

REQUEST FOR PROPOSAL
for
PRIVATE BAR FIXED-FEE CONTRACTING
MILWAUKEE COUNTY
CHAPTER 51 Cases

Issued by the
STATE OF WISCONSIN
Office of the State Public Defender
Assigned Counsel Division

April 26, 2019

Proposals must be received no later than
4:00 p.m. C.S.T. on **May 13, 2019**

For further information regarding this RFP,
contact Mark Rinehart at (608) 267-1771 or rinehartm@opd.wi.gov

**LATE PROPOSALS AND PROPOSALS SUBMITTED
BY FAX WILL BE REJECTED**

PART I

GENERAL INFORMATION

All parties who are interested in being considered for a contract with the Office of the State Public Defender (OSPD) must apply at this time under this Request for Proposal (RFP).

1.1 DEFINITIONS

A. Certification

An attorney is certified if s/he has submitted an application for certification pursuant to the requirements of PD 1, Admin Code, for representation of individuals in Chapter 51 proceedings, and that application has been approved. Approval for provisional certification is not certification for this RFP.

B. Contract

The written legal agreement to provide services pursuant to this RFP (incorporates this RFP and the successful contract group's proposal).

C. Contract Proposer

The attorney performing work under the contract.

D. Extension

Upon mutual agreement of both parties to the contract, the contract may be extended (with or without modifications) for an additional period of time, not to exceed two years.

E. Law Firm

A business entity composed of one or more attorneys, commonly related as partners or associates, who are ethically obligated by SCR 20:5.1 and 20:5.2. This does not include office sharing or other arrangements of convenience.

F. Online Billing

Submission of invoices through the OSPD website.

G. Proposal

The response to this RFP to be used in determining the award of contracts.

H. Chapter 51 Case

Civil Commitment Cases [§51.35(1)(e); 51.45(12)(c)(2); 51.45(13)(b)(2); 51.45(13)(d); 51.61(g); 51.20(3), (5) Wis. Stats.]:

Commitment cases include cases in which a petition has been filed under Chapter 51 against an adult. Reexamination hearings (including hearings to modify or cancel a commitment order), recommitments, extensions, and changes in placement brought after the original case is closed are counted as separate Commitment cases. Cases involving children as subjects of commitment proceedings are classified as Other Juvenile cases and would not be included under this contract. Petitions for reexamination, conditional release, or revocation of conditional release under §971.17, and proceedings under §971.14 are not included under this contract.

If a hearing for involuntary medication is scheduled more than sixty (60) days after a commitment order has been entered, the OSPD will open a separate commitment case under §51.61(1)(g)3., Wis. Stats. Otherwise a request for involuntary medication filed with the original proceeding is considered part of the original case.

If the case is settled with a “hold open“ agreement, the attorney remains on the case for sixty (60) days after the agreement is entered (unless the case is finalized at an earlier date). If a case is reopened after sixty (60) days because of an alleged breach of the “hold open” agreement, a new case is opened.

1.2 INTRODUCTION

The OSPD is soliciting proposals from attorneys interested in contracting for the provision of legal representation to indigent defendants in Chapter 51 cases in Milwaukee County. The annual contracts are to commence effective July 1, 2019, or as near to that date as possible. Contracts awarded for state fiscal year 2020 (FY20) may be renewed for an additional two years upon mutual agreement of the parties. Proposers must be certified for Chapter 51 appointments by the date of the submission of their proposal. Attorneys seeking certification should contact Kim Salas, Assigned Counsel Division Certification Specialist, at 608-264-8562.

1.3 SCOPE OF SERVICES

A. General

Under the terms of the contract, the contract groups shall provide competent professional legal representation in accordance with Chapter 977, Wis. Stats., Ch. PD 4 Wis. Admin. Code, the Wisconsin Supreme Court rules, and the OSPD Minimum Attorney Performance Standards. Representation shall commence from the time a case is appointed, and shall be consistently maintained by the attorney to completion as is set out by the terms of the contract. Contract attorneys will participate in a rotational intake system which may require review of documents, completion of OSPD forms, and some client contact not associated with an appointed case.

The attorney will be expected to timely and accurately complete necessary paperwork, to comply with case opening and closing requirements, and to protect the confidentiality of attorney-client information.

