



# STATE OF MONTANA REQUEST FOR PROPOSAL (THIS IS NOT AN ORDER)

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|--|---|
| <b>RFP Number:</b><br>HWY- 307755-RP                                     | <b>RFP Title:</b><br>DYNAMIC MESSAGE SIGN CENTRAL SOFTWARE    |
| <b>RFP Due Date and Time:</b><br>January 20, 2006<br>3:00 pm, Local Time | <b>Number of Pages:</b> 44<br><b>Number of Attachments:</b> 0 |

| ISSUING AGENCY INFORMATION   |   |
|--|---|
| <b>Procurement Officer:</b><br>Richele Parkhurst   | <b>Issue Date:</b><br>December 5, 2005  |
| <b>Purchasing Services Bureau<br/>Montana Department of Transportation<br/>P.O. Box 201001<br/>Helena, MT 59620-1001</b> | <b>Phone:</b> (406) 444-7226<br><b>Fax:</b> (406) 444-7613<br><br><b>State's Solicitation Website:</b><br><a href="http://www.discoveringmontana.com/doa/gsd">http://www.discoveringmontana.com/doa/gsd</a> |

| INSTRUCTIONS TO OFFERORS   |  |
|--|--|
| <b>Return in a Sealed Package Marked on the Face as Shown:</b><br><br><p style="text-align: center;">#HWY – 307755-RP<br/> <b>Purchasing Services Bureau<br/>Montana Department of Transportation<br/>2701 Prospect Avenue<br/>P.O. Box 201001<br/>Helena, MT 59620-1001</b></p> | <b>Accommodation Information:</b><br><br>MDT attempts to provide accommodations for any known for any known disability that may interfere with a person participating in any service, program or activity of the Department. Alternative accessible formats of this information will be provided upon request. For further information call Richele Parkhurst at (406) 657-0274 Voice or 1-800-335-7592 TTY or TTY (406) 444-7696. |

**IMPORTANT: SEE STANDARD TERMS AND CONDITIONS**

| OFFERORS MUST COMPLETE THE FOLLOWING |   |
|--------------------------------------|---|
| <b>Offeror Name/Address:</b>         | <b>Authorized Offeror Signatory:</b><br><br>(Please print name and sign in ink) |
| <b>Offeror Phone Number:</b>         | <b>Offeror FAX Number:</b>  |
| <b>Offeror Federal I.D. Number:</b>  | <b>Offeror E-mail Address:</b>  |

**OFFERORS MUST RETURN THIS COVER SHEET WITH RFP RESPONSE**

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## OFFEROR'S RFP CHECKLIST

### The 10 Most Critical Things to Keep in Mind When Responding to an RFP for the State of Montana

1. \_\_\_\_\_ **Read the entire document.** Note critical items such as: mandatory requirements; supplies/services required; submittal dates; number of copies required for submittal; funding amount and source; contract requirements (i.e., contract performance security, insurance requirements, performance and/or reporting requirements, etc.).
2. \_\_\_\_\_ **Note the procurement officer's name, address, phone numbers and e-mail address.** This is the only person you are allowed to communicate with regarding the RFP and is an excellent source of information for any questions you may have.
3. \_\_\_\_\_ **Attend the pre-proposal conference** if one is offered. These conferences provide an opportunity to ask clarifying questions, obtain a better understanding of the project, or to notify the State of any ambiguities, inconsistencies, or errors in the RFP.
4. \_\_\_\_\_ **Take advantage of the “question and answer” period.** Submit your questions to the procurement officer by the due date listed in the Schedule of Events and view the answers given in the formal “addenda” issued for the RFP. All addenda issued for an RFP are posted on the State’s website and will include all questions asked and answered concerning the RFP.
5. \_\_\_\_\_ **Follow the format required in the RFP** when preparing your response. Provide point-by-point responses to all sections in a clear and concise manner.
6. \_\_\_\_\_ **Provide complete answers/descriptions.** Read and answer **all** questions and requirements. Don’t assume the State or evaluation committee will know what your company capabilities are or what items/services you can provide, even if you have previously contracted with the State. The proposals are evaluated based solely on the information and materials provided in your response.
7. \_\_\_\_\_ **Use the forms provided**, i.e., cover page, sample budget form, certification forms, etc.
8. \_\_\_\_\_ **Check the State’s website for RFP addenda.** Before submitting your response, check the State’s website at <http://www.discoveringmontana.com/doa/GSD/osbs/Results.asp?AgencyID=TRANS1> to see whether any addenda were issued for the RFP. If so, you must sign and return a copy of each addendum issued along with your RFP response.
9. \_\_\_\_\_ **Review and read the RFP document again** to make sure that you have addressed all requirements. Your original response and the requested copies must be identical and be complete. The copies are provided to the evaluation committee members and will be used to score your response.
10. \_\_\_\_\_ **Submit your response on time.** Note all the dates and times listed in the Schedule of Events and within the document, and be sure to submit all required items on time. Late proposal responses are **never** accepted.

**This checklist is provided for assistance only and should not be submitted with Offeror’s Response.**

## SCHEDULE OF EVENTS

| <u>EVENT</u>   | <u>DATE</u>     |
|--|-----------------|
| RFP Issue Date .....   | 12/05/05        |
| Deadline for Receipt of Written Questions .....                      | 12/30/05        |
| Deadline for Posting of Written Answers to the State's Website ..... | 1/11/06         |
| RFP Response Due Date .....  | 1/20/06         |
| Intended Date for Contract Award .....                               | Approx. 3/01/06 |

## SECTION 1: PROJECT OVERVIEW AND INSTRUCTIONS

### 1.0 PROJECT OVERVIEW

The STATE OF MONTANA, Department of Transportation (hereinafter referred to as “the State”) is seeking a Contractor to provide central software to operate the 23 dynamic message signs that the State owns. A more complete description of the supplies and/or services sought for this project is provided in Section 3, Scope of Project. Proposals submitted in response to this solicitation must comply with the instructions and procedures contained herein.

### 1.1 CONTRACT TERM

The contract term is for a period of three (3) years beginning contract signature date and ending December 31, 2006. Renewals of the contract, by mutual agreement of both parties, may be made at one (1) -year interval, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of five (5) years, at the option of the State.

### 1.2 SINGLE POINT OF CONTACT

From the date this Request for Proposal (RFP) is issued until an offeror is selected and the selection is announced by the procurement officer, **offerors are not allowed to communicate with any state staff or officials regarding this procurement, except at the direction of Richele Parkhurst**, the procurement officer in charge of the solicitation. Any unauthorized contact may disqualify the offeror from further consideration. Contact information for the single point of contact is as follows:

Procurement Officer: Richele Parkhurst  
Address: Purchasing Services Bureau  
Montana Department of Transportation  
424 Morey Street  
PO Box 20437  
Billings, Montana 59104-0437  
Telephone Number: (406) 657-0274  
Fax Number: (406) 256-6487  
E-mail Address: rparkhurst@mt.gov

### 1.3 DEFINITION OF TERMS

- “RFP” means the Request for Proposal process
- “State” means the Montana Department of Transportation
- “Offeror” means the individual, organization or corporation interested in providing services as stated herein.
- “Evaluation Committee” means the group of people who will be reviewing and evaluating the offers received.
- “DMS” means Dynamic Message Signs
- “ITS” means Intelligent Transportations Systems
- “NTCIP” means National Transportation Communication ITS Protocol

## **1.4 REQUIRED REVIEW**

**1.4.1 Review RFP.** Offerors should carefully review the instructions, mandatory requirements, specifications, standard terms and conditions, and contract set out in this RFP and promptly notify the procurement officer identified above in writing or via e-mail of any ambiguity, inconsistency, unduly restrictive specifications, or error which they discover upon examination of this RFP. This should include any terms or requirements within the RFP that either preclude the offeror from responding to the RFP or add unnecessary cost. This notification must be accompanied by an explanation and suggested modification and be received by the deadline for receipt of written or e-mailed inquiries set forth below. The State will make any final determination of changes to the RFP.

**1.4.2 Form of Questions.** Offerors with questions or requiring clarification or interpretation of any section within this RFP must address these questions in writing or via e-mail to the procurement officer referenced above on or before December 30, 2005. Each question must provide clear reference to the section, page, and item in question. Questions received after the deadline will not be considered.

**1.4.3 State's Answers.** The State will provide an official written answer by January 11, 2006 to all questions received by December 30, 2005. The State's response will be by formal written addendum. Any other form of interpretation, correction, or change to this RFP will not be binding upon the State. Any formal written addendum will be posted on the State's website alongside the posting of the RFP at <http://www.discoveringmontana.com/doa/GSD/osbs/Results.asp?AgencyID=TRANS1> by the close of business on the date listed. Offerors must sign and return any addendum with their RFP response. Failure to return the signed addendum will result in the offeror's proposal being disqualified.

