



Request for Qualifications Market/End-User Study for Latex Paint Recovery

Issued by: Solid Waste Management Coordinating Board in
partnership with PaintCare Minnesota

Dated: November 29, 2017

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- A qualified respondent should review the attached specifications and submit two (2) unbound originals and Microsoft Windows compatible electronic versions on disk or CD of its proposal by 12:00 noon Central Standard Time (CST) on or before Thursday, January 12, 2018 to:

Laura Villa
Dakota County Environmental Resources
14955 Galaxie Avenue
Apple Valley, MN 55124

- The maximum contract amount involved in this RFQ is \$49,900.00 (Forty-Nine Thousand Nine Hundred Dollars and no/100ths).
 - The term of the contract to be awarded under this RFQ will be from February 15, 2018 through September 28, 2018.
 - This RFQ and any addenda will be posted to www.rethinkrecycling.com/swmcb.
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I. INTRODUCTION

A. Description of Entities Issuing this RFQ in Partnership

The Solid Waste Management Coordinating Board (SWMCB) is the issuing agency for the Request for Qualifications (RFQ). The SWMCB membership includes the counties of Anoka, Carver, Dakota, Hennepin, Ramsey and Washington. As of December 31, 2017, SWMCB's joint powers agreement is terminating. Dakota County will be assigned SWMCB's obligations in this RFQ. SWMCB is issuing this RFQ in partnership with PaintCare, a 501(c)(3) non-profit organization created by the American Coatings Association, a voluntary non-profit organization working to advance the needs of the paint and coatings industry.

B. Questions

Questions regarding this RFQ must be in writing and must be received by the SWMCB no later than noon on Tuesday, December 12, 2017. Address questions to SWMCB c/o Trudy Richter, Richardson Richter & Associates, Inc., 477 Selby Avenue, St. Paul, MN. Questions sent via facsimile or e-mail are acceptable if sent no later than the deadline stated above. The e-mail address is trichter@rranow.com. The phone number at Richardson Richter & Associates, Inc. is 651-222-7227. The Fax number is 651-223-5229. Responses to questions will be posted on www.rethinkrecycling.com/swmcb. It is the responsibility of the proposer to check the web site regularly for responses to questions.

C. RFQ Contents

This RFQ contains the following sections:

- I. Introduction
- II. Project Background
- III. Scope of Services
- IV. Timeline and Budget
- V. Instructions to Proposers
- VI. Evaluation of Proposals
- VII. Contract Terms and Conditions

II. PROJECT BACKGROUND

Minnesota was the fifth state to adopt paint stewardship legislation with its Minnesota Paint Stewardship Law ("Law") adopted in 2014. The broad goals of the Law are for paint manufacturers to: (a) Implement and finance a statewide product stewardship program that manages architectural paint; (b) Reduce the generation of post-consumer architectural paint; (c) Promote the reuse and recycling of post-consumer architectural paint; and (d) Negotiate and execute agreements to collect, transport, and process the architectural paint for end-of-life recycling and reuse.

The Minnesota Paint Stewardship Law requires a stewardship organization (or individual producers) to submit to the Minnesota Pollution Control Agency a Program Plan ("Plan") that includes among other sections the following:



Description of the method that will be used to reuse, deconstruct, or recycle the discarded paint to ensure that the paint's components, to the extent feasible, are transformed or remanufactured into finished products for use.

Prior to the initial Plan submitted by PaintCare, counties and household hazardous waste programs were the primary collection sites, and there were sufficient end markets for latex and oil-based post-consumer paint, comprised of both in-state and out-of-state processors of the two paint streams. At that time, the primary end markets for latex paint were recycling paint back into paint, or use as a binder or dust control agent in the manufacture of various products including Portland cement. While latex paint continues to be recycled into paint under the Plan, the end uses for the non-recyclable fraction have been discontinued, with the material exclusively transported to Oklahoma for use as alternative daily landfill cover. SWMCB, its member counties, and PaintCare are all interested in identifying other markets for post-consumer paint collected in Minnesota.

During the last program year (July 2016-June 2017), PaintCare collected over one million gallons of paint at retail drop-off sites and via county/HHW activities. The program processed 817,696 gallons of latex, of which 12% was reused by consumers, 38% was recycled into paint, and 50% was sent for alternative daily landfill cover out of state.

III. SCOPE OF SERVICES

A. Project Overview

The counties, with coordination and budget obligations assigned by the SWMCB to Dakota County, and PaintCare are partners in this Market/End-user Study for Latex Paint Recovery ("Study") and shall be responsible for funding the project, selecting the vendor, and working with the vendor to ensure the Study's scope of service and work products are completed on schedule.

The partners will invite other stakeholders, the Minnesota Pollution Control Agency ("MPCA"), and non-SWMCB counties, and contracted vendors or sub-contractors, to provide input and data on paint volumes, composition, and potential uses for latex paint. The selected proposer is encouraged to identify for inclusion other stakeholders for input and data in the Study.

