, technical and process specifications reflecting these standards for comparison value to be used in evaluating technology options.

The details of this project are included in Appendix 9.6, ERERTF Workplan Report To The Legislature, January 15, 2001.

1.2 Schedule of Events

1.2.1 Addenda

Any requests for interpretation of this RFP are required to be submitted no later than 12:01 PM CST on November 30, 2001. Any addenda resulting from requests for interpretation will be issued to all proposers who have requested this RFP from the legislative coordinating commission by no later than the close of business, December 3, 2001.

1.2.2 Proposal Delivery

Proposals must be delivered by 3:00 p.m. on December 10, 2001, to the Legislative Coordinating Commission, 85 State Office Building, 100 Constitution Avenue, St. Paul, MN 55155. Faxed proposals will not be accepted. **Proposals that are date and time stamped after 3:00 p.m. on December 10, 2001 will not be accepted.**

2. BUSINESS OVERVIEW, PROJECT GOALS AND BACKGROUND

2.1 Business Description

2.1.1 The ERERTF seeks to acquire professional business analyst services from reputable and experienced individuals or organizations that can undertake and carry out business research and assessment for ERERTF. The following goals and background should be considered in preparing proposals:

2.1.2 The main goal of the project is to provide functional and business standards that facilitate the management of electronic real estate recording. Electronic real estate recording means a publicly owned and managed county process, defined by statewide standards, that does not require paper or “wet” signatures, and under which real estate documents may be electronically:

- Created, executed, and authenticated
- Delivered to, recorded with and returned to, as well as indexed, fees recorded, archived, and retrieved by public and private sector users
- Retrieved by anyone from both on- and off-site locations and which satisfy the fiscal and oversight requirements of all government or private sector users

3. REQUESTED SERVICES

3.1 ERER Task Force is seeking a team of business analysts with the following skills:

The ideal candidates must have:

- Strong analytical and communication skills,
- Strong knowledge of XML, PKI and ADA standards
- Business modeling skills,
- Exceptional communication skills (both written & oral),
- Experience in real estate and/or real estate law in Minnesota
- Experience and understanding of current real estate lending practices

Requirements include:

- Strong knowledge of business processes,
- Ability to define business requirements, identifying functional specifications and identifying best practice standards
- Ability to articulate and recommend technology standards in regard to document transmission, digital signature and security layers
- The ability to conduct meetings with various groups and elicit and collect feedback

3.2 The primary responsibilities of the awarded contract are:

- Assess and analyze the current practices and technologies in county recorder, auditor and treasurer offices in a representative sample consisting of up to 21 Minnesota counties to be identified by the TaskForce and a sample of private sector customers in relation to the 37 concerns listed in the attached WorkPlan, including but not limited to:
 - As-is state of processes
 - Technology assessment and standards recommended
 - Recording process assessment and recording standards recommended
 - Content and terminology assessment and standards recommended
 - Authentication, securing and record priority assessment and standards recommended
 - Payment structures and standards recommended
- Evaluate electronic real estate recording processes and models in other jurisdictions within Minnesota's public and private institutions and the United States
- Design a high-level business model of public and private real estate recording processes in Minnesota
- Recommend standards for the business rules of an electronic real estate recording process with a concentration on the legal, technological, operational and functional contexts for a working process that represents both the public, private and national concerns
- Produce well researched and detailed cost / benefit justification of recommended standards
- Provide functional, technical and process specifications that reflect these standards which can be used for comparison value in evaluating technology options
- Work in unison with EREER subcommittee teams who will provide subject expertise and direction to work leading to Minnesota standards
- Mentor and work with any interns assigned to this project
- Work with existing vendors in this technology arena to obtain learnings and share findings

This work should be completed by the contractor within 18 weeks after the contract becomes effective. The contractor must remain available for revisions, clarification or additional related work.

3.3 The contractor is required to submit weekly status reports to the EREER Project Coordinator.

3.4 The contractor must disclose to the EREERTF any relationships or affiliations with other consultants, members of the Task Force or vendors. The contractor cannot be employed by any of the other consultants or vendors hired or be involved in any other bids let as part of the project.

3.5 Development of familiarity with the substantive work of the Task Force and the Sub-Committees of the Task Force.

3.6 Availability starting two weeks after execution of the contract and continuing for the duration of the Task Force. This contract may be amended for additional duties as approved by the Task Force and the contractor.

3.7 Contractor will provide the following for their own use:

- Office Space
- Office Furniture
- Office Supplies and Equipment
- Computing Equipment and Services
- Telecommunications Equipment and Services

4. Compensation

4.1 Each proposal should include a specific proposed compensation amount. Payment amounts and schedules will be negotiated with the successful proposer.

4.2 . Failure to meet negotiated timelines for ERERTF milestones and objectives may result in impositions of penalties pursuant to the contract.

5. Proposal Content

This section describes the content of the proposals submitted in response to this RFP. Each proposal must be in two parts. The first part contains information about the proposer and how the proposer will manage the project. The second part is the pricing proposal. The two proposals must be submitted together but the pricing proposal must be under separate cover in a sealed envelope. There should be no pricing information contained in the first part of the proposal.

5.1 Overview

The proposer should provide an overview of their proposal in this section.