## **1.5 GENERAL REQUIREMENTS**

**1.5.1 Acceptance of Standard Terms and Conditions/Contract.** By submitting a response to this RFP, offeror agrees to acceptance of the standard terms and conditions and contract as set out in Appendices A and B of this RFP. Much of the language included in the standard terms and conditions and contract reflects requirements of Montana law. Requests for additions or exceptions to the standard terms and conditions, contract terms, including any necessary licenses, or any added provisions must be submitted to the procurement officer referenced above by the date for receipt of written/e-mailed questions and must be accompanied by an explanation of why the exception is being sought and what specific effect it will have on the offeror's ability to respond to the RFP or perform the contract. The State reserves the right to address non-material requests for exceptions with the highest scoring offeror during contract negotiation. Any material exceptions requested and granted to the standard terms and conditions and contract language will be addressed in any formal written addendum issued for this RFP and will apply to all offerors submitting a response to this RFP. The State will make any final determination of changes to the standard terms and conditions and/or contract.

**1.5.2 Resulting Contract.** This RFP and any addenda, the offeror's RFP response, including any amendments, a best and final offer, and any clarification question responses shall be included in any resulting contract. The State's contract, attached as Appendix B, contains the contract terms and conditions which will form the basis of any contract between the State and the highest scoring offeror. In the event of a dispute as to the duties and responsibilities of the parties under this contract, the contract, along with any attachments prepared by the State, will govern in the same order of precedence as listed in the contract.

**1.5.3 Mandatory Requirements.** To be eligible for consideration, an offeror *must* meet the intent of all mandatory requirements. The State will determine whether an offeror's RFP response complies with the intent of the requirements. RFP responses that do not meet the full intent of all requirements listed in this RFP may be subject to point reductions during the evaluation process or may be deemed non-responsive.

**1.5.4 Understanding of Specifications and Requirements.** By submitting a response to this RFP, offeror agrees to an understanding of and compliance with the specifications and requirements described in this RFP.

**1.5.5 Prime Contractor/Subcontractors.** The highest scoring offeror will be the prime contractor if a contract is awarded and shall be responsible, in total, for all work of any subcontractors. All subcontractors, if any, must be listed in the proposal. The State reserves the right to approve all subcontractors. The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. Further, nothing contained within this document or any contract documents created as a result of any contract awards derived from this RFP shall create any contractual relationships between any subcontractor and the State.

**1.5.6 Offeror's Signature.** The proposals must be signed in ink by an individual authorized to legally bind the business submitting the proposal. The offeror's signature on a proposal in response to this RFP guarantees that the offer has been established without collusion and without effort to preclude the State of Montana from obtaining the best possible supply or service. Proof of authority of the person signing the RFP response must be furnished upon request.

**1.5.7 Offer in Effect for 120 Days.** A proposal may not be modified, withdrawn or canceled by the offeror for a 120-day period following the deadline for proposal submission as defined in the Schedule of Events, or receipt of best and final offer, if required, and offeror so agrees in submitting the proposal.

## **1.6 SUBMITTING A PROPOSAL**

**1.6.1 Organization of Proposal.** Offerors must organize their proposal into sections that follow the format of this RFP, with tabs separating each section. **A point-by-point response to all numbered sections, subsections, and appendices (section 1.1 through section 6.0, appendix A and Appendix B) is required.** If no explanation or clarification is required in the offeror's response to a specific subsection, the offeror shall indicate so in the point-by-point response or utilize a blanket response for the entire section with the following statement:

**“(Offeror's Name)” understands and will comply.**

**1.6.2 Failure to Comply with Instructions.** Offerors failing to comply with these instructions may be subject to point deductions. The State may also choose to not evaluate, may deem non-responsive, and/or may disqualify from further consideration any proposals that do not follow this RFP format, are difficult to understand, are difficult to read, or are missing any requested information.

**1.6.3 Multiple Proposals.** Offerors may, at their option, submit multiple proposals, in which case each proposal shall be evaluated as a separate document.

**1.6.4 Price Sheets.** Offerors *must* respond to the RFP by utilizing the RFP price sheets found in Section 5.1. These price sheets will serve as the primary representation of each offeror's cost/price, and will be used extensively during proposal evaluations. Additional information should be included as necessary to explain in detail the offeror's cost/price.

**1.6.5 Copies Required and Deadline for Receipt of Proposals.** Offerors must submit two original proposals and five (5) copies to the Purchasing Services Bureau. In addition, offerors must submit one electronic copy of the proposal, preferably in PDF format, on compact disk. Offerors unable to provide an electronic copy of the proposal in PDF format must provide it in Word or text format. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to RFP #HWY-307755-RP. ***Proposals must be received at the Purchasing Services Bureau (Room 173) prior to 3:00 pm, local time, January 20, 2006. Facsimile responses WILL NOT be accepted.***

**1.6.6 Late Proposals.** *Regardless of cause, late proposals will not be accepted and will automatically be disqualified from further consideration.* It shall be the offeror's sole risk to assure delivery at the receptionist's desk at the designated office by the designated time. Late proposals will not be opened and may be returned to the offeror at the expense of the offeror or destroyed if requested.

**1.6.7 Addressing of Proposals.** Proposals MUST be returned in a sealed package and marked as shown below:

#HWY- 307755-RP  
Purchasing Services Bureau  
Montana Department of Transportation  
2701 Prospect Avenue  
P.O. Box 201001  
Helena, MT 59620-1001

Proposals that are not returned in a sealed package, with the Request for Proposal Number clearly labeled on the outside **WILL BE DISQUALIFIED.**

## **1.7 COST OF PREPARING A PROPOSAL**

**1.7.1 State Not Responsible for Preparation Costs.** The costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the State are entirely the responsibility of the offeror. The State is not liable for any expense incurred by the offeror in the preparation and presentation of their proposal or any other costs incurred by the offeror prior to execution of a contract.

**1.7.2 All Timely Submitted Materials Become State Property.** All materials submitted in response to this RFP become the property of the State and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the State and offeror resulting from this RFP process.



## SECTION 2: RFP STANDARD INFORMATION

### **2.0 AUTHORITY**

This RFP is issued under the authority of section 18-4-304, MCA (Montana Code Annotated) and ARM 2.5.602 (Administrative Rules of Montana). The RFP process is a procurement option allowing the award to be based on stated evaluation criteria. The RFP states the relative importance of all evaluation criteria. No other evaluation criteria, other than as outlined in the RFP, will be used.

### **2.1 OFFEROR COMPETITION**

The State encourages free and open competition among offerors. Whenever possible, the State will design specifications, proposal requests, and conditions to accomplish this objective, consistent with the necessity to satisfy the State's need to procure technically sound, cost-effective services and supplies.

### **2.2 RECEIPT OF PROPOSALS AND PUBLIC INSPECTION**

**2.2.1 Public Information.** All information received in response to this RFP, including copyrighted material, is deemed public information and will be made available for public viewing and copying shortly after the time for receipt of proposals has passed with the following four exceptions: (1) bona fide trade secrets meeting the requirements of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA, that have been properly marked, separated, and documented; (2) matters involving individual safety as determined by the State; (3) other constitutional protections. See Mont. Code Ann. § 18-4-304.

**2.2.2 Procurement Officer Review of Proposals.** Upon opening the proposals received in response to this RFP, the procurement officer in charge of the solicitation will review the proposals and separate out any information that meets the referenced exceptions in Section 2.2.1 above, providing the following conditions have been met:

- Confidential information is clearly marked and separated from the rest of the proposal.
- The proposal does not contain confidential material in the cost or price section.
- An affidavit from an offeror's legal counsel attesting to and explaining the validity of the trade secret claim as set out in Title 30, chapter 14, part 4, MCA, is attached to each proposal containing trade secrets. Counsel must use the State of Montana "Affidavit for Trade Secret Confidentiality" form in requesting the trade secret claim. This affidavit form is available on the General Services Division's website at: <http://www.discoveringmontana.com/doa/gsd/procurement/forms.asp> or by calling (406) 444-2575.

Information separated out under this process will be available for review only by the procurement officer, the evaluation committee members, and limited other designees. Offerors must be prepared to pay all legal costs and fees associated with defending a claim for confidentiality in the event of a "right to know" (open records) request from another party.

The claim of a trade secret must be reasonable. If materials or information are included in a request for trade secret coverage that are not reasonably considered a "trade secret," the proposal will be rejected as non-responsive and will not be considered. In such cases, an offeror will not be given an opportunity to revise the proposal.

