

STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 ACQUISITION SERVICES
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

August 23, 2005

CHANGE NOTICE NO. 3
TO
CONTRACT NO. 071B9000746
between
THE STATE OF MICHIGAN
and

Fax 712-526-2392

| | | |
|--|-------------------------|---|
| NAME & ADDRESS OF VENDOR | | TELEPHONE |
| Cryotech Deicing Technology 6103 Orthoway Fort Madison, IA 52627 Keith.Johnson@cryotech.com | | 712-526-2407 – Keith Johnson 800-346-7237 – April Heston |
| | | VENDOR NUMBER/MAIL CODE |
| | | BUYER/CA (517) 373-6535 William C. Walsh, CPPB |
| Contract Compliance Inspector: Calcium Magnesium Acetate (CMA) De-Icer - Michigan Department of Transportation | | |
| CONTRACT PERIOD: | | To: July 14, 2006 |
| From: July 15, 1999 | | |
| TERMS | SHIPMENT | |
| Net 30 Days | 7 Days ARO | |
| F.O.B. | SHIPPED FROM | |
| Destination | Fort Madison, IA | |
| MINIMUM DELIVERY REQUIREMENTS | | |
| 22 tons (bulk); 20 tons (bagged); 4,200 gallons (liquid) | | |

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE (S):

Effective August 23, 2005, the following AMENDMENTS are made to this Contract:

The Buyer has been CHANGED to William C. Walsh, CPPB.

This Contract is hereby EXTENDED to July 14, 2006.

| | | |
|-------------------------------|-----------------|-------------------------|
| Pricing is hereby CHANGED to: | Bulk/Metric Ton | \$1,122.00 Delivered |
| | Bag/Metric Ton | \$1,182.00 Delivered |
| | Liquid | \$3.30/Gallon Delivered |

All other specifications, terms and conditions remain the same.

AUTHORITY/REASON:

Per request of MDOT, vendor agreement (letter dated 8/17/05) and approval of Acquisition Services.

INCREASE: \$0.00

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$5,378,751.00

STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 ACQUISITION SERVICES
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

May 7, 2004

CHANGE NOTICE NO. 2
 TO
 CONTRACT NO. 071B9000746
 between
 THE STATE OF MICHIGAN
 and

Fax 712-526-2392

| | | |
|---|-------------------------|---|
| NAME & ADDRESS OF VENDOR | | TELEPHONE |
| Cryotech Deicing Technology 6103 Orthoway Fort Madison, IA 52627 keith.Johnson@cryotech.com | | 712-526-2407 – Keith Johnson 800-346-7237 – April Heston |
| | | VENDOR NUMBER/MAIL CODE |
| | | BUYER/CA(517) 241-4225 Jennifer Hundt |
| Contract Compliance Inspector: Bard Lower | | |
| Calcium Magnesium Acetate (CMA) De-Icer - MDOT | | |
| CONTRACT PERIOD: | | |
| From: July 15, 1999 | | To: July 14, 2005 |
| TERMS | SHIPMENT | |
| Net 30 Days | 7 Days ARO | |
| F.O.B. | SHIPPED FROM | |
| Destination | Fort Madison, IA | |
| MINIMUM DELIVERY REQUIREMENTS | | |
| 22 tons (bulk); 20 tons (bagged); 4,200 gallons (liquid) | | |

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE (S):

This contract is hereby EXTENDED for one year. The new contract ending date is July 14, 2005.

For orders placed for shipment during the periods stated below, the following discounts apply:

August – September: 3% discount from contract price
 October – November: 2% discount from contract price
 December: 1% discount from contract price
 January – August: 0% discount. Price as listed in the contract

All other specifications, terms and conditions remain the same.

AUTHORITY/REASON:

Per DMB/ACQUISITION SERVICES request, agency agreement (Rick Dolan) on 4/21/04 and vendor agreement (Roxanna Hoffman) on 4/29/04.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$5,378,751.00

STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 OFFICE OF PURCHASING
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

December 6, 2000

CHANGE NOTICE NO. 1
 TO
 CONTRACT NO. 071B9000746
 between
 THE STATE OF MICHIGAN
 and

Fax 712-526-2392

| | | |
|---|-------------------------|---|
| NAME & ADDRESS OF VENDOR | | TELEPHONE |
| Cryotech Deicing Technology 6103 Orthoway Fort Madison, IA 52627 keith.Johnson@cryotech.com | | 712-526-2407 – Keith Johnson 800-346-7237 – April Heston |
| | | VENDOR NUMBER/MAIL CODE |
| | | BUYER/CA(517) 241-4225 Jennifer Hundt |
| Contract Compliance Inspector: Bard Lower | | |
| Calcium Magnesium Acetate (CMA) De-Icer - MDOT | | |
| CONTRACT PERIOD: | | To: July 14, 2004 |
| From: July 15, 1999 | | |
| TERMS | SHIPMENT | |
| Net 30 Days | 7 Days ARO | |
| F.O.B. | SHIPPED FROM | |
| Destination | Fort Madison, IA | |
| MINIMUM DELIVERY REQUIREMENTS | | |
| 22 tons (bulk); 20 tons (bagged); 4,200 gallons (liquid) | | |

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE (S):

To add the following MDOT garage to this contract per attached revised item listing effective immediately.