5.2 Approach

The proposal should describe the approach to undertake and complete the interviews of content listed in Appendix C of the WorkPlan, assessment, recommendations and pilot specifications.

5.3 Proposer Profile

The proposal must include background information about the company or individual that includes the proposer's lines of business, size, and the types of customers served. A copy of

the proposer's annual report, if any, should be included in the appendix. Also, include any other qualifications for work similar to the work being requested by ERERTF.

The proposal must provide a profile of the resources that will be applied to this project. The proposal should identify any subcontractors and their role in the project.

The proposal must provide brief biographies and resumes of the individual or individuals who will work on the project.

The proposal must provide a list of three references that are familiar with the work of the Proposer. Provide a description of at least one similar project you did with each reference. Provide a contact name, address, phone number and email address for each reference.

5.4 Pricing

The pricing proposal must be under separate cover in a sealed envelope. Only one copy of the pricing proposal is required. It should contain components described in this section. The ERERTF will negotiate a fixed priced, deliverable-based contract.

5.4.1 Services

This section of the pricing proposal should be an outline of the milestones and deliverables and the associated cost for each deliverable.

5.4.2 Incidental Costs

Incidental costs such as mileage to and from meetings with the Project Coordinator, are to be borne by the Proposer. Other expenses, such as travel to county offices outside of the Minneapolis-St. Paul metropolitan area, may be reimbursed as provided in the Commissioners Plan, found at <http://www.doer.state.mn.us/lr-cmrpl/lr-cmrpl/lr-cmrpl.htm>

6. Proposal Evaluation

6.1 Overview of Evaluation Methodology

6.1.1 Phases

The evaluation will be conducted in four phases (see Section 6.3 for details):

Phase 1 – Validation of RFP Responses

Phase 2 – Evaluation of Proposals (content)

Phase 3 – Evaluation of Pricing Proposals

Phase 4 – Selection of the Successful Proposer

6.1.2 Non-disclosure

During the evaluation process, all information concerning the proposals submitted, including identity and number of proposers, will remain private and will not be disclosed to anyone whose official duties do not require such knowledge, to the extent permitted by law.

6.1.3 Competitive Negotiations

In the event the ERERTF determines it appropriate to enter into competitive negotiations with responsible proposers who have submitted proposals within the competitive range, each proposer selected to participate in such negotiations will be offered an opportunity to submit price, technical, and other revisions to its proposal during negotiations. Participating proposers will be informed of the date of the closing of negotiations and that revisions to proposals must be submitted by that date.

6.1.4 Non-selection

Non-selection of any proposal will mean that either another proposal was determined to be more advantageous to the ERERTF or that the ERERTF exercised the right to reject all proposals.

6.1.5 Award

If a contract is awarded, the award will be made to a financially responsible proposer and which is most advantageous to the ERERTF with quality, price and other factors considered. The ERERTF will notify the successful Proposer in writing of the award of the contract. The ERERTF will notify the unsuccessful proposer(s) in writing that their proposals have not been accepted.

6.2 Evaluation Committee

An ERERTF committee will evaluate the proposer's proposals. Other professional staff (non-ERERTF) may also assist in the evaluation process. This assistance could include requirements review, contacting references, or answering technical questions from evaluators. The ERERTF reserves the right to alter the composition of the Evaluation Committee and their specific responsibilities at any time.

6.3 Evaluation Phases

6.3.1 Phase 1 – Validation of RFP Responses

The purpose of this phase is to determine if each proposal responds to terms and conditions in the RFP. A responsive proposal must comply with all instructions listed in this RFP and contain the proposal contents defined in Section 5, Proposal Content. The ERERTF reserves the right to reject any and all proposals, to modify these RFP specifications, or to waive any formalities or other nonmaterial specifications required by this RFP. Any proposal found to be non-responsive will be eliminated from further evaluation.

6.3.2 Phase 2 - Evaluation of Proposals (content)

Only those proposals found to be responsive under Section 6.3.1 will be considered in Phase 2. Reference checks may also be made. However, the ERERTF reserves the right to make an award without further clarification of the proposals received. Therefore, it is important that each proposal be submitted in the most complete manner possible. The ERERTF will evaluate the proposer(s) response to each of the specific proposal submission requirements which are identified in Section 5, Proposal Content. The evaluation of proposals will include ranking of each proposal after consideration of the details requested in Section 5 (Proposal Content).

6.3.3 Phase 3 - Evaluation of Pricing Proposals

Only those proposals found to be responsive under Sections 6.3.1 and 6.3.2 will be considered in Phase 3. Cost or price will be an important criterion for selecting among proposers that are deemed qualified to provide the requested services, but will not be the sole determining factor.

6.3.4 Selection of the Successful Proposer

Only those proposals found to be responsive under Sections 6.3.1, 6.3.2, 6.3.3 and 6.3.4 will be considered. The Evaluation committee will review the rankings of the proposals and make a recommendation of the successful proposer. The evaluation team may request that the finalist(s) make a set of structured presentations to clarify their proposals. The clarifications may include site visits to one or more of the proposer(s) facilities or references.