## **2.3 CLASSIFICATION AND EVALUATION OF PROPOSALS**

**2.3.1 Initial Classification of Proposals as Responsive or Nonresponsive.** All proposals will initially be classified as either “responsive” or “nonresponsive,” in accordance with ARM 2.5.602. Proposals may be found nonresponsive any time during the evaluation process if any of the required information is not provided; the submitted price is found to be excessive or inadequate as measured by criteria stated in the RFP; or the proposal is not within the plans and specifications described and required in the RFP. If a proposal is found to be nonresponsive, it will not be considered further.

**2.3.2 Determination of Responsibility.** The procurement officer will determine whether an offeror has met the standards of responsibility in accordance with ARM 2.5.407. Such a determination may be made at any time during the evaluation process and through contract negotiation if information surfaces that would result in a determination of nonresponsibility. If an offeror is found nonresponsible, the determination must be in writing, made a part of the procurement file and mailed to the affected offeror.

**2.3.3 Evaluation of Proposals.** The evaluation committee will evaluate the remaining proposals and recommend whether to award the contract to the highest scoring offeror or, if necessary, to seek discussion/negotiation or a best and final offer in order to determine the highest scoring offeror. All responsive proposals will be evaluated based on stated evaluation criteria. In scoring against stated criteria, the State may consider such factors as accepted industry standards and a comparative evaluation of all other qualified RFP responses in terms of differing price, quality, and contractual factors. These scores will be used to determine the most advantageous offering to the State.

**2.3.4 Completeness of Proposals.** Selection and award will be based on the offeror’s proposal and other items outlined in this RFP. Submitted responses may not include references to information located elsewhere, such as Internet websites or libraries, unless specifically requested. Information or materials presented by offerors outside the formal response or subsequent discussion/negotiation or “best and final offer,” if requested, will not be considered, will have no bearing on any award, and may result in the offeror being disqualified from further consideration.

**2.3.5 Achieve Passing Score.** Any proposal that fails to achieve 40 total points for the ‘Ability to Meet Supply Specifications’ in Section 6.1 will be eliminated from further consideration. A “fail” for any individual evaluation criteria may result in proposal disqualification at the discretion of the procurement officer.

**2.3.6 Opportunity for Discussion/Negotiation and/or Oral Presentation/Product Demonstration.** After receipt of all proposals and prior to the determination of the award, the State may initiate discussions with one or more offerors should clarification or negotiation be necessary. Offerors may also be required to make an oral presentation and/or product demonstration to clarify their RFP response or to further define their offer. In either case, offerors should be prepared to send qualified personnel to Helena, Montana, to discuss technical and contractual aspects of the proposal. Oral presentations and product demonstrations, if requested, shall be at the offeror’s expense.

**2.3.7 Best and Final Offer.** The “Best and Final Offer” is an option available to the State under the RFP process, which permits the State to request a “best and final offer” from one or more offerors if additional information is required to make a final decision. Offerors may be contacted asking that they submit their “best and final offer,” which must include any and all discussed and/or negotiated changes.

**2.3.8 Evaluation Committee Recommendation for Contract Award.** The evaluation committee will provide a written recommendation for contract award to the procurement officer that contains the scores, justification and rationale for its decision. The procurement officer will review the recommendation during the RFP process to ensure its compliance with the RFP process and criteria before concurring in the evaluation committee’s recommendation.

**2.3.9 Request for Documents Notice.** Upon concurrence with the evaluation committee's recommendation for contract award, the procurement officer will issue a "Request for Documents Notice" to the highest scoring offeror to obtain the required insurance documents, contract performance security, and any other necessary documents. Receipt of the "Request for Documents Notice" does not constitute a contract and no work may begin until a contract signed by all parties is in place.

**2.3.10 Contract Award.** Contract award, if any, will be made to the highest scoring offeror who provides all required documents. A formal contract utilizing the Contract attached as Appendix B and incorporating the Standard Terms and Conditions attached as Appendix A will be executed by all parties.

## **2.4 STATE'S RIGHTS RESERVED**

While the State has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the State of Montana to award and execute a contract. Upon a determination such actions would be in its best interest, the State, in its sole discretion, reserves the right to:

- cancel or terminate this RFP (Mont. Code Ann. § 18-4-307, MCA);
- reject any or all proposals received in response to this RFP (ARM 2.5.602);
- waive any undesirable, inconsequential, or inconsistent provisions of this RFP which would not have significant impact on any proposal (ARM 2.5.505);
- not award if it is in the best interest of the State not to proceed with contract execution (ARM 2.5.602); or
- if awarded, terminate any contract if the State determines adequate state funds are not available (Mont. Code Ann. § 18-4-313).

## **2.5 DEPARTMENT OF ADMINISTRATION POWERS AND DUTIES**

The Department of Administration is responsible for carrying out the planning and program responsibilities for information technology (IT) for state government. (Mont. Code Ann. § 2-17-512.) The Chief Information Officer is the person appointed to carry out the duties and responsibilities of the Department of Administration relating to information technology. The Department of Administration shall:

- review the use of information technology resources for all state agencies;
- review and approve state agency specifications and procurement methods for the acquisition of information technology resources; and
- review, approve, and sign all state agency contracts and shall review and approve other formal agreements for information technology resources provided by the private sector and other government entities.

## **2.6 COMPLIANCE WITH STATE OF MONTANA IT STANDARDS**

The offeror is expected to be familiar with the State of Montana IT environment. All services and products provided as a result of this RFP must comply with all applicable State of Montana IT policies and standards in effect at the time the RFP is issued. The offeror must request exceptions to State IT policies and standards in accordance with Section 1.5 of this RFP. It will be the responsibility of the State to deny the exception request or to seek a policy or standards exception through the Department of Administration, Information Technology Services Division (ITSD). Offerors are expected to provide proposals that conform to State IT policies and standards. It is the intent of ITSD to utilize the existing policies and standards and not to routinely grant exceptions. The State reserves the right to address non-material requests for exceptions with the highest scoring offeror during contract negotiation.

The links below will provide information on State of Montana IT strategic plans, current environment, policies, and standards.

State of Montana Information Technology Strategic Plan  
<http://www.mt.gov/itsd/stratplan/statewideplan.asp>

State of Montana Information Technology Environment  
<http://www.mt.gov/itsd/techmt/compenviron.asp>

State of Montana IT Policies  
<http://www.mt.gov/itsd/policy/enterprise.asp>

State of Montana Software Standards  
<http://www.mt.gov/itsd/policy/software.asp>

## SECTION 3: SCOPE OF PROJECT

In order for the State to determine the capabilities of an offeror to provide the supplies and/or perform the services specified below, the offeror must respond to the following requests for information regarding its ability to meet the State's requirements.

**NOTE: Each item must be thoroughly addressed. Offerors taking exception to any requirements listed in this section may be found non-responsive or be subject to point deductions.**

### **3.0 PURPOSE**

Dynamic Message Signs (DMS) in Montana have become an important way to disseminate traveler information to the public. DMS are used for construction information, road conditions, chain requirements, high wind warnings, and AMBER Alerts in this state. Currently, Montana has seven permanent DMS and sixteen portable DMS and plans to purchase more in the near future.

Along with having twenty-three DMS, Montana also has three separate vendor's software to operate these signs. Challenges with the software have arisen such as:

- All three cannot be loaded on the same computer.
- They are currently client based (i.e. the software is installed on each computer separately).
- Due to the client-based approach, the message logs are also saved on each individual computer; therefore to determine all of the messages that have been put on the signs, each computer that has the software installed on it needs to be queried.
- One of the pieces of software will only let the operator preview the first frame of the message and not multiple frames.
- None of the software is able to perform AMBER Alerts for all of Montana's DMS (i.e. put the same message on all of Montana's DMS in one move).

It is for these reasons that the State is seeking to purchase centralized DMS software that can operate all of the DMS according to their needs.

### **3.1 CORE REQUIREMENTS**

#### **3.1.1 Major Features.**

**3.1.1.1.** The software shall provide an interface that allows for operation and control of portable and permanent dynamic message signs (DMS).

**3.1.1.2.** The successful offeror shall integrate Montana's current DMS to operate with the software including:

- Seven Vultron permanent LED, LED Flip/Dot, and Flip/Dot DMS. There are two different sizes including 28 x 144 and 28 x 72. The software versions are 1.1.89 and the firmware revision is 1.27 for the controllers.
- Eight Ver-mac model PCMS 1210 portable DMS that display three lines of eight characters each. They use an analog cell phone and modem for remote connection and are running software version 2002VJ.

- Eight US Traffic Corp – Display Solutions model Sunray 390 portable DMS that display three lines of ten characters each. They use cell phone for remote connections using a tri-mode modem, CDMA for digital, and AMPS for analog. The software version is SR240 V1823.