B. Project Tasks

1. Evaluate the quantity and quality of latex paint received at two (2) to four (4) of the household hazardous waste (HHWs) programs that are operated by counties or are a county with similar programming. Both an urban and suburban county HHW shall be represented in the evaluation. Perform a paint "sort" to:



- a. Determine the weight of paint and container for each paint type (latex and oil-based) and each container size (quart, gallon, and 5-gallon).
 - b. Determine paint weight and container weight.
 - c. Determine the representation, by percent of total, for each paint type.
 - d. Determine the representation, by percent of total, for each container size (quart, gallon, and 5-gallon) by paint type.
 - e. Classify paint weight by condition (liquid, semi-liquid, dried, spoiled, etc.) and paint type (latex and oil-based).
 - f. Classify container weights by type (plastics 1-7, metal, hybrids, etc.).
 - g. Identify the components of paint and packaging, in conjunction with PaintCare and its advisors that may be most valuable for use in other products.
 - h. Extrapolate totals for all six (6) counties. Include in totals representative amounts voluntarily provided using the above methodology from interested counties in Greater Minnesota.
 - i. Compile PC/MPCA provided data on quantities, management methods, end uses, conversion assumptions, recycling rates, and other information used to evaluate paint management for calendar years 2013-2017.
2. Market/End-Use Study
- a. Research emerging technologies and other uses nationally that are not currently being utilized as a management option for Minnesota paint with emphasis on options higher on the waste hierarchy.
 - b. Classify necessary elements required for successful implementation of emerging technologies, as well as risks or barriers that would deter successful inclusion of a management option in future state contracts.
 - c. Provide cost estimates for current management costs and for diverting latex paint to emerging technologies and other uses – including collecting, processing, and transportation.
 - d. Identify and address any state regulatory concerns related to uses.
 - e. Identify Minnesota and Midwest-based outlets currently available for paint and paint container recycling or reuse.
 - f. Recommend market development opportunities for new end-uses of latex paint and containers in Minnesota.
 - g. Recommend state contract provisions related to paint uses with a preference for following Minnesota’s waste hierarchy and management within the state.



- h. Prepare draft findings for review by the Study partners. Finalize Study information and recommendations for next steps for market development. Present to a combined meeting of counties and PaintCare.
- 3. Work Products
The selected vendor will provide the following work products during the term of the Study:
 - a. A Project Plan for accomplishing the scope of work above including work tasks, measurable targets and deadlines.
 - b. A schedule and milestones for completion.
 - c. An itemized cost of all activities pertaining to the proposal.
 - d. As the project proceeds, suggested times for updates to the counties and PaintCare.
 - e. Identification of times during the Study process for input from other stakeholders.
 - f. A report that details the results of the Study and recommendations for implementing the Study's findings.

IV. TIMELINE AND BUDGET

A. Project Timeline

The requested services of this RFQ shall begin on or about February 15, 2018. The contract will end on September 28, 2018.

This RFQ will be conducted according to the following tentative schedule. This tentative schedule may be altered at any time.

November 29, 2017	Release of RFQ
December 12, 2017	Due date for questions
January 12, 2018	RFQ due by 12:00 noon
January 22-26, 2018	Interviews if needed
February 15, 2018	Contract Term Begins
September 28, 2018	Contract Term Ends

B. Budget

A not-to-exceed budget of \$49,900 (to be shared equally by SWMCB and PaintCare) has been agreed to by the partners in the Study.



V. INSTRUCTIONS TO PROPOSERS

A. General Information

1. Submittal of Proposals

Submit all proposals to Dakota County Environmental Resources, 14955 Galaxie Avenue, Apple Valley, Minnesota 55124 Attention: Laura Villa. All proposals must be received no later than 12:00 noon CST on Friday, January 12, 2018. Proposals received after this time may be rejected. Dakota County in its sole discretion, reserves the right to accept or reject any or all proposals. Proposers shall submit its proposal in a sealed package addressed as noted above, bearing Proposer's name, address and clearly marked as follows: Request for Qualifications: Market/End-User Study for Latex Paint Recovery.

2. Proposal Format

Proposals shall be prepared two-sided on 8-1/2" x 11" recycled paper. Proposers should submit proposals as two (2) unbound originals and on two (2) separate Microsoft Windows compatible electronic version CDs or thumb drives. Sequentially number all pages throughout or by section. The proposal should be clear and understandable when reproduced in black and white.

3. Project Contracting and Funding

The contract and payments for work performed will be through Dakota County on behalf of SWMCB and PaintCare.

4. Examination of Proposal Documents

By submitting a proposal, the Proposer represents it has thoroughly examined and become familiar with the work required under this RFQ and that he or she is capable of performing quality work to achieve the objectives of the Study.

5. Addenda/Clarifications

Any changes to this RFQ will be made by written addendum. No oral modification will be binding. Any changes to this RFQ can be found at www.rethinkrecycling.com/swmcb. It is the responsibility of the proposer to check the website regularly for any changes to this RFQ.