B. Number of Cases

The OSPD anticipates 400 **Chapter 51 cases being available in FY20**. Availability may be affected by a variety of factors (e.g., the number of cases issued, mandated higher caseloads for OSPD staff, and other management reasons). For these reasons, the OSPD cannot guarantee the appointment of an exact number or any number of cases. Attorneys selected under this RFP will be appointed Chapter 51 cases by the OSPD in a number not greater than the annual caseload statutorily set for OSPD staff.

The OSPD intends to award no more than ten (10) contracts to proposers. Each contract will be for a minimum of 25 cases and a maximum of 150 cases.

C. Payment Rate

The fixed fee for cases appointed under this contract is **\$239**.

1.4 PROPOSAL CONTENT/CONTRACTUAL OBLIGATIONS

A. Proposal Content

Proposals submitted in response to this RFP shall respond to all of the technical specifications in Part II. Failure to respond to any specification may be a basis for a proposer being eliminated from consideration during the selection process. The OSPD reserves the right to reject any or all proposals and to award contracts based on its sole and exclusive discretion and judgment.

In the event of a contract award, the contents of this RFP (including all attachments), RFP addenda and revisions, and the proposal from the successful proposer will become contractual obligations. The OSPD reserves the right to negotiate the maximum number of Chapter 51 cases to be appointed and the total contract cost based on cases appointed with the selected proposer prior to entering into a contract. The maximum number of Chapter 51 cases to be appointed may be increased during the contract period upon agreement of both parties.

This contract may not be amended or altered without the express written consent of all parties.

B. Contractual Obligations

The Attorney is responsible for the accuracy and completeness of the information contained in all documents and reports submitted during the term of the contract.

1.5 CONTRACT TERM

A. Commencement

The anticipated contract term is July 1, 2019, through June 30, 2020. Contracts awarded pursuant to this RFP may be renewed annually for up to two years upon mutual agreement of the parties. The effective date will be determined by the contracting parties during contract negotiations.

B. Termination

A contract may be terminated by either party for any reason. However, the termination of a contract does not abrogate the contract group's duty to complete any and all cases in which representation has begun under the terms of the contract.

1.6 ISSUING AGENCY

This RFP is issued for the State of Wisconsin by the OSPD. The OSPD is the sole point of contact in the State of Wisconsin during the selection process.

1.7 INCURRING COSTS

The State of Wisconsin is not liable for any costs incurred by any proposer in replying to this RFP, or any costs not otherwise expressly provided for in this contract.

1.8 REPORTS BY CONTRACT GROUP

Attorneys must keep records pursuant to the terms of the contract.

1.9 EVALUATION

Evaluation of the work performed under the contract may be conducted by the OSPD.

1.10 CLIENT CONFIDENTIALITY/RIGHT OF PRIVACY

The contract group shall be responsible for ensuring the confidentiality of all records associated with the performance of the contract.

1.11 INDEPENDENT CONTRACTOR

Attorneys are at all times deemed to be independent contractors. The contract does not in any way create the relationship of attorney and client or employee and employer, either between the contract attorney and the State of Wisconsin, or between the contract attorney and the OSPD. The contract attorney exclusively assumes the responsibility for the acts of his/her associates and employees as they relate to the services provided within the scope of the contract. The contract attorney shall be solely and exclusively responsible for any and all professional errors and omissions that may arise in the course of representing clients under the contract.

1.12 INSURANCE

The contract attorneys selected under this RFP are considered independent contractors, not state employees, and, therefore, are responsible for obtaining any and all insurance that is needed in their law practice including liability insurance.

1.13 STANDARD TERMS AND CONDITIONS

The State of Wisconsin reserves the right to incorporate standard state contract provisions into any contract negotiated with any proposal submitted in response to this RFP. The Standard Terms and Conditions (DOA-3054) are attached as Attachment C.

1.14 SUBSEQUENT CONTRACT PROPOSALS

Contract attorneys' performance throughout the life of this contract may be used in evaluating subsequent proposals.

1.15 PUBLIC INFORMATION

It is the intention of the State to maintain an open and public process in the submission, review, and approval of contract awards. All material submitted by proposers will be made available for public inspection after the Notice of Intent to Award is issued. This information will be available for public inspection, under supervision, during the hours of 8:00 a.m. to 4:00 p.m., for five (5) business days from the date of said notice, at the Office of the State Public Defender, 17 South Fairchild Street, Fifth Floor, Madison, Wisconsin, 53707-7923. No proposal submitted to the OSPD can be marked as confidential, and any materials so marked, by being included in the proposal, will be considered public information. Final scores for all proposals also will be open for public inspection.