**3.1.1.3.** The successful offeror shall work with the Montana DMS vendors to integrate the DMS with the software.

### **3.1.2 Architecture and Standards Compliance.**

**3.1.2.1.** The software shall be NTCIP (National Transportation Communication ITS Protocol) compliant.

**3.1.2.2.** The software shall have the ability to work with the State's current Ethernet network and Microsoft RAS dial-up capabilities.

**3.1.2.3.** The software shall be a server-based.

**3.1.2.4.** The software shall be web-based for the client interface.

**3.1.2.5.** The software shall be compatible with Windows XPsp2, Windows 2003 Server sp1, Windows 2003 Server sp1 Terminal Services and upgradeable.

**3.1.2.6.** The software shall function on any communications medium (i.e. low-bandwidth connection such as cellular, etc).

**3.1.2.7.** The software shall allow users to easily add new DMS elements (signs) to the software when purchased.

**3.1.2.8.** The software shall allow other DMS (vendor communication protocols) to be added to the software without modifying the remainder of the software.

**3.1.2.9.** The software will be compliant with State of Montana and Montana Department of Transportation IT Standards. The State's standards can be found on the website listed in Section 2.6.

**3.1.2.10.** The software shall provide the user with connectivity information including:

- Connecting/disconnecting
- Performing requested activity
- Waiting for resource (i.e. modem)
- Detailed error information (phone line busy, no response from DMS, etc)

### **3.1.3 DMS Message Features**

**3.1.3.1.** The software shall allow users to create new frames and messages based on their security permissions.

**3.1.3.2.** The software shall have the ability to store message libraries.

**3.1.3.3.** The software shall allow users to choose messages from the library to be sent to the sign.

**3.1.3.4.** The software shall ensure that the message chosen for a sign will fit on the sign and send an error message to the user if the message is too big for the sign.

**3.1.3.5.**The software shall have the ability to send one message to multiple signs and to save these scenarios for future use.

**3.1.3.6.**The software shall have the ability to set message priorities (i.e. which messages are more important than others) which will be defined by the administrator (e.g. if user attempts to put an AMBER message on the sign, ensure that it will not override a higher priority message such as a lane closure) and to inform user of request acceptance or denial.

**3.1.3.7.**The software shall have the ability to schedule messages for deployment at specific times (start and end times).

**3.1.3.8.**The software shall have the ability to create and store scenarios or messaging plans (e.g. message x for signs 1, 2, and 3) based on their security permissions.

**3.1.3.9.**The software shall have the ability to set AMBER Alerts.

**3.1.3.10.**The software shall have the ability to define 'default' messages per sign.

### **3.1.4 DMS Functional Features**

**3.1.4.1.**The software shall have the ability to control portable and permanent DMS displays including character matrix, line matrix, and full matrix.

**3.1.4.2.**The software shall allow the DMS to be turned on and off remotely.

**3.1.4.3.**The software shall have the ability to poll the DMS and tell operator what the message is on all frames of the sign.

**3.1.4.4.**The software shall have the ability to measure the status of the DMS (i.e. what is on the sign, power, temperature, controller, airflow, brightness, control mode, source, priority, pixel test, airflow test, time left, and communication) both manually (i.e. at any time a user chooses) and automatically (i.e. at a scheduled time).

**3.1.4.5.**The software shall have the ability to notify (i.e. email) an administrator and the user (i.e. a message box) if the signs are not functioning properly (i.e. if there is a need for a technician to provide attention to the signs for example if the software cannot communicate with the sign or if the pixel test shows that pixels/boards need to be replaced) when the status is measured.

**3.1.4.6.**The software shall have the ability to define the sign parameters for each DMS (i.e. character spacing, character height, line spacing, horizontal and vertical justification, pixel space between rows, and full matrix versus line matrix versus character matrix) and restrict these from being changed except by an administrator.

### **3.1.5 Security System**

**3.1.5.1.**The software shall allow administrators to add, delete, and edit users.

**3.1.5.2.**The software shall allow administrators to associate specific permissions to users.

**3.1.5.3.**The software shall allow administrators to control which users may access specific signs.

**3.1.5.4.**The software shall allow administrators to associate the following controls via permissions:

- Ability to create, edit, and delete messages
- Ability to create, edit, and delete DMS and their parameters
- Ability to create, edit, and delete message priorities.

### **3.1.6 Archive System**

**3.1.6.1.**For each event, the software will log date, time, description, device, and user.

**3.1.6.2.**The software shall log user information including user login/logout and user account and permission changes.

**3.1.6.3.**The software shall log administrative changes such as creation, deletion, and editing of messages, message priorities, DMS parameters, and user account revisions.

**3.1.6.4.**The software shall log device information such as DMS connectivity, message activation/deactivation, and scenario activation/deactivation.

**3.1.6.5.**The software shall log sign failures (status information, and communication failures)

**3.1.6.6.**The software shall have the ability to create reports for user information, administrative changes, device information, and sign failures (as mentioned above in 2.0, 3.0, 4.0, and 5.0) based on date and time.

**3.1.6.7.**The software shall allow users to view logs without creating a report.

**3.1.6.8.**The software shall allow users to export log data into Microsoft Excel or Word format.

### **3.1.7 Maintenance and Training**

**3.1.7.1.**The successful offeror shall provide training to the State on utilizing and troubleshooting the software and shall identify their training plan in the proposal.

**3.1.7.2.**The successful offeror shall provide twenty-four hour, seven day a week telephone and on-line customer support for the duration of the contract.

**3.1.7.3.**The successful offeror shall provide two (2) user manuals, and if available provide the manual in an electronic format. Offeror will provide the State any updates to the manual for the duration of the contract. The State may duplicate manuals for internal use only without consent from the Offeror.

## **3.2 OPTIONAL ATTRIBUTES**

### **3.2.1 Map Interface**

**3.2.1.1.** The software may have a map interface that can be used for updating and viewing the DMS by clicking on the device.

**3.2.1.2.**The software may have the ability to locate portable DMS via global positioning system (GPS) on a map.



**3.2.1.3.**The software may have the ability to post the map user interface as read only on the website including DMS locations and current posted messages.

**3.2.1.4.**The software may have the ability to save maps views on each desktop (i.e. the districts can save view so it will only be their district).

### **3.2.2 Other Attributes**

**3.2.2.1.**The software may have the ability to operate other Intelligent Transportation System (ITS) devices using the software.

**3.2.2.2.**The software may have the ability to perform spell check on messages or to have a word list of acceptable words allowed on the DMS.

**3.2.2.3.**Integrates with Microsoft Active Directory

This is not an exhaustive list of additional attribute. Please explain any of your other additional attributes that you believe may be of interest to the State.

## SECTION 4: OFFEROR QUALIFICATIONS

### **4.0 STATE'S RIGHT TO INVESTIGATE AND REJECT**

The State may make such investigations as deemed necessary to determine the ability of the offeror to provide the supplies and/or perform the services specified. The State reserves the right to reject any proposal if the evidence submitted by, or investigation of, the offeror fails to satisfy the State that the offeror is properly qualified to carry out the obligations of the contract. *This includes the State's ability to reject the proposal based on negative references.*

### **4.1 OFFEROR INFORMATIONAL REQUIREMENTS**

In determining the capabilities of an offeror to perform the services specified herein, the following informational requirements must be met by the offeror. The response "(Offeror's Name) understands and will comply" may not be appropriate for this section. **(Note: Each item must be thoroughly addressed. Offerors taking exception to any requirements listed in this section may be found non-responsive or be subject to point deductions.)**

**4.1.1 References.** Offeror shall provide an exhaustive list of all current entities that are using supplies and/or services of the type proposed in the RPF. The references may include state government or universities where the offeror, preferably within the last five (5) years, has successfully completed installation and operation of DMS central software. At a minimum, the offeror shall provide the company name, the location where the services were provided, contact person(s), customer's telephone number, e-mail address, and a complete description of the service type including DMS vendor, and dates the services were provided. These references may be contacted to verify offeror's ability to perform the contract. The State reserves the right to use any information or additional references deemed necessary to establish the ability of the offeror to perform the conditions of the contract. Negative references may be grounds for proposal disqualification.

**4.1.2 Resumes/Company Profile and Experience.** Offeror shall specify how long the individual/company submitting the proposal has been in the business of providing supplies and/or services similar to those requested in this RFP and under what company name. Offeror should provide a complete description of any relevant past projects, including the supply/service type and dates the supplies and/or services were provided. A resume or summary of qualifications, work experience, education, skills, etc., which emphasizes previous experience in this area should be provided for all key personnel who will be involved with any aspects of the contract.