6. Pre-Contractual Expenses

Pre-contractual expenses are defined as expenses incurred by the Proposer in: 1) preparing its proposal in response to this RFQ; 2) submitting that proposal; 3) negotiating any matter related to this proposal; or 4) any other expenses incurred by the Proposer prior to the date of execution of the proposed agreement.



The SWMCB, the counties or PaintCare shall not, in any event, be liable for any pre-contractual expenses incurred by the Proposers in the preparation of their proposals. Proposers shall not include any such expenses as part of their proposals.

7. Contract Award

Issuance of this RFQ and receipt of proposals does not commit the SWMCB, the counties, Dakota County or PaintCare to award a contract.

8. Joint Offers

Where two or more Proposers desire to submit a single proposal in response to this RFQ, they should do so on a prime-subcontractor basis rather than as a joint venture.

9. Contact Person

The Proposer's sole point of contact for this proposal following the submittal of questions on December 12, 2017 is Laura Villa, Dakota County, (952) 891-7548; email: laura.villa@co.dakota.mn.us.

10. SWMCB and Dakota County Rights

The SWMCB or Dakota County may investigate the qualifications of any Contractor under consideration, require confirmation of information furnished by Contractor, and require additional evidence of qualifications to perform the work described in this RFQ. Dakota County reserves the right to:

- a. Postpone opening proposals for its own;
- b. Accept or reject any or all proposals received in response to this RFQ;
- c. Amend or withdraw this RFQ at any time;
- d. Issue a subsequent RFQ;
- e. Request any additional information it deems appropriate at any time;
- f. Remedy technical errors in the RFQ process;
- g. Appoint evaluation committees to review proposals;
- h. Establish a short list of Contractors eligible for interview after evaluation of written proposals;
- i. Negotiate with any, all, or none of the RFQ respondents;
- j. Reject and replace one or more subcontractors;
- k. Wave minor irregularities in the proposals;
- l. Accept the lowest cost proposals; or
- m. Negotiate contract terms contemporaneously and/or subsequently with any number of proposers as Dakota County deems to be in its best interest.

This RFQ does not commit the SWMCB, its counties, Dakota County, or PaintCare to enter into a contract, nor does it obligate any of them to pay for any costs incurred in preparation and submission of proposals or in



anticipation of a contract. Upon submission, all proposals become the property of Dakota County, which retains the right to use any concept or idea presented in any proposal submitted, whether or not that proposal is accepted.

B. Contractor's Proposal

1. Letter of Transmittal

Address the letter of transmittal to the attention of Laura Villa, Dakota County. Include, at a minimum, the following:

- a. Identification of the offering firm(s), including name, address and telephone number of each firm;
- b. Acknowledgment of receipt of RFQ addenda, if any;
- c. Name, title, address, telephone and fax numbers and e-mail address of contact person during period of proposal evaluation;
- d. A statement to the effect that the proposal shall remain valid for a period of not less than 120 days from the date of submittal; and
- e. Signature of a person authorized to bind the offering firm to the terms of the proposal.

2. Contractor Team Organization

In this section, state in writing and/or provide an organization chart showing the team members and key personnel. Identify the team members' areas of responsibility. Provide subcontractors' company name, address, contact person, and telephone number. Provide resumes for project manager and key personnel. Resumes should not exceed a half page and should identify key legal expertise of the individual. The individual identified as the client lead/project manager should provide a one page resume with additional background on his/her experience in solid waste management in Minnesota.

3. Qualifications and Experience

Identify similar projects involving waste and market evaluations/development undertaken by the Contractor within the last five (5) years.

For each project, provide the client's name, address and telephone number for a contact person currently available who is familiar with the firm's performance on each project listed.

4. Work Plan and Budget

The Contractor's proposal should demonstrate the Contractor's understanding of the project goals. The Contractor's proposal must include a clear description of the methods or process to be used to provide the services requested.

The Contractor should provide a budget for the project. The budget should include:



- a. professional fees including hourly rates or blended rate;
- b. rates of direct expenses (equipment, supplies, copies, fax, etc.) typically billed for reimbursement; and
- c. "other", as appropriate.

5. Conflict of Interest

The Contractor must identify any potential conflict of interest it may have with the SWMCB, any Member County, PaintCare or any other party or entity that may be affected by the terms of this RFQ and responsive proposals.

6. References

The Contractor must provide three references. One reference must be for the individual who will be tasked with the project lead.

VI. EVALUATION OF PROPOSALS

Each proposal will be assessed as to how well it responds to the RFQ. Specifically, the following will be taken into account:

A. Experience and Qualifications of Firm(s)

- The comprehensiveness, appropriateness and quality of experience of the member firms; and
- Response of references.

B. Experience of Personnel

- Likely level of effort and participation of key personnel;
- Experience, education and qualifications of key personnel with similar roles and projects; and
- Demonstrated ability to successfully lead the project.

C. Work Plan for Scope of Services

- Completeness and clarity of proposal;
- Scope of work approach, timing and substance;
- Understanding the project objectives and work tasks; and
- Ability to complete project in a timely manner.