1.16 SUBMITTAL OF PROPOSAL

1. Proposals must not exceed four typed pages, in addition to the forms and documents included in the Request for Proposals.
2. Closing Date. The closing date for the receipt of all proposals under this solicitation is **May 13, 2019**. Proposals sent by FAX will NOT be accepted. A proposal will be accepted and considered received on time if received by, and stamped in to, the OSPD by 4:00 p.m., Central Standard Time, on **May 13, 2019**. Proposals not so stamped may not be accepted. Receipt of a proposal by the mail system does not constitute receipt of a proposal by the OSPD, for purposes of this RFP.
3. Proposals may be emailed to:
Mark Rinehart
Supervisor–Assigned Counsel Division
rinehartm@opd.wi.gov

OR

Proposals may be mailed or hand delivered to:
Mark Rinehart
Supervisor–Assigned Counsel Division
Office of the State Public Defender
17 South Fairchild Street, Fifth Floor
P.O. Box 7923
Madison, Wisconsin 53707-7923

Proposers are cautioned to allow sufficient time for delivery by the U.S. Post Office, since it can sometimes take two or more days to receive mail from across the state. All proposals that are received after the closing date of **May 13, 2019**, will not be reviewed and will be returned to the proposer. **NO EXCEPTIONS WILL BE ALLOWED.**

1.17 SUPPLEMENTAL INFORMATION

No additional information will be accepted from a proposer after the deadline for submittal of proposals, unless requested by the OSPD.

1.18 WITHDRAWAL OF PROPOSALS

Proposals may be withdrawn by written notice. Proposals may be withdrawn in person by the proposer or his/her authorized representative, provided that his/her identity is made known and he/she signs a receipt for the proposal.

1.19 TECHNICAL ASSISTANCE

If additional information is required to enable a proposer to interpret the requirements, address such questions in writing to:

Mark Rinehart
Supervisor–Assigned Counsel Division
rinehartm@opd.wi.gov

OR

Mark Rinehart
Supervisor–Assigned Counsel Division
Office of the State Public Defender
17 South Fairchild Street, Fifth Floor
P.O. Box 7923
Madison, Wisconsin 53707-7923

The deadline for questions is **May 9, 2019** at 4:00 p.m. Central Standard Time. The OSPD reserves the right to send its response to your request for additional information to all proposers and to anyone who requests it.

1.20 WAIVER OF INFORMALITIES

The OSPD reserves the right to accept or reject any or all responses to this RFP, waive minor informalities, and to accept only the most qualified offer in the sole and exclusive judgment of the OSPD. The determination of whether an RFP condition is substantive or an informality shall reside solely with the OSPD.

1.21 SELECTION PROCESS – AWARD EVALUATION CRITERIA

All proposals submitted in response to this RFP will be evaluated by the OSPD, which will make the final decision on the selection of contract attorneys. The award will be made to the proposers who best meet the needs of the OSPD and its clients.

A. Mandatory Provisions

The following provisions are mandatory. Failure to comply will result in ineligibility of the proposal or termination of the contract.

1. All proposers must have a valid, active license to practice law in the State of Wisconsin.
2. All proposers must be OSPD-certified to handle Chapter 51 cases in Milwaukee County.
3. All proposers must agree to accept Chapter 51 contract cases at the applicable rate.
4. All proposers must be in compliance with the OSPD and Wisconsin Supreme Court rules regarding continuing legal education.
5. All proposers must submit invoices online and must have internet access and a valid email account.

B. Evaluation Criteria

Proposals meeting the mandatory provisions will be evaluated according to the following criteria:

1. Education and Experience 50 points
 - a. Law school classes and/or internships
 - b. Number of criminal cases handled last year
 - c. Trials in the last five years
 - d. Litigated motions in the last two years
 - e. CLE related to mental health law/OSPD practice areas

2. Professionalism 10 points
 - a. Law school activities
 - b. Memberships in legal associations
 - c. Contributions to the legal profession
 - d. Client complaints/responsiveness to clients
 - e. Disciplinary actions (SCR/ACD)

3. Working Relationship with the OSPD 20 points
 - a. ACD certification and compliance history
 - b. OSPD internships
 - c. Cooperation with/responsiveness to local OSPD offices
 - d. Cooperation with/responsiveness to Assigned Counsel Division
 - e. Withdrawal from cases
 - f. Activities demonstrating dedication to OSPD mission

4. Operational Capacity 20 points
 - a. Ability to handle several Chapter 51 cases
 - b. Ability to communicate with non-English speakers (fluency in Spanish a plus)
 - c. Permanent administrative staff (Spanish speakers a plus)
 - d. Office sharing arrangements, location, space, and accessibility

The points stated above for each category identified shall be the maximum amount awarded for each category.