**4.1.3 Ability to Meet Core Requirements.** Offeror shall provide information as to its ability to meet the core requirements detailed above in Section 3.

**4.1.4 Method of Providing Services.** Offeror shall provide a description of the work plan and the methods to be used that will convincingly demonstrate to the State what the offeror intends to do, the timeframes necessary to accomplish the work, and how the work will be accomplished to meet the contract requirements as more specifically detailed in above Section 3. The Offeror shall also include a list of DMS makes and models that they have previously integrated into their software and what changes were made to the signs/software to accommodate this integration. Offeror must specifically address each of the requirements as defined in this RFP.

**4.1.5 Software Example.** Offeror shall provide a cd or dvd overview of the product in question that contains screen shots of the user interface. The offeror shall also provide a copy of the software user manual.

## SECTION 5: COST PROPOSAL

### **5.0 PROJECT BUDGET**

There is no “set” budget for this project. The project budget must include a total, not to exceed, project cost. The Offeror is to provide a breakdown of the costs necessary to complete the project based on the following criteria:

| <b>Task</b>  | <b>Cost for Requirements Only</b> | <b>Additional Cost for Optional Attributes</b> |
|--|-----------------------------------|--|
| Software   |                                   |  |
| Yearly Software License Fees                                       |                                   |  |
| Yearly Maintenance Agreement and Upgrade Fees                      |                                   |  |
| Software Training  |                                   |  |
| Software Integration with current DMS (Cost in time and materials) |                                   |  |
| Cost for Adding Additional Devices in the Future                   |                                   |  |

## SECTION 6: EVALUATION PROCESS

### 6.0 BASIS OF EVALUATION

The evaluation committee will review and evaluate the offers according to the following criteria based on a **total number of 150 points with a maximum 10-point bonus.**

The References, **Resumes/Company Profile and Experience, Ability to Meet Supply Specifications, Method of Providing Services and Software Example** portions of the offer will be evaluated based on the following Scoring Guide. The **Cost Proposal** will be evaluated based on the formula set forth below.

#### SCORING GUIDE

A maximum total number of points available is set out in the RFP's evaluation criteria section. Each category of evaluation criteria will be broken down further with points assigned to each. In awarding these points, please consider the following guidelines:

**Superior Response (95-100%):** A superior response will be a highly comprehensive, excellent reply that meets all of the requirements of the areas within that category. In addition, the response covers areas not originally addressed within the RFP category and includes additional information and recommendations that would prove both valuable and beneficial to the agency. This response is considered to be an excellent standard, demonstrating the offeror's authoritative knowledge and understanding of the project.

**Good Response (85-94%):** A good response meets all the requirements of the RFP and demonstrates in a clear and concise manner a thorough knowledge and understanding of the project.

**Fair Response (60-84%):** A fair response minimally meets most requirements set forth in the RFP with an adequate manner. The offeror demonstrates some ability to comply with guidelines, parameters, and requirements of the project, but knowledge of the subject matter is limited.

**Failed Response (0-59%):** A failed response does not meet the requirements set forth in the RFP. The offeror has not demonstrated knowledge of the subject matter.

### 6.1 EVALUATION CRITERIA

| <b>References</b>  |                | <b>10% points for a possible 15 points</b> |  |
|--|----------------|--|--|
| Category   | Section of RFP | Point Value                                |  |
| A. References<br>(Complete Contact Information Provided) | 4.1.1          | 10   |  |
| B. Provide List of Governmental Clients/Contracts        | 4.1.1          | 5  |  |

  

| <b>Resumes/Company Profile and Experience</b> |                | <b>6.67% of points for a possible 10 points</b> |  |
|---|----------------|---|--|
| Category                                      | Section of RFP | Point Value                                     |  |
| A. Years of Experience                        | 4.1.2          | 3   |  |
| B. Past Projects                              | 4.1.2          | 4   |  |
| C. Staff Qualifications                       | 4.1.2          | 3   |  |

| <b>Ability to Meet Supply Core Requirements</b>   |                       | <b>33.33% of points for a possible 50 points</b> |  |
|---|-----------------------|--|--|
| <b>Category</b>   | <b>Section of RFP</b> | <b>Point Value</b>                               |  |
| A. Requirements   | 3.1, 4.1.3 & 6.2      | 40   |  |
| B. Additional Attributes  | 3.2 & 4.1.3           |  |  |
| C. Expandability of Software  | 3.1.2 & 4.1.3         | 10   |  |
| (Note that the additional attributes will allow for a maximum of 10 bonus points [i.e. points over the X allowed points] also, these points will not be granted unless the Offeror can meet all of the requirements.) |                       |  |  |

| <b>Method of Providing Services</b> |                       | <b>16.67% of points for a possible 25 points</b> |  |
|-------------------------------------|-----------------------|--|--|
| <b>Category</b>                     | <b>Section of RFP</b> | <b>Point Value</b>                               |  |
| A. Methods                          | 4.1.4                 | 10   |  |
| B. Work Plan                        | 4.1.4                 | 10   |  |
| C. Proposed Timeliness              | 4.1.4                 | 5  |  |

| <b>Software Example</b>                |                       | <b>6.67% of points for a possible 10 points</b> |  |
|--|-----------------------|---|--|
| <b>Category</b>                        | <b>Section of RFP</b> | <b>Point Value</b>                              |  |
| A. CD/DVD Overview of Software         | 4.1.5                 | 2   |  |
| B. User Manual                         | 4.1.5                 | 3   |  |
| C. Understandability of User Interface | 4.1.5                 | 5   |  |

| <b>Cost Proposal</b> |                       | <b>26.67% of points for a possible 40 points</b> |  |
|----------------------|-----------------------|--|--|
| <b>Category</b>      | <b>Section of RFP</b> | <b>Point Value</b>                               |  |
| A. Cost Proposal     | 5.0                   | 40   |  |

The Ratio Method will be used to calculate the cost.

With this method, the proposal with the lowest cost received the maximum points allowed. All other proposals receive a percentage of the points available based on their cost relationship to the lowest. This is determined by applying the following formula:

$$\frac{\text{Lowest Responsive Offer Total Cost}}{\text{This Offeror's Total Cost}} \times \text{Maximum number of available points} = \text{Award Points}$$

This Offeror's Total Cost

Example: The cost for the lowest proposal is \$100,000. The next lowest proposal has a cost of \$125,000. The total points available for cost = 100 points.

$$\frac{\$100,000}{\$125,000} = .80 \times 100 = 80 \text{ points}$$

## 6.2 CORE REQUIREMENT CHECKLIST

Please initial in the column acknowledging that your software can meet the specification core requirement.

| Core Requirement Section              | Core Requirement   | Offeror Initials |
|---------------------------------------|--|------------------|
| Major Features                        | The software shall provide an interface that allows for operation and control of portable and permanent dynamic message signs (DMS).   |                  |
| Major Features                        | The vendor shall integrate Montana's current DMS to operate with the software including: <ul style="list-style-type: none"> <li>• Seven Vultron permanent LED, LED Flip/Dot, and Flip/Dot DMS. There are two different sizes including 28 x 144 and 28 x 72. The software versions are 1.1.89 and the firmware revision is 1.27 for the controllers.</li> <li>• Eight Ver-mac model PCMS 1210 portable DMS that display three lines of eight characters each. They use an analog cell phone and modem for remote connection and are running software version 2002VJ.</li> <li>• Eight US Traffic Corp – Display Solutions model Sunray 390 portable DMS that display three lines of ten characters each. They use cell phone for remote connections using a tri-mode modem, CDMA for digital, and AMPS for analog. The software version is SR240 V1823.</li> </ul> |                  |
| Major Features                        | The vendor shall work with the Montana DMS vendors to integrate the DMS with the software.   |                  |
| Architecture and Standards Compliance | The software shall be NTCIP compliant.   |                  |
| Architecture and Standards Compliance | The software shall have the ability to work with MDT's current Ethernet network and Microsoft RAS dial-up capabilities.  |                  |
| Architecture and Standards Compliance | The software shall be a server-based or web-based system not client-based.   |                  |
| Architecture and Standards Compliance | The software shall be compatible with Windows XPsp2, Windows 2003 Server sp1, Windows 2003 Server sp1 Terminal Services and upgradeable.   |                  |
| Architecture and Standards Compliance | The software shall function on any communications medium (i.e. low-bandwidth connection such as cellular, etc).  |                  |
| Architecture and Standards Compliance | The software shall allow users to easily add new DMS to the software when purchased.   |                  |
| Architecture and Standards Compliance | The software shall allow other DMS to be added to the software without modifying the remainder of the software.  |                  |
| Architecture and Standards Compliance | The software shall provide the user with connectivity information including: <ul style="list-style-type: none"> <li>• Connecting/disconnecting</li> <li>• Performing requested activity</li> <li>• Waiting for resource (i.e. modem)</li> <li>• Detailed error information (phone line busy, no response from DMS, etc)</li> </ul>   |                  |
| DMS Message Features                  | The software shall allow users to create new frames and messages based on their security permissions.  |                  |
|                                       |  |                  |