7. ADMINISTRATIVE

7.1 Calendar of Events

- November 26, 2001 The Notice of Availability is published in the State Register; the RFP is available.
- November 30, 2001 Questions from proposers are due by 12:01 P.M. CST. Questions must be submitted to Greg Hubinger (contact information listed in 7.2, below).
- December 3, 2001 An addendum to this RFP will be available in response to vendor questions.
- December 10, 2001 Proposals are due and must be received by 3:00 P.M. CST.
- Post December 10, 2001 Qualifying proposers will be notified to arrange a presentation if required.

7.2 Inquiries

Questions regarding this proposal may be addressed solely and only to:

Greg Hubinger
Legislative Coordinating Commission
85 State Office Building
100 Constitution Ave.
St. Paul, MN. 55155
Voice: 651-296-2963
Fax: 651-297-3697
Email: greg.hubinger@commissions.leg.state.mn.us

Questions are due in writing or by fax on November 30, 2001, at 12:01 PM C.S.T.

7.3 Addendum

An addendum will be faxed or mailed on December 3, 2001, to vendors who have requested the RFP.

The addendum will include answers to questions received from vendors by November 30, 2001, at 12:01 PM C.S.T.

7.4 Binding Communication

No oral communication will override written communication, and only written communication is binding upon the RFP process.

7.5 Proposals

Proposals must be delivered by 3:00 p.m., C.S.T. on December 10, 2001, to the Legislative Coordinating Commission, 85 State Office Building, 100 Constitution Ave, St. Paul, MN 55155. Faxed proposals will not be accepted. **Proposals date and time stamped after 3:00 p.m. C.S.T. on date will not be accepted.**

7.6 Proposal Packaging

Please submit one (1) clearly marked signed original and one (1) unbound copy of the proposal. The original proposal must be signed in ink by an authorized member of the organization. Only the original copy of the document need contain the required appendixes, the Affirmative Action Data Page & Statement of Compliance and the Certificate of Non-collusion. Plainly mark "ERERTF Proposal" on the outside envelope. Submit only one pricing proposal under separate cover along with the rest of the proposal. Prices and terms of the proposal as stated must be valid for the length of any resulting contract. Provide also an electronic copy of the proposal and project plan and pricing proposal in Microsoft Word 6.0 format. The electronic files should be submitted on a CD. The CD and its container should be labeled with the name of the proposer and "ERERTF Business Analysis Proposal."

7.7 Effect of Submitting a Proposal

All proposals shall constitute binding irrevocable offers to enter into a business relationship with the ERERTF for a period of 180 days after the proposal submission deadline date. Acceptance of any proposal shall occur upon final execution of a contract. Proposals may not be withdrawn after proposal opening.

7.8 Rejection of Proposals

7.8.1 Reserved Rights

ERERTF reserves the right to reject any or all proposals, in whole or in part, received by reason of this RFP. ERERTF may use the proposals as a basis for negotiation of a final contract. Multiple proposals may be used if ERERTF and the LCC determine it to be necessary. ERERTF reserves the right to add items or services to the contract. ERERTF also reserves rights to make minor modifications in system requirements. In compliance with Minn. Stat.

§16C.07, the availability of this contracting opportunity is being offered to state employees. ERERTF will evaluate the responses of any state employee along with other responses to this Request for Proposal.

7.8.2 Failure to Supply Information

Failure to supply any information requested to accompany proposals may be cause for rejection of the proposal as non-compliant. ERERTF may waive any immaterial deviation in a proposal. ERERTF reserves the right to request additional information if clarification is needed.

7.9 Proposer's Cost

ERERTF will not pay for any information herein requested, nor is it liable for any costs incurred by any proposer.

7.10 Disposition of Responses

All materials submitted in response to this Request for Proposal will become property of the ERERTF and will become public record after the evaluation process is completed and an award decision made. If the Proposer submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minn. Stat. § 13.37, the Proposer must:

- clearly mark 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, and
- defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments or damages awarded against the ERERTF in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the State's award of a contract and its termination or completion. In submitting a response to this RFP, the Proposer agrees that this indemnification survives as long as the trade secret materials are in the possession of the State. The ERERTF is required to keep all the basic documents related to its contract, including responses to RFPs for a minimum of seven years.

The ERERTF will not consider the prices submitted by the Proposer to be proprietary or trade secret materials.

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

7. 11 Proposal Obligations

The contents of the proposal and any clarification thereto submitted by the successful proposer shall become part of the contractual obligation and incorporated by reference into the ensuing contract.

The ERERTF owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under the contract. Further details of intellectual property rights are outlined in the standard contract, Appendix 9.1.

7.14 Signature of Proposer's Agent

A proposal will be accepted only if signed by an officer of a corporate contractor authorized to sign contracts on its behalf, a member of a partnership contractor, or an agent of a contractor properly authorized by a power of attorney or an equivalent document submitted to ERERTF prior to submission of the proposal or with the proposal.

7.15 Proposer Acceptance of RFP Content and Standard Contract

The content of this RFP and the proposal of the successful Proposer will become part of the final contract if a contract is awarded. Each Proposer's proposal must include a statement of acceptance of all terms and conditions stated within this RFP, modified by a detailed statement of exception for each item excepted by the Proposer.