Proposals from certified minority-owned businesses may be given a weighted preference. If you feel you qualify as a minority-owned business please contact the Wisconsin Supplier Diversity Program, Department of Administration, P.O. Box 7970, Madison, WI 53707, (608) 267-9550.

The OSPD Regional Attorney Manager and Local Attorney Managers in the Milwaukee Juvenile/Mental Health office will be completing a Proposer Assessment Form that will be given to the evaluators to be used in scoring the Professional Record/Reputation portion of the above evaluation criteria. The form will also be given to the evaluators to be used in their scoring of the Working Relationship with the OSPD portion of the above evaluation criteria.

References listed by proposers may be contacted. Results of any such contacts with references may be used in their determination of final scores.

1.22 NOTIFICATION OF AWARD

Each proposal will be reviewed by the Evaluation Committee. Each proposer will receive written notice as to whether he/she will be offered a contract.

1.25 APPEAL PROCESS

The appeals procedure applies only to those requests for proposals that are \$25,000 or greater.

A proposer who is aggrieved by the Intent to Award a contract may protest to the OSPD. Protesters should make their protests as specific as possible and shall identify Wisconsin State Statutes and Wisconsin Administrative Code provisions that are alleged to have been violated. Notices of intent to protest and protests must be made in writing.

The written Notice of Intent to protest the Intent to Award a contract must be filed with the Office of the State Public Defender, 17 South Fairchild Street, Fifth Floor, P.O. Box 7923, Madison, WI 53707-7923, and received in the office within five (5) working days after the Notice of Intent to Award is issued.

The written protest must be received by the OSPD no later than ten (10) working days after the Notice of Intent to Award is issued.

The protester may appeal the decision of the OSPD to the Secretary of the Department of Administration within five (5) working days of issuance of the OSPD decision, with a copy of such appeal filed with the OSPD. The appeal must allege a violation of a statute or a provision of the Wisconsin Administrative Code.

PART II

TECHNICAL SPECIFICATIONS

Proposers are advised to carefully read the RFP, particularly the evaluation criteria (Sec. 1.21(B)), before beginning to write a proposal. Please limit your answers to the forms provided, the specific documents requested, and a maximum of four (4) additional pages.

2.1 FORMS

The first two documents to include in the proposal that you submit should be the completed Identification Form, Attachment A and the completed Operational Capacity Form, Attachment B.

2.2 EVALUATION CRITERIA

The rest of your proposal should include the documents requested in this section and up to four (4) pages of supporting information.

Education and Experience (50% of total score)

In this section, the proposer must provide information about the qualifications of the attorneys providing services under the contract.

- Describe your legal education, training and experience, particularly as they relate to Chapter 51 practice. Indicate the level of trial experience and motion practice, specifying any particularly complex or unique issues litigated.
- A current resume and two letters of reference. One letter of reference must be from a judge or law school professor.
- List all mental health law CLE programs or law school courses attended in the last 5 years.

Professionalism (10% of total score)

In this section, the proposer must fully discuss the following:

- Any findings of a violation of a disciplinary rule by the Office of Lawyer Regulation (formerly the Board of Attorneys Professional Responsibility);
- Any incidents or circumstances that resulted in open or public admonishment by a judge for allegedly inappropriate, unprofessional or unethical conduct;
- All cases on which a court found ineffective assistance of counsel.

Indicate any legal organizations, boards, or committees on which you currently serve or have served on in the past, and any acknowledgements, awards or commendations you have received in recognition of your contributions to the legal profession or your community.

Working Relationship with OSPD

(20% of total score)

In this section, the proposer must indicate the attorney's length of participation in the OSPD private bar program, and satisfaction of OSPD Continuing Legal Education requirements. Also discuss the proposer's relationship with the Milwaukee Juvenile/Mental Health office of the OSPD and the Assigned Counsel Division. In discussing these relationships, include your responsiveness to requests for information, acceptance of appointments, and timely submission of forms (e.g., expert requests, closing forms, vouchers).