|                         |  |  |
|-------------------------|--|--|
| DMS Message Features    | The software shall have the ability to store message libraries.  |  |
| DMS Message Features    | The software shall allow users to choose messages from the library to be sent to the sign.   |  |
| DMS Message Features    | The software shall ensure that the message chosen for a sign will fit on the sign and send an error message to the user if the message is too big for the sign.  |  |
| DMS Message Features    | The software shall have the ability to send one message to multiple signs and to save these scenarios for future use.  |  |
| DMS Message Features    | The software shall have the ability to set message priorities (i.e. which messages are more important than others) which will be defined by the administrator (e.g. if user attempts to put an AMBER message on the sign, ensure that it will not override a higher priority message such as a lane closure) and to inform user of request acceptance or denial.                                 |  |
| DMS Message Features    | The software shall have the ability to schedule messages for deployment at specific times.   |  |
| DMS Message Features    | The software shall have the ability to create and store scenarios or messaging plans (e.g. message x for signs 1, 2, and 3) based on their security permissions.   |  |
| DMS Message Features    | The software shall have the ability to set AMBER Alerts.   |  |
| DMS Functional Features | The software shall have the ability to control portable and permanent DMS displays including character matrix, line matrix, and full matrix.   |  |
| DMS Functional Features | The software shall allow the DMS to be turned on and off remotely.   |  |
| DMS Functional Features | The software shall have the ability to poll the DMS and tell operator what the message is on all frames of the sign.   |  |
| DMS Functional Features | The software shall have the ability to measure the status of the DMS (i.e. what is on the sign, power, temperature, controller, airflow, brightness, control mode, source, priority, pixel test, airflow test, time left, and communication) both manually (i.e. at any time a user chooses) and automatically (i.e. at a scheduled time).   |  |
| DMS Functional Features | The software shall have the ability to notify (i.e. email) an administrator and the user (i.e. a message box) if the signs are not functioning properly (i.e. if there is a need for a technician to provide attention to the signs for example if the software cannot communicate with the sign or if the pixel test shows that pixels/boards need to be replaced) when the status is measured. |  |
| DMS Functional Features | The software shall have the ability to define the sign parameters for each DMS (i.e. character spacing, character height, line spacing, horizontal and vertical justification, pixel space between rows, and full matrix versus line matrix versus character matrix) and restrict these from being changed except by an administrator.   |  |
| Security System         | The software shall allow administrators to add, delete, and edit users.  |  |
| Security System         | The software shall allow administrators to associate specific permissions to users.  |  |
|                         |  |  |

|                          |   |  |
|--------------------------|---|--|
| Security System          | The software shall allow administrators to associate the following controls via permissions: <ul style="list-style-type: none"> <li>• Ability to create, edit, and delete messages</li> <li>• Ability to create, edit, and delete DMS and their parameters</li> </ul> |  |
| Security System          | Ability to create, edit, and delete message priorities.   |  |
| Archive System           | For each log, date, time, description, device, and user shall be logged.  |  |
| Archive System           | The software shall log user information including user login/logout and user account and permission changes.  |  |
| Archive System           | The software shall log administrative changes such as creation, deletion, and editing of messages, message priorities, and DMS parameters.  |  |
| Archive System           | The software shall log device information such as DMS connectivity, message activation/deactivation, and scenario activation/deactivation.  |  |
| Archive System           | The software shall log sign failures.   |  |
| Archive System           | The software shall have the ability to create reports for user information, administrative changes, device information, and sign failures (as mentioned above in 2.0, 3.0, 4.0, and 5.0) based on date and time.  |  |
| Archive System           | The software shall allow users to view logs without creating a report.  |  |
| Archive System           | The software shall allow users to export data into Microsoft Excel or Word format.  |  |
| Maintenance and Training | The software vendor shall provide training to MDT on utilizing and troubleshooting the software and shall identify their training plan in the proposal.   |  |
| Maintenance and Training | The software vendor shall provide twenty-four hour, seven day a week telephone and on-line customer support for the duration of the contract.   |  |
| Maintenance and Training | The software vendor shall provide a user manual.  |  |
| Viability of Software    | The software vendor shall provide updates and enhancements to the software as the technologies change for the duration of the contract.   |  |



## APPENDIX A: STANDARD TERMS AND CONDITIONS

**By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.**

**ACCEPTANCE/REJECTION OF BIDS OR PROPOSALS:** The State reserves the right to accept or reject any or all bids or proposals, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal.

**ACCESS AND RETENTION OF RECORDS:** The Contractor agrees to provide the Department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

**ALTERATION OF SOLICITATION DOCUMENT:** In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

**ASSIGNMENT, TRANSFER AND SUBCONTRACTING:** The Contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the Department. (Mont. Code Ann. § 18-4-141.)

**AUTHORITY:** The following bid, request for proposal, limited solicitation, or contract is issued in accordance with Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

**BILLING:** The State of Montana cannot pay for materials or services in advance. All billing against this purchase order must be made only after completion of receipt of merchandise or services rendered.

**COMPLIANCE WITH LAWS:** The Contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

**CONFORMANCE WITH CONTRACT:** No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the Department of Transportation Purchasing Bureau. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the Contractor's expense.

**DISABILITY ACCOMMODATIONS:** The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

**EXCEPTIONS:** A prospective Contractor may take “exception” to bid terms, conditions, specifications and dates stated within the bid package. However, the Department reserves the right to disqualify any and all bids submitted which include exceptions, if deemed not in the Department’s best interest.

**FACSIMILE RESPONSES:** Facsimile bids sent directly to the Department of Transportation will not be accepted; however, facsimile bids sent to a 3rd party and then delivered to the Department in a properly addressed, sealed envelope will be accepted.

**FAILURE TO HONOR BID/PROPOSAL:** If a bidder/Contractor to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the Department may, in its discretion, suspend the bidder/Contractor for a period of time from entering into any contracts with the State of Montana.

**FORCE MAJEURE:** Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

**HOLD HARMLESS/INDEMNIFICATION:** The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

**LATE BIDS AND PROPOSALS:** Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

**PAYMENT TERM:** All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All Contractors may be required to provide banking information at the time of contract execution in order to facilitate state electronic funds transfer payments.

**REFERENCE TO CONTRACT:** The contract or purchase order number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract.

**REGISTRATION WITH THE SECRETARY OF STATE:** Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://www.sos.state.mt.us>

**SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

**SHIPPING:** Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

**SOLICITATION DOCUMENT EXAMINATION:** Vendors shall promptly notify the State of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation document.

**TAX EXEMPTION:** The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

**TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED:** Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

**TERMINATION OF CONTRACT:** Unless otherwise stated, the State may, by written notice to the Contractor, terminate the contract in whole or in part at any time the Contractor fails to perform the contract.

**UNAVAILABILITY OF FUNDING:** The contracting agency, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313 (3).)

**U.S. FUNDS:** All prices and payments must be in U.S. dollars.

**VENUE:** This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

**WARRANTIES:** The Contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.

## **FEDERAL AID REQUIREMENTS**

Some of the product purchased from the resulting contract of this Invitation for Bid **may** be purchased with Federal Aid Funds. Therefore, the following provisions will apply to the Invitation for Bid and to the resulting contract.

### **A. MONTANA PREFERENCES**

Since Federal Aid Funds will be utilized to pay for this project, the Montana bid preferences will not apply.

### **B. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with

the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

### **C. NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS**

18 U.S.C. 1020 reads as follows:

*"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or*

*Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or*

*Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;*

*Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."*

### **D. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

#### 1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List), which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**E. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions**

- 1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
  - d. Have not within a 3-year period preceding this application/ proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**F. Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**G. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:**

- 1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**H. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

- 1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.



## APPENDIX B: INFORMATION TECHNOLOGY CONTRACT

1. Parties
2. Effective Date, Duration and Renewal
3. Cost/Price Adjustments
4. Services and/or Supplies
5. Consideration/Payment
6. Access and Retention of Records
7. Assignment, Transfer and Subcontracting
8. Hold Harmless/Indemnification
9. Limitation of Liability
10. Compliance with Workers' Compensation Act
11. Independent Contractor
12. Compliance with Laws
13. Civil Rights Compliance
14. Intellectual Property
15. Patent and Copyright Protection
16. Contract Performance Assurance
17. Contract Oversight
18. Contract Termination
19. Event of Breach - Remedies
20. Waiver of Breach
21. State Personnel
22. Contractor Personnel
23. Meetings and Reports
24. Contractor Performance Assessments
25. Transition Assistance
26. Choice of Law and Venue
27. Scope, Amendment and Interpretation
28. Execution

## CONTRACT #

### 1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana, Department of Transportation (hereinafter referred to as "the State"), whose address and phone number are 2701 Prospect Avenue, Helena, MT 59620, (406) PHONE # and CONTRACTOR NAME, (hereinafter referred to as the "Contractor"), whose nine digit Federal ID Number, address and phone number are TAX ID, ADDRESS and PHONE NUMBER.