D. Cost Allocation

- Cost relative to proposed level of effort and deliverables;
- Ability to perform project within budget;
- Reasonableness of costs; and
- Total cost

E. Other Factors

- Any other factors deemed relevant by the counties and PaintCare.



VII. CONTRACT TERMS AND CONDITIONS

A. Contract Parties

Dakota County will enter into a contract with the selected proposer in substantially the form attached hereto. Submission of a proposal constitutes acceptance by the proposer of these terms and conditions.

B. Exceptions and Deviations

Any exceptions to the requirements in this RFQ, **including the insurance requirements**, must be included as a separate element of the proposal under the heading "Exceptions and Deviations." Dakota County retains the right, in its sole discretion, to reject these requests for exception.

**AGREEMENT BETWEEN DAKOTA COUNTY
AND (VENDOR NAME) FOR SERVICES**

This Agreement ("Agreement") is between the County of County Dakota, Minnesota ("Dakota County"), a political subdivision of the State of Minnesota, and Vendor Name, Address, individual/sole proprietor, partnership, corporation ("Contractor").

WHEREAS, the Solid Waste Management Coordinating Board ("SWMCB") issued an RFQ dated November 29, 2017 on behalf of its members Anoka, Carver, Dakota, Hennepin, Ramsey, and Washington Counties (collectively the counties); and

WHEREAS, the SWMCB assigned its contractual and budgetary obligations in said RFQ to Dakota County who has accepted said assignment on behalf of SWMCB and all counties; and

WHEREAS, Dakota County on behalf of the counties and in partnership with PaintCare requires services to be provided as listed in the RFQ; and

WHEREAS, Contractor desires to and is capable of providing the necessary services according to the terms and conditions stated in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained in this Agreement the parties agree as follows:

Dakota County and the Contractor shall agree as follows:

1. Scope of Services

Contractor shall:

- a. Evaluate the quantity and quality of latex paint received at two (2) to four (4) of the household hazardous waste (HHWs) programs that are operated by members of the SWMCB or are a county with similar programming. Both an urban and suburban SWMCB county HHW shall be represented in the evaluation. Perform a paint "sort" to:
 - i. Determine the weight of paint and container for each paint type (latex and oil-based) and each container size (quart, gallon, and 5-gallon).
 - ii. Determine paint weight and container weight.
 - iii. Determine the representation, by percent of total, for each paint type.
 - iv. Determine the representation, by percent of total, for each container size (quart, gallon, and 5-gallon) by paint type.
 - v. Classify paint weight by condition (liquid, semi-liquid, dried, spoiled, etc.) and paint type (latex and oil-based).
 - vi. Classify container weights by type (plastics 1-7, metal, hybrids, etc.).
 - vii. Identify the components of paint and packaging, in conjunction with PaintCare and its advisors that may be most valuable for use in other products.

- viii. Extrapolate totals for all six (6) SWMCB county members. Include in totals representative amounts voluntarily provided using the above methodology from interested counties in Greater Minnesota.
 - ix. Compile PC/MPCA provided data on quantities, management methods, end uses, conversion assumptions, recycling rates, and other information used to evaluate paint management for calendar years 2013-2017.
- b. Market/End-Use Study
- i. Research emerging technologies and other uses nationally that are not currently being utilized as a management option for Minnesota paint with emphasis on options higher on the waste hierarchy.
 - ii. Classify necessary elements required for successful implementation of emerging technologies, as well as risks or barriers that would deter successful inclusion of a management option in future state contracts.
 - iii. Provide cost estimates for current management costs and for diverting latex paint to emerging technologies and other uses – including collecting, processing, and transportation.
 - iv. Identify and address any state regulatory concerns related to uses.
 - v. Identify Minnesota and Midwest-based outlets currently available for paint and paint container recycling or reuse.
 - vi. Recommend market development opportunities for new end-uses of latex paint and containers in Minnesota.
 - vii. Recommend state contract provisions related to paint uses with a preference for following Minnesota’s waste hierarchy and management within the state.
 - viii. Prepare draft findings for review by the Study partners. Finalize Study information and recommendations for next steps for market development. Present to a combined meeting of counties and PaintCare.
- c. Work Products
- The selected vendor will provide the following work products during the term of the Study:
- i. A Project Plan for accomplishing the scope of work above including work tasks, measurable targets and deadlines.
 - ii. A schedule and milestones for completion.
 - iii. An itemized cost of all activities pertaining to the proposal.
 - iv. As the project proceeds, suggested times for updates to the counties and PaintCare.
 - v. Identification of times during the Study process for input from other stakeholders.
 - vi. A report that details the results of the Study and recommendations for implementing the Study’s findings.

2. Dakota County's Roles and Responsibilities

- a. In collaboration with PaintCare and the counties, Dakota County shall coordinate the work of the Contractor.
- b. Dakota County shall be responsible for paying the Contractor's invoices.

3. Time

The services will be provided from February 15, 2018 through December 31, 2018.