Attached to the RFP (see Appendix 9.1) is a standard contract that shall form the basis for the contract to be entered into between the State and the successful Proposer under this RFP. All proposers shall be responsible for indicating any exceptions to particular terms and conditions in the contract. Failure to take exception to a term or condition shall be deemed acceptance of such term and condition, and Proposer shall be bound to accept all such terms and conditions in the final executed contract. Exceptions to the RFP or standard contract must be noted on the "Exceptions to Terms and Conditions" form attached as Appendix 9.2. Exceptions to standard contract language will be a factor in the evaluation of proposals.

7.16 Workers' Compensation

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

7.17 Human Rights Compliance

The Minnesota Human Rights Act (Minn. Stat. § 363.073) divides the contract compliance program into two categories. Both categories apply to any contracts for goods or services in excess of \$100,000.

The first category applies to businesses that have had more than 40 full-time employees within Minnesota on a single working day during the previous 12 months. The businesses in this category must have submitted an Affirmative Action plan to the Commissioner of the Minnesota Department of Human Rights prior to the due date of the response and must have received a Certificate of Compliance prior to the execution of the contract.

The second category applies to businesses that have had more than 40 full-time employees on a single working day in the previous 12 months in the state in which they have their primary place of business. The businesses in this category must have either a current Certificate of Compliance previously issued by the Department of Human Rights or certify to the contracting state agency that they are in compliance with federal Affirmative Action requirements before execution of the contract. For further information, contact the Department of Human Rights, 190 East 5th Street, Suite 700, St. Paul, MN 55101; Voice: 651-296-5663; Toll Free: 800-657-3704; or TTY: 651-296-1283.

Minnesota proposers must have a current Certificate of Compliance or submitted an affirmative action plan by the time proposals are due, or their proposal will be rejected.

State agencies are under no obligation to delay the execution of a contract until a proposer has completed the Human Rights certification process. It is the sole responsibility of the proposer to apply for and obtain a Human Rights certificate prior to execution, as applicable.

The State of Minnesota Affirmative Action Data Page can be found in Appendix 9.3.

7.18 Affidavit of Non-collusion

Each proposer must complete the Affidavit of Non-collusion found in Appendix 9.5 and include it with the response to the proposal.

7.19 Certification of Insurance

The ERERTF will require that a certificate of insurance be filed with the State's authorized agent within 14 days of execution of the Contract and prior to commencement of any work under this contract. The types of insurance necessary will be workers' compensation insurance, commercial general liability, and professional/technical, Errors and Omissions, and/or Miscellaneous Liability Insurance. Details on insurance certification will be worked on during contract negotiation.

8. Contractual Requirements

8.1 General

The following contractual terms and conditions in conjunction with such portions of the general and technical specifications and RFP, as ERERTF deems appropriate for contract inclusion, shall be incorporated into and become a part of the contract entered into between ERERTF and the proposer.

8.1.1 Conformance With State and Federal Regulations.

The proposer will be required to unconditionally comply with all Federal and Minnesota laws, regulations, and policies as they exist or as amended which are or may be applicable to contracts, including those not specifically mentioned in the Contract. If applicable, work performed under the contract must conform to the Federal requirements set forth in 45 CFR, Parts 74 and 95. The Proposer may request ERERTF to issue policy determinations or operating guidelines required for proper performance of the Contract. The proposer shall be entitled to rely upon and act in accordance with such policy determinations and operating guidelines and shall incur no liability in doing so unless the Proposer acts negligently, maliciously, fraudulently, or in bad faith.

8.1.2 Proposer Personnel and Services Management.

The Proposer's contract manager will be required to provide, in advance and in writing, any permanent or temporary (greater than ten (10) consecutive work days) changes to or deletions from the Proposer's named personnel. During the course of the contract, ERERTF will reserve the right to approve or disapprove the Proposer's (and any subcontractor's) staff assigned to the contract and to approve or disapprove any proposed changes to that staff. The Proposer will be required, upon request, to provide ERERTF with a resume of any member of its staff or a subcontractor's staff assigned to or proposed to be assigned to any aspect of the performance of the contract. Upon the written request of the ERERTF contract manager, any employee of the Proposer who, in the opinion of the contract manager is unacceptable, shall be removed from the project staff. In the event that an employee is removed pursuant to a written request from the ERERTF contract manager, the Proposer shall as soon as possible, but no later than twenty (20) days, fill the vacancy with an acceptable employee. Replacement of any personnel, including those who have terminated employment, shall be with personnel of equal or greater ability and qualifications as those previously approved by ERERTF.

8.1.3 State Property

The Proposer will be responsible for the proper custody and care of any State-owned property furnished for the Proposer's use in connection with the performance of the Contract, and the Proposer will reimburse ERERTF for such property's loss or damage, normal wear and tear excepted.

8.2 Patent and Copyright Indemnity

Proposer will defend the State against a claim that machines or software programming supplied hereunder infringes a U.S. patent or copyright, or that the machine's operation pursuant to a current release and modification level of any programming supplied by

Proposer infringes a U.S. patent. Proposer will pay any resulting costs, damages, and attorney's fees finally awarded provided that:

The ERERTF promptly notifies Proposer in writing of the claim; and Proposer has sole control of the defense and all related settlement negotiations, except the ERERTF may participate in such defense and all related settlement negotiations upon prior written consent of Proposer, which consent shall not be unreasonably withheld.