Please identify all cases from which you have withdrawn in the past two years with an explanation of the reason for the withdrawal.

Operational Capacity

(20% of total score)

Discuss your plan for handling the additional cases and intake responsibilities if awarded a contract. Discuss how you will organize your practice to adapt to the short notice provided for most Chapter 51 hearings and participation in weekly or bi-weekly intake responsibilities.

Discuss your means of client contact, including how regular contact should/will be made.

ATTACHMENT A: IDENTIFICATION FORM

- A.** Name of Attorney:
- B.** Primary Location of Practice:
 (Street)
 (P.O. Box)
 (City, State, Zip)
 (Telephone)
 (Email)

Online billing is required. Valid email account necessary.

- C.** Annual number of cases you propose handling:
The minimum number is 25 cases plus intake.
The maximum number may be up to 150 cases plus intake.
 Maximum number: _____
- D.** Complete the Attorney Table below. Attach a resume that includes: home address, home telephone, legal experience, publications or teaching experience, education, and training.

Attorney Table

Name of Attorney	SSN or FEIN	State Bar ID	Years of Law Practice

For OSPD use only:

Maximum proposed cases _____ X \$239 = \$_____ FY20 TOTAL Contract Amount

ATTACHMENT B: OPERATIONAL CAPACITY FORM

1. List the areas of law in which you practice and their percentages of your total work.

2. List the percentage of your total clientele and revenues that would be represented by the proposed contract.
_____ % of total clientele
_____ % of total revenues

3. List the job titles and the numbers of your full-time and part-time support staff (including investigators).

4. Describe any present or anticipated office sharing arrangements.

5. List and explain any legal action taken against the proposer for failure to comply with the terms of a contract.

6. List any proceedings by, or against, the proposer or proposer's firm under the bankruptcy laws of the United States.

7. List and explain any placement of liens or other encumbrances against any practice related payment obligations owed by the proposer.

Attorney Signature:

Date Signed:

ATTACHMENT C: STANDARD TERMS AND CONDITIONS

- 1.0 SPECIFICATIONS:** The specifications in this request are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. The State of Wisconsin shall be the sole judge of equivalency. Bidders/proposers are cautioned to avoid bidding alternates to the specifications which may result in rejection of their bid/proposal.
- 2.0 DEVIATIONS AND EXCEPTIONS:** Deviations and exceptions from original text, terms, conditions, or specifications shall be described fully, on the bidder's/proposer's letterhead, signed, and attached to the request. In the absence of such statement, the bid/proposal shall be accepted as in strict compliance with all terms, conditions, and specifications and the bidders/proposers shall be held liable.
- 3.0 QUALITY:** Unless otherwise indicated in the request, all material shall be first quality. Items which are used, demonstrators, obsolete, seconds, or which have been discontinued are unacceptable without prior written approval by the State of Wisconsin.
- 4.0 QUANTITIES:** The quantities shown on this request are based on estimated needs. The state reserves the right to increase or decrease quantities to meet actual needs.
- 5.0 DELIVERY:** Deliveries shall be F.O.B. destination freight prepaid and included unless otherwise specified.
- 6.0 PRICING AND DISCOUNT:** The State of Wisconsin qualifies for governmental discounts and its educational institutions also qualify for educational discounts. Unit prices shall reflect these discounts.
- 6.1** Unit prices shown on the bid/proposal or contract shall be the price per unit of sale (e.g., gal., cs., doz., ea.) as stated on the request or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price, the unit price shall govern in the bid/proposal evaluation and contract administration.
- 6.2** Prices established in continuing agreements and term contracts may be lowered due to general market conditions, but prices shall not be subject to increase for ninety (90) calendar days from the date of award. Any increase proposed shall be submitted to the contracting agency thirty (30) calendar days before the proposed effective date of the price increase, and shall be limited to fully documented cost increases to the contractor which are demonstrated to be industry-wide. The conditions under which price increases may be granted shall be expressed in bid/proposal documents and contracts or agreements.
- 6.3** In determination of award, discounts for early payment will only be considered when all other conditions are equal and when payment terms allow at least fifteen (15) days, providing the discount terms are deemed favorable. All payment terms must allow the option of net thirty (30).
- 7.0 UNFAIR SALES ACT:** Prices quoted to the State of Wisconsin are not governed by the Unfair Sales Act.
- 8.0 ACCEPTANCE-REJECTION:** The State of Wisconsin reserves the right to accept or reject any or all bids/proposals, to waive any technicality in any bid/proposal submitted, and to accept any part of a bid/proposal as deemed to be in the best interests of the State of Wisconsin.
- Bids/proposals MUST be date and time stamped by the soliciting purchasing office on or before the date and time that the bid/proposal is due. Bids/proposals date and time stamped in another office will be rejected. Receipt of a bid/proposal by the mail system does not constitute receipt of a bid/proposal by the purchasing office.
- 9.0 METHOD OF AWARD:** Award shall be made to the lowest responsible, responsive bidder unless otherwise specified.
- 10.0 ORDERING:** Purchase orders or releases via purchasing cards shall be placed directly to the contractor by an authorized agency. No other purchase orders are authorized.
- 11.0 PAYMENT TERMS AND INVOICING:** The State of Wisconsin normally will pay properly submitted vendor invoices for legal services within one hundred twenty (120) days of receipt providing goods and/or services have been delivered, installed (if required), and accepted as specified.
- Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing.
- A good faith dispute creates an exception to prompt payment.