4. Cost/Payment

- a. Payment amount/schedule (to be negotiated and included here).
- b. The Contractor shall submit monthly invoices to Dakota County for review and approval.
- c. Reimbursement of expenses, if included, will be made consistent with Dakota County's policies. Dakota County will reimburse only the actual cost of out of pocket expenses. If reimbursement for travel is permitted, all airfare will first be authorized by Dakota County and will be reimbursed at the lowest cost fare available. Lodging, meals, ground transportation and incidentals necessitated by this Agreement will be reimbursed according to the Internal Revenue Service ("IRS") Regular Per Diem Rate Method or actual cost, whichever is less. Mileage will be reimbursed at the IRS rate in effect at the time of travel.
- d. Interest accrual and disputes regarding payment shall be governed by the provisions of Minnesota Statutes Section 471.425.

5. Independent Contractor

It is agreed that nothing contained in this Agreement is intended or should be construed as creating the relationship of agents, partners, joint venturers, or associates between the parties hereto or as constituting the Contractor as the employee of Dakota County, PaintCare, or both for any purpose or in any manner whatsoever. The Contractor is an independent contractor and neither it, its employees, agents nor representatives are employees of Dakota County, PaintCare, or both. From any amounts due the Contractor, there will be no deductions for federal income tax or FICA payments, nor for any state income tax, nor for any other purposes, which are associated with an employer-employee relationship unless required by law. Payment of federal income tax, FICA payments, and state income tax are the responsibility of the Contractor.

6. Indemnification

The Contractor shall indemnify, hold harmless and defend Dakota County and PaintCare, and their officials, employees, and agents from any and all liability, loss, costs, damages, expenses, claims or actions, including attorney's fees, which Dakota County and PaintCare, and their officials, employees, and agents may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of the Contractor, its employees, or agents in the execution, performance, or failure to adequately perform the Contractor's obligations pursuant to this Agreement.

7. Insurance

- a. General Terms. At its own expense and in order to protect Contractor and to protect Dakota County and PaintCare under the indemnity provisions set forth above, Contractor shall procure and maintain policies of insurance covering the term of this Agreement, as set forth in the Insurance Terms, which is attached and incorporated in Exhibit 1.

- b. Certificates. Prior to or concurrent with execution of this Agreement, Contractor shall file certificates or certified copies of such policies of insurance with Dakota County and PaintCare.
- c. Failure to Provide Proof of Insurance. Dakota County may withhold payments or immediately terminate this Agreement for failure of Contractor to furnish proof of insurance coverage or to comply with the insurance requirements as stated above.
- d. Non-Waiver. Nothing in this Agreement shall constitute a waiver by Dakota County, PaintCare, or any Member County of any statutory or common law immunities, limits, or exceptions on liability.

8. Non-Assignability

The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same, whether by subcontract, assignment or novation, without the prior written consent of Dakota County which will obtain input from the counties and approval from PaintCare.

9. Unavailability of Funding

The purchase of goods or services from the Contractor under this Agreement is subject to the availability and provision of funding from the United States, the State of Minnesota, or other funding sources. Dakota County may immediately terminate this Agreement if the funding for the contracted goods and services is no longer available. Upon receipt of Dakota County's notice of termination of the Agreement the Contractor shall take all actions necessary to discontinue further commitments of funds to the Agreement. Termination shall be treated as termination without cause and will not result in any penalty or expense to Dakota County.

10. Non-Conforming Services

The acceptance by Dakota County of any non-conforming services under the terms of this Agreement or the foregoing by Dakota County of any of the rights or remedies arising under the terms of this agreement shall not constitute a waiver of Dakota County's right to conforming services or any rights and/or remedies in respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies of Dakota County provided or referred to under the terms of this Agreement are cumulative and not mutually exclusive.

11. Equal Employment Opportunity

The Contractor agrees to comply with all federal, state and local laws, resolutions, ordinances, rules, regulations and executive orders pertaining to unlawful discrimination on account of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, sexual orientation, disability, or age. When required by law or requested by Dakota County, the Contractor shall furnish a written affirmative action plan.

12. Respectful Workplace and Violence Prevention

The Contractor shall make all reasonable efforts to ensure that the Contractor's employees, officials and subcontractors do not engage in violence while performing under this Agreement. Violence means words and actions that hurt or attempt to threaten or hurt people; it is any action involving the use of physical force, harassment, intimidation, disrespect, or misuse of power and authority where the impact is to cause pain, fear or injury.

13. Subcontractor Payment

The Contractor shall pay any subcontractor within ten days of the Contractor's receipt of payment from Dakota County for undisputed services provided by the

subcontractor. The Contractor shall pay interest of 1 1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

14. Setoff

Notwithstanding any provision of this Agreement to the contrary, the Contractor shall not be relieved of liability to Dakota County for damages sustained by Dakota County by virtue of any breach of this Agreement by the Contractor. Dakota County may withhold any payment to the Contractor for the purpose of setoff until such time as the exact amount of damages due Dakota County from the Contractor is determined.