If such claim has occurred, or in Proposer's opinion is likely to occur, the ERERTF agrees to permit Proposer, at its opinion and expense, either to procure for the ERERTF the right to continue using the machines or software programming, or to replace or modify the same so that they become non-infringing. If the Proposer is unable to do either, the ERERTF shall be entitled to a refund of the price of the equipment or software programming based on a seven year amortization period.

8.3 Title

Proposer must pass unencumbered title to the LCC of any and all materials, systems, accessories, and devices purchased under this agreement.

9. Appendixes

9.1 Standard Contract

9.2 Exceptions to Terms and Conditions

9.3 Affirmative Action Data Page

9.4 Notice to Proposers

9.5 Affidavit of Noncollusion

9.6 Workplan Report to the Legislature, January 15, 2001.

9.1 Standard Contract

This section contains the standard language for the contract that will be negotiated with the selected proposer. Any exceptions to terms and condition should be included in the appendix of the proposal using the form contained in Appendix 9.2.

**STATE OF MINNESOTA
PROFESSIONAL AND TECHNICAL SERVICES CONTRACT**

This contract is between the State of Minnesota, acting through its Legislative Coordinating Commission on behalf of the Electronic Real Estate Recording Task Force ("State") and ("Contractor").

Recitals

1. Under Minn. Stat. § 15.061 the State is empowered to engage such assistance as deemed necessary.
2. The State is in need of Business Analyst services for the Electronic Real Estate Task Force (ERERTF) Project.
3. The Contractor represents that it is duly qualified and agrees to perform all services described in this contract to the satisfaction of the State.

Contract

1 Term of Contract

1.1 Effective date December 13, 2001, or the date the State obtains all required signatures, whichever is later.

The Contractor must not begin work under this contract until this contract is fully executed and the Contractor has been notified by the State's Authorized Representative to begin the work.

1.2 Expiration date. June 30, 2003, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

1.3 Survival of Terms. The following clauses survive the expiration or cancellation of this contract: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 13. Publicity and Endorsement; 14. Governing Law, Jurisdiction, and Venue; and 16 Data Disclosure.

2 Contractor's Duties

The Contractor, who is not a state employee, will:

3 Time

The Contractor must comply with all the time requirements described in this contract. In the performance of this contract, time is of the essence. Failure to meet negotiated timelines for ERERTF milestones and objectives may result in impositions and penalties pursuant to the contract upon notice from the ERERTF. The penalty for such failure to meet timelines is forfeiture of the retainage portion of this contract consisting of the final 10% of the payment under the contract, and an additional forfeiture of 10% of the contractual amount if there are at the time of the determination that this clause has not been met unpaid amounts of equal or excess amount. If payments have been made to Contractor such that less than this amount

remains to be paid, then the Contractor must refund the difference between the amount yet unpaid and the amount of the forfeiture to the ERERTF.

4 Consideration and Payment

4.1 **Consideration.** The State will pay for all services performed by the Contractor under this contract as follows:

- (A) **Compensation.** The Contractor will be paid _____.
- (B) **Travel Expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of this contract will not exceed \$ ____.
- (C) **Total Obligation.** The total obligation of the State for all compensation and reimbursements to the Contractor under this contract will not exceed \$ _____.

4.2. Payment

(A) **Invoices.** The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the following schedule:

(B) **Retainage.** Under Minnesota Statutes Section 16C.08, subdivision 5(b), no more than 90% of the amount due under this contract may be paid until the final product of this contract has been reviewed by the State's agency head. The balance due will be paid when the State's agency head determines that the Contractor has satisfactorily fulfilled all the terms of this contract.

5 Conditions of Payment

All services provided by the Contractor under this contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

6 Authorized Representative

The State's Authorized Representative is Mary Kiffmeyer, Chair of the ERERTF for her successor, and has the responsibility to monitor the Contractor's performance and the authority to accept the services provided under this contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Contractor's Authorized Representative is _____. If the Contractor's Authorized Representative changes at any time during this contract, the Contractor must immediately notify the State.

7 **Assignment, Amendments, Waiver, and Contract Complete**

- 7.1 **Assignment.** The Contractor may neither assign nor transfer any rights or obligations under this contract without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this contract, or their successors in office.
- 7.2 **Amendments.** Any amendment to this contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original contract, or their successors in office.
- 7.3 **Waiver.** If the State fails to enforce any provision of this contract, that failure does not waive the provision or its right to enforce it.
- 7.4 **Contract Complete.** This contract contains all negotiations and agreements between the State and the Contractor. No other understanding regarding this contract, whether written or oral, may be used to bind either party.

8 **Liability**

The Contractor must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this contract by the Contractor or the Contractor's agents or employees. This clause will not be construed to bar any legal remedies the Contractor may have for the State's failure to fulfill its obligations under this contract.

9 **State Audits**

Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this contract are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this contract.

10 **Government Data Practices and Intellectual Property**

- 10.1. **Government Data Practices.** The Contractor and State will comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this Clause, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released.