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- 12.0 TAXES:** The State of Wisconsin and its agencies are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below.

The State of Wisconsin, including all its agencies, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. The State of Wisconsin may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials.

- 13.0 GUARANTEED DELIVERY:** Failure of the contractor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the contractor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include the administrative costs.

- 14.0 ENTIRE AGREEMENT:** These Standard Terms and Conditions shall apply to any contract or order awarded as a result of this request except where special requirements are stated elsewhere in the request; in such cases, the special requirements shall apply. Further, the written contract and/or order with referenced parts and attachments shall constitute the entire agreement and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the contracting authority.

- 15.0 APPLICABLE LAW AND COMPLIANCE:** This contract shall be governed under the laws of the State of Wisconsin. The contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. The State of Wisconsin reserves the right to cancel this contract if the contractor fails to follow the requirements of §77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax. The State of Wisconsin also reserves the right to cancel this contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

- 16.0 ANTITRUST ASSIGNMENT:** The contractor and the State of Wisconsin recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Wisconsin (purchaser). Therefore, the contractor hereby assigns to the State of Wisconsin any and all claims for such overcharges as to goods, materials or services purchased in connection with this contract.

- 17.0 ASSIGNMENT:** No right or duty in whole or in part of the contractor under this contract may be assigned or delegated without the prior written consent of the State of Wisconsin.

- 18.0 WORK CENTER CRITERIA:** A work center must be certified under §16.752, Wis. Stats., and must ensure that when engaged in the production of materials, supplies or equipment or the performance of contractual services, not less than seventy-five percent (75%) of the total hours of direct labor are performed by severely handicapped individuals.

- 19.0 NONDISCRIMINATION / AFFIRMATIVE ACTION:** In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in §51.01(5), Wis. Stats., sexual orientation as defined in §111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities.

- 19.1** Contracts estimated to be over twenty-five thousand dollars (\$25,000) require the submission of a written affirmative action plan by the contractor. An exemption occurs from this requirement if the contractor has a workforce of less than twenty-five (25) employees. Within fifteen (15) working days after the contract is awarded, the contractor must submit the plan to the contracting state agency for approval. Instructions on preparing the plan and technical assistance regarding this clause are available from the contracting state agency.

19.2 The contractor agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the contracting state agency that sets forth the provisions of the State of Wisconsin's nondiscrimination law.

19.3 Failure to comply with the conditions of this clause may result in the contractor's becoming declared an "ineligible" contractor, termination of the contract, or withholding of payment.

- 20.0 PATENT INFRINGEMENT:** The contractor selling to the State of Wisconsin the articles described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe any United States patent. The contractor covenants that it will at

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its own expense defend every suit which shall be brought against the State of Wisconsin (provided that such contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.

21.0 SAFETY REQUIREMENTS: All materials, equipment, and supplies provided to the State of Wisconsin must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code and all applicable OSHA Standards.