15. Data Practices

All data collected, created, received, maintained or disseminated for any purpose in the course of the Contractor's performance of this Agreement is governed by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, or any other applicable state statutes, any state rules adopted to implement the Act and statutes, as well as federal statutes and regulations on data privacy.

16. Compliance With Applicable Law

The Contractor agrees to comply with all federal, state and local laws or ordinances, and all applicable rules, regulations, and standards established by any agency of such governmental units, which are now or hereafter promulgated insofar as they relate to the Contractor's performance of the provisions of this Agreement. It shall be the obligation of the Contractor to apply for, pay for and obtain all permits, licenses, or both, required by any governmental agency for the provision of those services contemplated herein.

17. Audit

Until the expiration of six (6) years after the furnishing of services pursuant to this Agreement, the Contractor, upon written request, shall make available to Dakota County, the State Auditor or Dakota County's ultimate funding sources, including PaintCare, a copy of this Agreement and the books, documents, records and accounting procedures and practices of the Contractor relating to this Agreement.

18. Termination

- a. With Cause: Dakota County reserves the right to suspend or terminate this Agreement if the Contractor violates any of the terms or conditions of this Agreement or does not fulfill in a timely and proper manner its obligations under this Agreement as determined by Dakota County. In the event that Dakota County exercises its right of suspension or termination under this Paragraph, it shall submit written notice to the Contractor, specifying the extent of such suspension or termination under this Paragraph, the reasons therefore, and the date upon which such suspension or termination becomes effective. Upon receipt of such notice, the Contractor shall take all actions necessary to discontinue further commitments of funds to the extent that they relate to the suspended or terminated portions of this Agreement.
- b. Without Cause: Dakota County may terminate this Agreement without cause and for any reason whatsoever upon giving at least thirty (30) days'

written notice thereof to the Contractor. In such event, the Contractor shall be entitled to receive compensation for the services provided in a satisfactory manner up to and including the effective date of termination.

19. Conflict of Interest

The Contractor affirms that, to the best of the Contractor's knowledge, the Contractor's involvement in this Agreement does not result in a conflict of interest with any party or entity which may be affected by the terms of this Agreement. The Contractor agrees that, should any conflict or potential conflict of interest become known to the Contractor, the Contractor will immediately notify Dakota County of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict or potential conflict, and will advise Dakota County whether the Contractor will or will not resign from the other engagement or representation.

20. Waste Reduction

The Contractor shall participate in a recycling program for at least four broad types of recyclable materials and shall favor the purchase of recycled products in its procurement processes. All reports, publications and documents produced as a result of this contract shall be printed on both sides of the paper, where commonly accepted publishing practices allow, on recycled and recyclable paper using soy-based inks, and shall be bound in a manner that does not use glue.

21. Alteration

Any alteration, variation, modification, or waiver of the provisions of this Agreement shall be valid only after it has been reduced to writing and duly signed by both parties.

22. Interpretation of Agreement; Venue

This Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this Agreement shall be venued in the appropriate state or federal district court in Ramsey County, Minnesota.

23. Authorized Representative

The following named persons are designated the authorized representatives of parties for purposes of this Agreement. These persons have authority to bind the party they represent and to consent to modifications and subcontracts, except that, as to Dakota County, the authorized representative shall have only the authority specifically or generally granted by Dakota County Board. Notification required to be provided pursuant to this Agreement shall be provided to the following named persons and addresses unless otherwise stated in this Agreement, or in a modification of this Agreement.

To Contractor:

To Dakota County:

Contract Signatory
Vendor Address
City, State Zip
Telephone:

In addition, notification to Dakota County regarding breach or termination shall be provided to the office of the Dakota County Attorney, 1560 Highway 55, Hastings, Minnesota 55033.

24. Liaison

To assist the parties in the day-to-day performance of this Agreement and to develop service, ensure compliance and provide ongoing consultation, a liaison shall be designated by Contractor and Dakota County. The parties shall keep each other continually informed, in writing, of any change in the designated liaison. At the time of execution of this Agreement, the following persons are the designated liaisons:

Contractor Liaison:

County Liaison:

Telephone:

Email:

25. Ownership of Work Product

- a. The Contractor agrees that all right, title, and interest in all material that Contractor shall conceive or originate, either individually or jointly with others, and which arises out of the performance of this Agreement, are the property of Dakota County and are by this Agreement assigned to Dakota County along with ownership of any and all copyrights in the material.
- b. Where applicable, works of authorship created by Contractor for Dakota County in performance of this Agreement shall be considered "works made for hire" as defined in the U.S. Copyright Act. Contractor shall, upon the request of Dakota County, execute all papers and perform all other acts necessary to assist Dakota County to obtain and register copyrights on such material.
- c. The Contractor warrants that any materials or products provided or produced by it in the performance of this Agreement will not infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party.