10.2. **Intellectual Property Rights**

(A) **Intellectual Property Rights.** The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents *created and paid for under this contract*. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this contract. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, in the performance of this

contract. The Documents will be the exclusive property of the State and all such Documents must be immediately returned to the State by the Contractor upon completion or cancellation of this contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be “works made for hire.” The Contractor assigns all right, title, and interest it may have in the Works and the Documents to the State. The Contractor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State’s ownership interest in the Works and Documents.

(B) Obligations

1. Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of this contract, the Contractor will immediately give the State’s Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon.

2. Representation. The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, the Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor’s expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor’s or the State’s opinion is likely to arise, the Contractor must, at the State’s discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

11 Affirmative Action

11.1 For contracts in excess of \$100,000.00 the Contractor certifies that it is in compliance with Minn. Stat. § 363.073.

11.2 If the Contractor has had more than 40 full-time employees within the State of Minnesota on a single working day during the previous 12 months the Contractor must comply with the following Affirmative Action requirements for disabled workers:

(A) 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.

(B) The Contractor will comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(C) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363.073, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(D) The Contractor will 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.

(E) The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Minn. Stat. § 363.073, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

12 Workers' Compensation

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

13 Publicity and Endorsement

13.1 **Publicity.** Any publicity regarding the subject matter of this contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this contract.

13.2 **Endorsement.** The Contractor must not claim that the State endorses its products or services.

14 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.

15 Termination

15.1 *Termination by the State.* The State may cancel this contract at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

15.2 *Termination for Insufficient Funding.* The State may immediately terminate this contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Contractor. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding within a reasonable time of the State's receiving that notice.

16 Data Disclosure

Under Minn. Stat. § 270.66, and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Contractor to file state tax returns and pay delinquent state tax liabilities, if any.

1. ERERTF

By: _____
Title Chair, Electronic Real Estate Recording Task Force
Date: _____

2. LCC

By: _____
Title: Director, Legislative Coordinating Commission
Date: _____

By: _____
Title: _____
Date: _____

3. Contractor

By: .
Title: .
Date: .

Attachment A - Statement of Deliverables

To be negotiated based on section 3.2 of this RFP and the ERERTF Workplan in Appendix 9.6.

Attachment B - Payment Schedule

To be negotiated.

Attachment C: Acceptance of Deliverables

The State's Authorized Representative will be the initial interpreter of this Contract and will judge the acceptability of the work hereunder.

Attachment D. Dispute Resolution

In the event of dispute between the Parties arising out of, or related to this Contract, but not related to acceptance of deliverables under attachment C, (the "Dispute"), the Parties agree to utilize the procedures specified in this Attachment (the "Procedure") unless otherwise modified by agreement of the Parties at the time the dispute arises.

Dispute Resolution Procedure

Initiating Party: A party seeking to initiate the Procedure (the "Initiating Party") shall give written notice with supporting data to the other party within (5) five days of the occurrence of the event giving rise to the claim, dispute, or other matter, describing briefly the nature of the dispute and identifying an individual with authority to settle the dispute on its behalf.

Responding Party: The party receiving such notice (the "Responding Party") shall have five (5) days to provide the Initiating Party with a written response identifying an individual with authority to settle the Dispute on its behalf. (The individual so designated are the "Authorized Individuals").

Authorized Individuals: The Authorized Individuals shall make investigation as they deem appropriate and thereafter promptly (but in no event later than fifteen (15) days from the date of Initiating Party's notice shall commence discussion with each other concerning resolution of the Dispute.

Submission Date: If the Dispute has not been resolved within fifteen (15) days from commencement of discussions (such fifteenth day being the Submission Date) it shall be submitted to alternative dispute resolution ("ADR Process") in accordance with the following procedure.

Neutral: The parties shall have five (5) days from the Submission Date to agree upon a mutually acceptable neutral person not affiliated with either of the parties (the "Neutral").

AAA Neutral: If no Neutral has been selected within such time, the parties agree to jointly request the American Arbitration Association to supply within five (5) days a list of potential neutrals with qualifications as specified by the parties in joint request.

Selection: Within five (5) days of receipt of the list, the parties shall independently rank the proposed candidates, shall simultaneously exchange rankings and shall select as the Neutral the individual receiving the highest combined ranking who is available to serve.

Place: In consultation with the Neutral the parties shall promptly designate a mutually convenient time and place for the ADR Process (and unless circumstances require otherwise, such time to be no later than ten (10) days after selection of the Neutral).

Information: In the event either of the parties has substantial need for information in the possession of the other party in order to prepare for the ADR Process, the parties shall attempt in good faith to agree on procedures for the expeditious exchange of information, with the help of the Neutral if required.

Summary: Five working days prior to the first scheduled session of ADR Process, each party shall deliver to the Neutral and to the other party a concise written summary of its view as to the facts, law and conclusion in connection with the matter in dispute.

Representation: In the ADR Process each party may be represented by their respective Authorized Individual and by counsel. In addition, each party may bring such additional persons as needed to respond to questions, contribute, inform and participate in the negotiations, the number of such additional persons to be agreed upon by the parties in advance, with assistance of the Neutral if necessary.