### THE PARTIES AGREE AS FOLLOWS:

### 2. EFFECTIVE DATE, DURATION, AND RENEWAL

**2.1 Contract Term.** This contract shall take effect on contract signature date, and terminate on December 31, 2006 unless terminated earlier in accordance with the terms of this contract. (Mont. Code Ann. § 18-4-313.)

**2.2 Contract Renewal.** This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in one (1)-year intervals, or any interval that is advantageous to the State, for a period not to exceed a total of five (5) years. This renewal is dependent upon legislative appropriations.

### 3. COST/PRICE ADJUSTMENTS

**3.1 Cost Increase by Mutual Agreement.** After the initial term of the contract, each renewal term may be subject to a cost increase by mutual agreement.

### 4. SERVICES AND/OR SUPPLIES

Contractor agrees to provide to the State central software to operate 23 dynamic message signs that the State owns. *A more detailed description will be added depending on the information provided by the Contractor in the RFP response.*

### 5. CONSIDERATION/PAYMENT

**5.1 Payment Schedule.** In consideration for the central software to operate 23 dynamic message signs that the State owns to be provided, the State shall pay according to the schedule as outlined in section 16, Contract Performance Assurance.

**5.2 Withholding of Payment.** The State may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

### 6. ACCESS AND RETENTION OF RECORDS

**6.1 Access to Records.** The Contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

**6.2 Retention Period.** The Contractor agrees to create and retain records supporting the services as detailed herein for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

## **7. ASSIGNMENT, TRANSFER AND SUBCONTRACTING**

The Contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.) The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationships exist between any subcontractor and the State.

## **8. HOLD HARMLESS/INDEMNIFICATION**

Contractor agrees to defend, protect, indemnify and save harmless the State of Montana and the Department of Transportation against and from all claims, liabilities, demands, causes of action, judgments (including costs and reasonable attorney fees), and losses to them from any cause whatever (including patent, trademark and copyright infringements) arising from the Agreement and its execution. This agreement to indemnify includes any suits, claims, actions, losses, costs or damages of any kind, including the State's and Department's legal expenses, arising out of, in connection with, or incidental to the Agreement, but does not include any such suits, claims, actions, costs, or damages which are solely the result of the negligent acts, omissions or misconduct of Department's employees. If a claim arises out of, depends upon or relates to, a negligent act, omission, or misconduct of Contractor's employees, it will not be considered the sole negligence of the State and the Contractor agrees to defend, protect, indemnify, and save harmless the State of Montana and the Department.

The Contractor assumes all responsibility for ensuing and enforcing safe working conditions and compliance with all safety-related rules and regulations for the benefit of its own employees, the employees of any subcontractor, and the public. That responsibility includes all duties related to safety, regardless of whether any such duties are, or are alleged to be, "nondelegable" (e.g., the Montana Safe Place to Work Statute, etc.). This indemnification is expressly intended by the parties to include any claims, liabilities, demands, causes of action, judgments (including costs and reasonable attorney fees), and losses that are, or are alleged or held to be, based upon a breach by the Department of a nondelegable duty related to workplace safety for the Contractor's employees, the employees of any subcontractor, and the public.

## **9. LIMITATION OF LIABILITY**

Except for damages caused by injury to persons or tangible property, or related to defending intellectual property provided under the contract, the Contractor's liability for contract damages is limited to direct damages.

## **10. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the Purchasing Services Bureau, Department of Transportation, PO Box 201001, Helena, MT 59620-1001 upon expiration.

## **11. INDEPENDENT CONTRACTOR**

Due to requirements of Federal labor laws, individuals who are presently a Montana State employee will not be considered for potential award of the Agreement. A successful bidder, who, during the post-bid period or during the term of the Agreement, becomes a Montana State employee, must immediately notify in writing the Department's Field Maintenance Chief. Contractor agrees that, if it becomes a Montana State employee

during those periods, or if it hires anyone to perform more than 50% of the work under the Agreement who is a Montana State employee, the Agreement is subject to immediate termination.

It is expressly agreed that the Contractor in fulfilling the terms of this Agreement is not an employee of the DEPARTMENT, but is solely an INDEPENDENT CONTRACTOR and not an employee of the DEPARTMENT.

## **12. COMPLIANCE WITH LAWS**

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

## **13. NON-DISCRIMINATION NOTICE**

### **NON-DISCRIMINATION NOTICE**

During the performance of this Agreement, Contractor (hereafter in this Section "the Party"), for itself, its assignees and successors in interest, agrees as follows:

#### **A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS**

- (1) Compliance with Regulations: The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) Nondiscrimination: The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.
- (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) Information and Reports: The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.

- (5) Sanctions for Noncompliance: In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
- (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
  - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

**B) COMPLIANCE WITH THE MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, SEC. 49-3-207, MCA**

In accordance with Section 49-3-207, MCA, the Party agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

**C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)**

- (1) The Party will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) The Party will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: **"The Party will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Party. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Party."**
- (3) All video recordings produced and created under contract and/or agreement will be closed-captioned.

**D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR PART 26**

Each Agreement the Department signs with a Party (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

**The Party, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Party shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Party to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.**

## **14. INTELLECTUAL PROPERTY/OWNERSHIP**

**14.1 Mutual Use.** All patent and other legal rights in or to inventions created in whole or in part under this contract must be available to the State for royalty-free and nonexclusive licensing. Unless otherwise specified in a statement of work, both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract including all deliverables and other materials, products, modifications developed or prepared for the State by Contractor under this contract or any program code, including site related program code, created, developed or prepared by Contractor under or in support of the performance of its obligations hereunder, including manuals, training materials and documentation (the "work product").

**14.2 Title and Ownership Rights.** The State shall retain title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio and video), text and the like provided by the State (the "content"), but grants Contractor the right to access and use content for the purpose of complying with its obligations under this contract and any applicable statement of work.

**14.3 Ownership of Work Product.** Contractor agrees to execute any documents or take any other actions as may reasonably be necessary, or as the State may reasonably request, to perfect the State's ownership of any work product.

**14.4 Copy of Work Product.** Contractor shall, at no cost to the State, deliver to the State, upon the State's request during the term or at the expiration or termination of all or part of Contractor's performance hereunder, a current copy of all work product in the form and on the media in use as of the date of the State's request, or as of such expiration or termination, as the case may be.

**14.5 Ownership of Contractor Information.** Techniques, sub-routines, algorithms and methods or rights thereto owned by Contractor at the time this contract is executed and employed by Contractor in connection with the services provided to the State (the "contractor information") shall be and remain the property of Contractor. The Contractor must provide full disclosure of any contractor information to the State prior to its use and prove its ownership. Contractor grants to the State a perpetual, irrevocable, royalty free, unrestricted right to use, modify, transfer and maintain the contractor information. Except as otherwise provided for in Section 12.3 or as may be expressly agreed in any statement of work, Contractor shall retain title to and ownership of any hardware provided by Contractor.

## **15. PATENT AND COPYRIGHT PROTECTION**

**15.1 Third Party Claim.** In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor will indemnify the State against all costs, damages and attorney's fees that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

**15.2 Product Subject of Claim.** If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine if the Contract has been breached.

## **16. CONTRACT PERFORMANCE ASSURANCE**

**16.1 Milestone Payments.** Payments to the Contractor will be based on completion and acceptance of each milestone defined below.

**16.2 Payment Holdbacks.** 25% will be withheld from each milestone payment. The total amount withheld will be paid to the contractor at the completion and acceptance of the final milestone.

| Milestone/Deliverable   | Hold Back               | Payment % of Total |
|---|-------------------------|--------------------|
| Milestone 1: Demonstrates the ability to connect to each of the 23 signs via the network      | 25% of approved invoice | 25%                |
| Milestone 2: Demonstrates the ability for centralized control of the signs on via the network | 25% of approved invoice | 25%                |
| Milestone 3: Training completed   | 25% of approved invoice | 25%                |
| Milestone 4: State evaluation/determination of functionality of software (i.e. testing)       | 25% of approved invoice | 25%                |
| Final Acceptance  |                         | 100%               |

**17. CONTRACT OVERSIGHT**

**17.1 CIO Oversight.** The Chief Information Officer (CIO) for the State of Montana, or designee, may perform contract oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur within the performance of contract obligations. The CIO may require the issuance of a right to assurance or the issuance of a stop work order.