DAKOTA COUNTY

CONTRACTOR

By: _____

By: _____

Date of Signature: _____

Date of Signature: _____

Approved as to Form:

Assistant County Attorney

EXHIBIT 1
INSURANCE TERMS

Contractor agrees to provide and maintain at all times during the term of this Contract such insurance coverages as are indicated herein and to otherwise comply with the provisions that follow. Such policy(ies) of insurance shall apply to the extent of, but not as a limitation upon or in satisfaction of, the Contract indemnity provisions. The provisions of this section shall also apply to all Subcontractors, Sub-subcontractors, and Independent Contractors engaged by Contractor with respect to this Contract, and Contractor shall be entirely responsible for securing the compliance of all such persons or parties with these provisions.

APPLICABLE SECTIONS ARE CHECKED

1. Workers Compensation. Workers' Compensation insurance in compliance with all applicable statutes including an All States or Universal Endorsement where applicable. Such policy shall include Employer's Liability coverage in an amount no less than \$500,000. If Contractor is not required by Statute to carry Workers' Compensation Insurance, Contractor agrees: (1) to provide County with evidence documenting the specific provision under Minn. Stat. § 176.041 which excludes Contractor from the requirement of obtaining Workers' Compensation Insurance; (2) to provide prior notice to County of any change in Contractor's exemption status under Minn. Stat. § 176.041; and (3) to hold harmless and indemnify County and PaintCare from and against any and all claims and losses brought by Contractor or any subcontractor or other person claiming through Contractor for Workers' Compensation or Employers' Liability benefits for damages arising out of any injury or illness resulting from performance of work under this Contract. If any such change requires Contractor to obtain Workers' Compensation Insurance, Contractor agrees to promptly provide County with evidence of such insurance coverage.

2. General Liability.

"Commercial General Liability Insurance" coverage (Insurance Services Office form title), providing coverage on an "occurrence" rather than on a "claims made" basis, which policy shall include, but not be limited to, coverage for Bodily Injury, Property Damage, Personal Injury, Contractual Liability (applying to this Contract), Independent Contractors, "XC&U" and Products-Completed Operations liability (if applicable). Such coverage may be provided under an equivalent policy form (or forms), so long as such equivalent form (or forms) affords coverage which is at least as broad. An Insurance Services Office "Comprehensive General Liability" policy which includes a Broad Form Endorsement GL 0404 (Insurance Services Office designation) shall be considered to be an acceptable equivalent policy form.

Contractor agrees to maintain at all times during the period of this Contract a total combined general liability policy limit of at least \$1,500,000 per occurrence and aggregate, applying to liability for Bodily Injury, Personal Injury, and Property Damage, which total limit may be satisfied by the limit afforded under its Commercial General Liability policy, or equivalent policy, or by such policy in combination with the limits afforded by an Umbrella or Excess Liability policy (or policies); provided, that the coverage afforded under any such Umbrella or Excess Liability policy is at least as broad as that afforded by the underlying Commercial General Liability policy (or equivalent underlying policy).

Such Commercial General Liability policy and Umbrella or Excess Liability policy (or policies) may provide aggregate limits for some or all of the coverages afforded thereunder, so long as such aggregate limits have not, as of the beginning of the term or at any time during the term, been reduced to less than the total required limits stated above, and further, that the Umbrella or Excess Liability policy provides coverage from the point that such aggregate limits in the underlying Commercial General Liability policy become reduced or exhausted. An Umbrella or Excess Liability policy which "drops down" to respond immediately over reduced underlying limits, or in place of exhausted underlying limits, but subject to a deductible or "retention" amount, shall be acceptable in this regard so long as such deductible or retention for each occurrence does not exceed the amount shown in the provision below.

Contractor's liability insurance coverage may be subject to a deductible, "retention" or "participation" (or other similar provision) requiring the Contractor to remain responsible for a stated amount or percentage of each covered loss; provided, that such deductible, retention or participation amount shall not exceed \$25,000 each occurrence.

Such policy(ies) shall name Dakota County and PaintCare, and their officers, employees and agents as Additional Insureds thereunder.

3. Professional Liability. Professional Liability (errors and omissions) insurance with respect to its professional activities to be performed under this Contract. This amount of insurance shall be at least \$1,500,000 per occurrence and aggregate (if applicable). Coverage under such policy may be subject to a deductible, not to exceed \$25,000 per occurrence. Contractor agrees to maintain such insurance for at least one (1) year from Contract termination.

It is understood that such Professional Liability insurance may be provided on a claims-made basis, and, in such case, that changes in insurers or insurance policy forms could result in the impairment of the liability insurance protection intended for Dakota County hereunder. Contractor therefore agrees that it will not seek or voluntarily accept any such change in its Professional Liability insurance coverage if such impairment of Dakota County's protection could result; and further, that it will exercise its rights under any "Extended Reporting Period" ("tail coverage") or similar policy option if necessary or appropriate to avoid impairment of Dakota County's protection. Contractor further agrees that it will, throughout the one (1) year period of required coverage, immediately: (a) advise Dakota County of any intended or pending change of any Professional Liability insurers or policy forms, and provide Dakota County with all pertinent information that Dakota County may reasonably request to determine compliance with this section; and (b) immediately advise Dakota County of any claims or threats of claims that might reasonably be expected to reduce the amount of such insurance remaining available for the protection of Dakota County.