Format: The parties, in consultation with the Neutral, will agree upon a format for meetings, designed to assure that both the Neutral and the Authorized Individuals have opportunity to hear an oral presentation of each party's point of view and the matter in dispute, with or without assistance of counsel or others, but with assistance of the Neutral. To this end, the Neutral is authorized to conduct both joint meetings and separate private caucuses with parties. During the ADR Process, the Neutral will be free to divulge to the parties all information as to the other party.

Opinions: The Neutral, if no agreement has been reached between the parties, and not later than thirty (30) days after the first scheduled session of ADR Process, (i) shall provide his or her opinion to both parties on probable outcomes should the matter be litigated, and (ii) shall make one or more recommendations as to the terms of a possible settlement, upon any conditions imposed by the parties (including but not limited to, a minimum and maximum amount). The opinions and recommendations of the Neutral shall not be binding on the parties.

Process: The parties agree to participate in the ADR Process to its conclusion (as designated by the Neutral) and not to terminate negotiations concerning resolution of the matter in dispute until at least ten (10) days thereafter.

Claims: Unless requested by the State to stop work, the Contractor agrees to continue working to resolve the dispute during the ADR Process. Contractor shall raise any and all claims for additional compensation Contractor believes due and owing for such work during the ADR Process

Fees: The parties shall pay the fees of the Neutral equally. The Neutral shall be disqualified as a witness, consultant, expert or counsel for either party with respect to the matters in dispute and any related matters.

The ADR Process procedure is a compromise negotiation for purposes of applicable State and Federal rule of evidence. To the extent allowed by the Minnesota Data Practices Act, the entire process is confidential, and no stenographic, visual or audio record shall be made.

The rendering of a decision by the State's Authorized Representative will be a condition precedent to Contractor's exercise of such rights and remedies as it may have under this Contract or at law in respect to any claim, dispute or other matter.

Attachment E: Errors or Omissions

1. Contractor will be responsible for the accuracy of the work and must within (30) thirty days of receipt of notice of any error, omission or negligent act make necessary revisions or corrections resulting from Contractor's errors, omissions, or negligent acts without additional compensation for a period of at least (12) months after acceptance. Accuracy shall mean the work will be designed, developed and delivered according to Contract Specifications.
2. Acceptance of work by State will not relieve Contractor of the responsibility for subsequent correction of any errors or omissions of any ambiguities.
3. Contractor must prepare any and all plans or data needed to correct errors and/or omissions without added compensation, even though contractor may have already received final payment.
4. If errors, omissions and/or negligent acts are made by Contractor in any phase of the work, the correction of which may require additional work, Contractor will be promptly notified by State and will be required to perform within (30) thirty days of such notification such additional work as may be necessary to correct these errors, omissions and/or negligent acts and without additional cost to State.
5. If the Contractor is aware of any errors, omissions and/or negligent acts made in any phase of the work, the corrections of which may require any additional work, Contractor must within (30) days of such knowledge perform such additional work as may be necessary to correct these errors, omissions and/or negligent acts without additional cost to State.
6. Contractor will be responsible for any damages incurred as a result of its errors, omissions, and/or negligent acts. Acceptance of the work by State will not relieve Contractor of the responsibility for subsequent correction of any such errors, omissions and/or negligent acts, or of liability for loss or damages resulting therefrom.

7. Contractor must respond to State's notice of any errors and/or omissions within 24 hours and give immediate attention to these corrections to minimize any delays to the Contractor. Notification will be by telephone, followed by Certified Mail.

9.2. Exceptions to Terms and Conditions

A Contractor shall be presumed to be in agreement with the terms, conditions, and content of the RFP and standard contract (Appendix 9.1) unless the Contractor takes specific exception to one or more of the terms or conditions.

CONTRACTORS ARE CAUTIONED THAT BY TAKING ANY EXCEPTION THEY MAY BE MATERIALLY DEVIATING FROM THE RFP SPECIFICATIONS. IF A CONTRACTOR MATERIALLY DEVIATES FROM AN RFP SPECIFICATION, ITS PROPOSAL MAY BE REJECTED.

A materially deviation is an exception to a specification which (1) affords the Contractor taking the exception a competitive advantage over other Contractors; or (2) gives the State something significantly different than the State requested.

Instructions: Contractors must explicitly list all exceptions to RFP and State standard contract terms and conditions, if any. Reference the exact number of the State's term and condition. If no exceptions exist, state "NONE" specifically. Exceptions must be taken to both the terms and conditions in the boilerplate contract developed specifically for this procurement and to the terms and conditions set forth in the RFP.

Contractor Name: _____

Term(s) and Condition(s):

Number Explanation of Exception

9.3 Affirmative Action Data Page

STATE OF MINNESOTA - AFFIRMATIVE ACTION DATA PAGE

If your response to the RFP is in excess of \$100,000, please complete the information requested:

BOX A:

1. Have you employed more than 40 full-time employees within Minnesota on a single working day during the previous 12 months?

YES _____ NO _____

If your answer is "NO," proceed to BOX B. If your answer is "YES," **your response will be rejected unless your firm or business has a Certificate of Compliance issued by the State of Minnesota, Commissioner of Human Rights, or has submitted an affirmative action plan** to the Commissioner of Human Rights for approval **by the time the responses are due** for any solicitation in excess of \$100,000.