22.0 WARRANTY: Unless otherwise specifically stated by the bidder/proposer, equipment purchased as a result of this request shall be warranted against defects by the bidder/proposer for one (1) year from date of receipt. The equipment manufacturer's standard warranty shall apply as a minimum and must be honored by the contractor.

23.0 INSURANCE RESPONSIBILITY: The contractor performing services for the State of Wisconsin shall:

23.1 Maintain worker's compensation insurance as required by Wisconsin Statutes, for all employees engaged in the work.

23.2 Maintain commercial liability, bodily injury and property damage insurance against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out this contract. Minimum coverage shall be one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.

23.3 The state reserves the right to require higher or lower limits where warranted.

24.0 CANCELLATION: The State of Wisconsin reserves the right to cancel any contract in whole or in part without penalty due to non-appropriation of funds or for failure of the contractor to comply with terms, conditions, and specifications of this contract.

25.0 VENDOR TAX DELINQUENCY: Vendors who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.

26.0 PUBLIC RECORDS ACCESS: It is the intention of the state to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities.

Bid/proposal openings are public unless otherwise specified. Records may not be available for public inspection prior to issuance of the notice of intent to award or the award of the contract.

27.0 PROPRIETARY INFORMATION: Any restrictions on the use of data contained within a request, must be clearly stated in the bid/proposal itself. Proprietary information submitted in response to a request will be handled in accordance with applicable State of Wisconsin procurement regulations and the Wisconsin public records law. Proprietary restrictions normally are not accepted. However, when accepted, it is the vendor's responsibility to defend the determination in the event of an appeal or litigation.

27.1 Data contained in a bid/proposal, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented. All data, documentation, and innovations become the property of the State of Wisconsin.

27.2 Any material submitted by the vendor in response to this request that the vendor considers confidential and proprietary information and which qualifies as a trade secret, as provided in s. 19.36(5), Wis. Stats., or material which can be kept confidential under the Wisconsin public records law, must be identified on a Designation of Confidential and Proprietary Information form (DOA-3027). Bidders/proposers may request the form if it is not part of the Request for Bid/Request for Proposal package. Bid/proposal prices cannot be held confidential.

28.0 DISCLOSURE: If a state public official (§19.42, Wis. Stats.), a member of a state public official's immediate family, or any organization in which a state public official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this agreement, and if this agreement involves payment of more than three thousand dollars (\$3,000) within a twelve (12) month period, this contract is voidable by the state unless appropriate disclosure is made according to §19.45(6), Wis. Stats., before signing the contract. Disclosure must be made to the State of Wisconsin Ethics Board, 44 East Mifflin Street, Suite 601, Madison, Wisconsin 53703 (Telephone 608-266-8123).

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State classified and former employees and certain University of Wisconsin faculty/staff are subject to separate disclosure requirements, §16.417, Wis. Stats.

- 29.0 RECYCLED MATERIALS:** The State of Wisconsin is required to purchase products incorporating recycled materials whenever technically and economically feasible. Bidders are encouraged to bid products with recycled content which meet specifications.
- 30.0 MATERIAL SAFETY DATA SHEET:** If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29CFR 1910.1200, provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).
- 31.0 PROMOTIONAL ADVERTISING / NEWS RELEASES:** Reference to or use of the State of Wisconsin, any of its departments, agencies or other subunits, or any state official or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the State of Wisconsin. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the contracting agency.
- 32.0 HOLD HARMLESS:** The contractor will indemnify and save harmless the State of Wisconsin and all of its officers, agents and employees from all suits, actions, or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the operations of the contractor, or of any of its contractors, in prosecuting work under this agreement.
- 33.0 FOREIGN CORPORATION:** A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement is required to conform to all the requirements of Chapter 180, Wis. Stats., relating to a foreign corporation and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority. Any foreign corporation which desires to apply for a certificate of authority should contact the Department of Financial Institutions, Division of Corporation, P. O. Box 7846, Madison, WI 53707-7846; telephone (608) 261-7577.
- 34.0 WORK CENTER PROGRAM:** The successful bidder/proposer shall agree to implement processes that allow the State agencies, including the University of Wisconsin System, to satisfy the State's obligation to purchase goods and services produced by work centers certified under the State Use Law, §16.752, Wis. Stat. This shall result in requiring the successful bidder/proposer to include products provided by work centers in its catalog for State agencies and campuses or to block the sale of comparable items to State agencies and campuses.
- 35.0 FORCE MAJEURE:** Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.