4. Automobile Liability. Business Automobile Liability insurance covering liability for Bodily Injury and Property Damage arising out of the ownership, use, maintenance, or operation of all owned, non-owned and hired automobiles and other motor vehicles utilized by Contractor in connection with its performance under this Contract. Such policy shall provide total liability limits for combined Bodily Injury and/or Property Damage in the amount of at least \$1,500,000 per accident, which total limits may be satisfied by the limits afforded under such policy, or by such policy in combination with the limits afforded by an Umbrella or Excess Liability policy(ies); provided, that the coverage afforded under any such Umbrella or Excess Liability policy(ies) shall be at least as broad with respect to such Business Automobile Liability insurance as that afforded by the underlying policy. **Unless included within the scope of Contractor's Commercial General Liability policy, such**

Business Automobile Liability policy shall also include coverage for motor vehicle liability assumed under this contract.

Such policy, and, if applicable, such Umbrella or Excess Liability policy(ies), shall include Dakota County and PaintCare, and their officers, employees and agents as Additional Insureds thereunder.

5. Additional Insurance. Dakota County shall, at any time during the period of the Contract, have the right to require that Contractor secure any additional insurance, or additional feature to existing insurance, as Dakota County may reasonably require for the protection of their interests or those of the public. In such event Contractor shall proceed with due diligence to make every good faith effort to promptly comply with such additional requirement(s).

6. Evidence of Insurance. Contractor shall promptly provide Dakota County and PaintCare with evidence that the insurance coverage required hereunder is in full force and effect prior to commencement of any work. At least 10 days prior to termination of any such coverage, Contractor shall provide Dakota County and PaintCare with evidence that such coverage will be renewed or replaced upon termination with insurance that complies with these provisions. Such evidence of insurance shall be in the form of the Dakota County Certificate of Insurance, or in such other form as Dakota County may reasonably request, and shall contain sufficient information to allow Dakota County to determine whether there is compliance with these provisions. At the request of Dakota County, Contractor shall, in addition to providing such evidence of insurance, promptly furnish Contract Manager with a complete (and if so required, insurer-certified) copy of each insurance policy intended to provide coverage required hereunder. All such policies shall be endorsed to require that the insurer provide at least 30 days' notice to Dakota County and PaintCare prior to the effective date of policy cancellation, nonrenewal, or material adverse change in coverage terms. On the Certificate of Insurance, Contractor's insurance agency shall certify that he/she has Error and Omissions coverage.

7. Insurer: Policies. All policies of insurance required under this paragraph shall be issued by financially responsible insurers licensed to do business in the State of Minnesota, and all such insurers must be acceptable to Dakota County. Such acceptance by Dakota County shall not be unreasonably withheld or delayed. An insurer with a current A.M. Best Company rating of at least A:VII shall be conclusively deemed to be acceptable. In all other instances, Dakota County shall have 15 business days from the date of receipt of Contractor's evidence of insurance to advise Contractor in writing of any insurer that is not acceptable to Dakota County. If Dakota County does not respond in writing within such 15 day period, Contractor's insurer(s) shall be deemed to be acceptable to Dakota County.

8. Noncompliance. In the event of the failure of Contractor to maintain such insurance and/or to furnish satisfactory evidence thereof as required herein, Dakota County shall have the right to purchase such insurance on behalf of Contractor, which agrees to provide all necessary and appropriate information therefor and to pay the cost thereof to Dakota County immediately upon presentation of invoice.

9. Loss Information. At the request of Dakota County and/or PaintCare, Contractor shall promptly furnish loss information concerning all liability claims brought against Contractor (or any other insured under Contractor's required policies), that may affect the amount of liability insurance available for the benefit and protection of Dakota County and PaintCare under this section. Such loss information shall include such specifics and be in such form as Dakota County and/or PaintCare may reasonably require.

10. Release and Waiver. Contractor agrees to rely entirely upon its own property insurance for recovery with respect to any damage, loss or injury to the property interests of Contractor. Contractor hereby releases Dakota County and PaintCare, and their officers, employees, agents, and others acting on their behalf, from all claims, and all liability or responsibility to Contractor, and to anyone claiming through or under Contractor, by way of subrogation or otherwise, for any loss of or damage to Contractor's business or property caused by fire or other peril or event, even if such fire or other peril or event was caused in whole or in part by the negligence or other act or omission of Dakota County and/or PaintCare or other party who is to be released by the terms hereof, or by anyone for whom such party may be responsible.

Contractor agrees to effect such revision of any property insurance policy as may be necessary in order to permit the release and waiver of subrogation agreed to herein. Contractor shall, upon the request of Dakota County and/or PaintCare, promptly provide a Certificate of Insurance, or other form of evidence as may be reasonably requested by Dakota County and/or PaintCare, evidencing that the full waiver of subrogation privilege contemplated by this provision is present; and/or, if so requested by Dakota County and/or PaintCare, Contractor shall provide a full and complete copy of the pertinent property insurance policy(ies).