**17.2 Right to Assurance.** If the State, in good faith, has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this contract, the State may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at the State’s option, be the basis for terminating the contract under the terms and conditions or other rights and remedies available by law or provided by the contract.

**17.3 Stop Work Order.** The State may, at any time, by written order to the Contractor, require the Contractor to stop any or all parts of the work required by this contract for the period of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The State Project Manager shall make the necessary adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

**18. CONTRACT TERMINATION**

**18.1 Termination for Cause.** The State may, by written notice to the Contractor, terminate this contract in whole or in part at any time the Contractor fails to perform this contract pursuant to Section 18, Event of Breach - Remedies.

**18.2 Bankruptcy or Receivership.** Voluntary or involuntary Bankruptcy or receivership by Contractor may be cause for termination.

**18.3 Non-Compliance with Department of Administration Requirements.** The Department of Administration pursuant to section 2-17-514, MCA, retains the right to cancel or modify any contract, project or activity that is not in compliance with the Department's Plan for Information Technology, the State Strategic Plan for Information Technology, or any Statewide IT policy or standard in effect as of the date of contract signing.

**18.4 Reduction of Funding.** The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(4).)

**18.5 Termination for Convenience.** The State may terminate this contract and/or any active projects in whole or in part at any time. In the event the contract is terminated for the convenience of the State the agency will pay for all accepted work performed and accepted deliverables completed in conformance with the contract up to the date of termination.

## **19. EVENT OF BREACH – REMEDIES**

**19.1 Event of Breach.** Any one or more of the following acts or omissions of the Contractor shall constitute an event of breach:

- a. products or services furnished by the Contractor fail to conform to any requirement of the contract, or
- b. failure to submit any report required hereunder; or
- c. failure to perform any of the other covenants and conditions of the contract, including beginning work under this contract without prior Department of Administration approval.

**19.2 State's Actions in Event of Breach.** Upon the occurrence of any event of breach, the State may take any one, or more, or all, of the following actions:

- a. give the Contractor a written notice specifying the event of breach and requiring it to be remedied within, in the absence of a greater or lesser specification of time, 30 days from the date of the notice; and if the event of breach is not timely remedied, terminate this contract upon giving the Contractor notice of termination;
- b. give the Contractor a written notice specifying the event of breach and suspending all payments to be made under this contract and ordering that the portion of the contract price, which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the event of breach, shall never be paid to the Contractor;
- c. set off against any other obligation the State may owe to the Contractor any damages the State suffers by reason of any event of breach; or
- d. treat the contract as materially breached and pursue any of its remedies at law or in equity, or both.

## **20. WAIVER OF BREACH**

No failure by the State to enforce any provisions hereof after any event of breach shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of breach shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other breach on the part of the Contractor.



## 21. STATE PERSONNEL

**21.1 State Contract Manager.** The State Contract Manager identified below is the State's single point of contact and will perform all contract management pursuant to section 2-17-512, MCA, on behalf of the State. Written notices, requests, complaints or any other issues regarding the contract should be directed to the State Contract Manager.

The State Contract Manager for this contract is:

(Name):  
(Address):  
(City, State, ZIP):  
(Telephone #):  
(Cell Phone #):  
(Fax #):  
(E-mail):

**21.2 State Project Manager.** The State Project Manager identified below will manage the day-to-day project activities on behalf of the State.

The State Project Manager for this contract is

(Name):  
(Address):  
(City, State, ZIP):  
(Telephone #):  
(Cell Phone #):  
(Fax #):  
(E-mail):

## 22. CONTRACTOR PERSONNEL

**22.1 Identification/Substitution of Personnel.** The personnel identified or described in the Contractor's proposal shall perform the services provided for the State under this contract. Contractor agrees that any personnel substituted during the term of the contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The State reserves the right to approve Contractor personnel assigned to work under the contract, and any changes or substitutions to such personnel. The State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve the Contractor to perform and be responsible for its obligations under this Contract. The State reserves the right to require Contractor personnel replacement. In the event that Contractor personnel become unavailable, it will be the Contractor's responsibility to provide an equally qualified replacement in time to avoid delays to the work plan.

**22.2 Contractor Contract Manager.** The Contractor Contract Manager identified below will be the single point of contact to the State Contract Manager and will assume responsibility for the coordination of all contract issues under this contract. The Contractor Contract Manager will meet with the State Contract Manager and/or others necessary to resolve any conflicts, disagreements, or other contract issues.

The Contractor Contract Manager for this contract is:

(Name):  
(Address):  
(City, State, ZIP):  
(Telephone #):  
(Cell Phone #):  
(Fax #):  
(E-mail):

**22.3 Contractor Project Manager.** The Contractor Project Manager identified below will manage the day-to-day project activities on behalf of the Contractor:

The Contractor Project Manager for this contract is:

(Name):  
(Address):  
(City, State, ZIP):  
(Telephone #):  
(Cell Phone #):  
(Fax #):  
(E-mail):

## **23. MEETINGS AND REPORTS**

**23.1 Technical or Contractual Problems.** The Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract, at no additional cost to the State. Meetings will occur as problems arise and will be coordinated by the State. Failure to participate in problem resolution meetings or failure to make a good faith effort to resolve problems may result in termination of the contract.

**23.2 Progress Meetings.** During the term of the contract, the State's Project Manager will plan and schedule progress meetings with the Contractor to discuss the progress made by the Contractor and the State in the performance of their respective obligations. These progress meetings will include the State Project Manager, the Contractor Project Manager, and any other additional personnel involved in the performance of the contract as required. At each such meeting, the Contractor shall provide the State with a written status report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of the State to perform its obligation under the contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

**23.3 Failure to Notify.** In the event Contractor fails to specify in writing any problem or circumstance with respect to the period during the term covered by Contractor's status report, it shall be conclusively presumed for purposes of this contract that no such problem or circumstance arose during such period, and Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for either claiming it is entitled to receive any amount (including without limitation damages or additional charges arising out of a breach by the State of any State obligation) with respect to any of Contractor's obligations hereunder in excess of those previously agreed to; or failing to complete any of Contractor's obligations hereunder. Submission by Contractor of the status reports shall not alter, amend or modify Contractor's or the State's rights or obligations pursuant to any provision of this Contract.

**23.4 State's Failure or Delay.** For a problem or circumstance identified in the Contractor's status report in which Contractor claims was the result of the State's failure or delay in discharging any State obligation, the State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the State agrees as to the cause of such problem or circumstance, then the Parties shall extend any deadlines or due dates affected thereby, and provide for any additional charges by Contractor. If the State does not agree as to the cause of such problem or circumstance, the Parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both Parties.

## **24. CONTRACTOR PERFORMANCE ASSESSMENTS**

**24.1 Assessments.** The State may do assessments of the Contractor's performance. Contractors will have an opportunity to respond to assessments, and independent verification of the assessment may be utilized in the case of disagreement.

**24.2 Record.** Completed assessments may be kept on record at ITSD and may serve as past performance data. Past performance data will be available to assist agencies in the selection of IT service providers for future projects. Past performance data may also be utilized in future procurement efforts.

## **25. TRANSITION ASSISTANCE**

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, the Contractor must provide for a reasonable period of time after the expiration or termination of this project or contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

## **26. CHOICE OF LAW AND VENUE**

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

## **27. SCOPE, AMENDMENT AND INTERPRETATION**

**27.1 Contract.** This contract consists of # OF PAGES numbered pages, any Attachments as required, RFP #HWY - , as amended and the Contractor's RFP response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

**27.2 Entire Agreement.** These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

**28. EXECUTION**

The parties through their authorized agents have executed this contract on the dates set out below.

**DEPARTMENT OF TRANSPORTATION**

CONTRACTOR NAME  
ADDRESS  
ADDRESS  
FEDERAL ID # \_\_\_\_\_

BY: \_\_\_\_\_  
(Name/Title)

BY: \_\_\_\_\_  
(Name/Title)

BY: \_\_\_\_\_  
(Signature)

BY: \_\_\_\_\_  
(Signature)

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Approved as to Legal Content:

Approved as to Form:

\_\_\_\_\_  
Legal Counsel

\_\_\_\_\_  
Procurement Officer

Approved as to Civil Rights Language

\_\_\_\_\_  
Civil Rights Bureau

Chief Information Officer Approval:

The Contractor is notified that pursuant to section 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

\_\_\_\_\_  
Chief Information Officer (Date)  
Department of Administration

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