2. Please check one of the following statements:

_____ **YES**, we have a **current** Certificate of Compliance that has been issued by the State of Minnesota, Commissioner of Human Rights. (Include a copy of your certificate with your response.)

_____ **NO**, we **do not have** a Certificate of Compliance; however, **we submitted an Affirmative Action plan** to the Commissioner of Human Rights for approval

on _____, 19_____. The plan must be approved by the Commissioner of Human Rights before any contract or agreement can be executed.

_____ **NO**, we **have not submitted** a plan. If your plan is not submitted by the time the responses are due, your response will be rejected.

NOTE: Minnesota contractors must have a certificate issued by the Minnesota Department of Human Rights. Affirmative Action plans approved by the federal government, a county, or a municipality must still be reviewed and approved by the Minnesota Department of Human Rights for a certificate to be issued.

BOX B:

1. Have you employed more than 40 full-time employees on a single working day during the previous 12 months in a state in which you have your primary place of business and that primary place of business is outside of the State of Minnesota, but inside the United States?

YES _____ NO _____

If your answer is "NO," proceed to BOX C. If your answer is "YES," **the state cannot execute a contract with your firm or business unless it is in compliance with the Minnesota Human Rights certification requirements. It is the sole responsibility of the contractor to apply for and obtain a human rights certification prior to execution as applicable.** You may achieve compliance with the Human Rights Act by having either a current Certificate of Compliance issued by the State of Minnesota, Commissioner of Human Rights, or by certifying that you are in compliance with federal Affirmative Action requirements.

2. Please check one of the following statements:

_____ **YES**, we have a current Certificate of Compliance issued by the Minnesota Department of Human Rights. (Include a copy of your certificate with your response.)

_____ **YES**, we are in compliance with federal Affirmative Action requirements.

_____ **NO**, we do not have a current Certificate of Compliance and we cannot certify that we are in compliance with federal Affirmative Action requirements.

BOX C:

1. If your answers to BOX A (Question 1) and Box B (Question 1) were "NO," you are not subject to the Minnesota Human Rights Act certification requirement. Please, however, check one of the following:

_____ **NO**, we have not employed more than 40 full-time employees within Minnesota on a single working day during the previous 12 months and we have not employed more than 40 full-time employees on a single working day during the previous 12 months in the state in which our primary place of business is located.

_____ We are a business with our primary place of business outside of the United States that has not employed more than 40 full-time employees within Minnesota on a single working day during the previous 12 months.

For further information regarding Minnesota Human Rights requirements, contact the Department of Human Rights, Compliance Services, 190 East 5th Street, Suite 700, St. Paul, MN 55101; Voice: 651.296.5663; Toll Free: 800.657.3704; or TTY: 651.296.1283. For further information regarding federal Affirmative Action requirements, call 800.669.4000 or visit its web site at <http://www.eeoc.gov/>.

By signing this statement, the contractor certifies that the information provided is accurate.

NAME OF FIRM:

AUTHORIZED SIGNATURE:

TITLE:

DATE:

9.4 NOTICE TO CONTRACTORS

AFFIRMATIVE ACTION CERTIFICATION OF COMPLIANCE

The Minnesota Human Rights Act (Minn. Stat. § 363.073) divides the contract compliance program into two categories. Both categories apply to any contracts for goods or services in excess of \$100,000.

The first category applies to businesses that have had more than 40 full-time employees within Minnesota on a single working day during the previous 12 months. The businesses in this category must have submitted an Affirmative Action plan to the Commissioner of the Department of Human Rights prior to the due date of the response and must have received a Certificate of Compliance prior to the execution of the contract.

The second category applies to businesses that have had more than 40 full-time employees on a single working day in the previous 12 months in the state in which they have their primary place of business. The businesses in this category must have either a current Certificate of Compliance previously issued by the Department of Human Rights or certify to the contracting state agency that they are in compliance with federal Affirmative Action requirements before execution of the contract. For further information, contact the Department of Human Rights, 190 East 5th Street, Suite 700, St. Paul, MN 55101; Voice: 651-296-5663; Toll Free: 800-657-3704; or TTY: 651-296-1283.

Minnesota contractors must have a current Certificate of Compliance or submitted an affirmative action plan by the time proposals are due, or their proposal will be rejected.

State agencies are under no obligation to delay the execution of a contract until a contractor has completed the Human Rights certification process. It is the sole responsibility of the contractor to apply for and obtain a Human Rights certificate prior to execution, as applicable.

9.5 Affidavit of Noncollusion

**STATE OF MINNESOTA
AFFIDAVIT OF NONCOLLUSION**

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

1. That I am the Proposer (if the Proposer is an individual), a partner in the company (if the Proposer is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Proposer is a corporation);
2. That the attached proposal submitted in response to the Business Analyst Services Request for Proposals dated November 26, 2001 has been arrived at by the Proposer independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Proposer 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 Proposer or its employees or agents to any person not an employee or agent of the Proposer 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.

Proposer's Firm Name: _____

Authorized Signature: _____

Date: _____

Subscribed and sworn to me this _____ day of _____

Notary Public

My commission expires: _____

9.6 Workplan Report to the Legislature, January 15, 2001

See attached file and/or see the Workplan on the ERERTF Web site at <http://www.commissions.leg.state.mn.us/lcc/workplan.pdf>.