AUTHORITY/REASON:

Per request from agency, Malcolm Smith, and concurrence by vendor, Roxanna Huffman, dated November 22, 2000.

INCREASE: \$191,400.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$5,378,751.00

STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 OFFICE OF PURCHASING
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

July 20, 1999

NOTICE
 OF
 CONTRACT NO. 071B9000746
 between
 THE STATE OF MICHIGAN
 and

| | | |
|---|------------------------------------|--|
| NAME & ADDRESS OF VENDOR | | TELEPHONE Keith Johnson (712) 526-2407 |
| Cryotech Deicing Technology 6103 Orthoway Fort Madison, IA 52627 | | VENDOR NUMBER/MAIL CODE |
| | | BUYER (517) 241-1145 Lymon C. Hunter |
| NIGP #192-46-38 | Contract Administrator: Bard Lower | CS-138 # Nonjuris |
| Calcium Magnesium Acetate (CMA) De-Icer - MDOT | | |
| CONTRACT PERIOD: 5 Years | From: July 15, 1999 | To: July 14, 2004 |
| TERMS | SHIPMENT | |
| Net 30 Days | 7 Days ARO | |
| F.O.B. | SHIPPED FROM | |
| Destination | Fort Madison, IA | |
| MINIMUM DELIVERY REQUIREMENTS | | |
| 22 tons (bulk); 20 tons (bagged); 4,200 gallons (liquid) | | |

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

The terms and conditions of this Contract are those of ITB #071I9000613, this Contract Agreement and the vendor's quote dated 5/14/99. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: \$ 5,187,351.00

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
OFFICE OF PURCHASING
P.O. BOX 30026, LANSING, MI 48909
 OR
530 W. ALLEGAN, LANSING, MI 48933

CONTRACT NO. 071B9000746
between
THE STATE OF MICHIGAN
and

| | | |
|--|--|---|
| NAME & ADDRESS OF VENDOR <p style="text-align: center;">Cryotech Deicing Technology 6103 Orthoway Fort Madison, IA 52627</p> | | TELEPHONE Keith Johnson (712) 526-2407 VENDOR NUMBER/MAIL CODE BUYER (517) 241-1145 Lymon C. Hunter |
| NIGP #192-46-38 Contract Administrator: Bard Lower CS-138 # Nonjuris <p style="text-align: center;">Calcium Magnesium Acetate (CMA) De-Icer - MDOT</p> | | |
| CONTRACT PERIOD: 5 Years From: July 15, 1999 To: July 14, 2004 | | |
| TERMS <p style="text-align: center;">Net 30 Days</p> | SHIPMENT <p style="text-align: center;">7 Days ARO</p> | |
| F.O.B. <p style="text-align: center;">Destination</p> | SHIPPED FROM <p style="text-align: center;">Fort Madison, IA</p> | |
| MINIMUM DELIVERY REQUIREMENTS 22 tons (bulk); 20 tons (bagged); 4,200 gallons (liquid) | | |
| MISCELLANEOUS INFORMATION: THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT. The terms and conditions of this Contract are those of ITB #071I9000613, this Contract Agreement and the vendor's quote dated 5/14/99. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence. Estimated Contract Value: \$ 5,187,351.00 | | |

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071i9000613. A Purchase Order Form will be issued only as the requirements of the State Departments are submitted to the Office of Purchasing. Orders for delivery may be issued directly by the State Departments through the issuance of a Purchase Order Form.

All terms and conditions of the invitation to bid are made a part hereof.

FOR THE VENDOR:

FOR THE STATE:

 Firm Name

 Authorized Agent Signature

 Authorized Agent (Print or Type)

 Date

 Signature
David F. Ancell

 Name
State Purchasing Director

 Title

 Date

CALCIUM MAGNESIUM ACETATE (CMA) DE-ICER

Per the attached specifications. All prices for the various products are delivered to the MDOT Maintenance Garages indicated below.

CALCIUM MAGNESIUM ACETATE (CMA) DE-ICER

| Item No. | NIGP CODE | Unit | Location | Unit Price |
|----------|----------------|------|--|--------------------|
| 1. | 192-46-38-6700 | GA | CMA De-icer; Pre-wetting Liquid Delivered to: MDOT 3502 E. Washington Saginaw, MI 48601 Brand: Cryotech CMA Product: CF7 2896100 | \$ <u>3.30</u> |
| 2. | 192-46-38-6700 | GA | CMA De-icer; Pre-wetting Liquid Delivered to: MDOT - Blue Water Bridge 1410 Elmwood Port Huron, MI 48060 Brand: Cryotech CMA Product: CF7 2896100 | \$ <u>3.30</u> |
| 3. | 192-46-38-6007 | BG | CMA De-icer: Bagged 2,205 pounds per bag Delivered to: MDOT 937 Bridge Plaza Sault Ste. Marie, MI 49783 Brand: Cryotech CMA Product: CF7 2875104 | \$ <u>1,032.00</u> |

CALCIUM MAGNESIUM ACETATE (CMA) DE-ICER

| Item No. | NIGP CODE | Unit | Location | Unit Price |
|----------|----------------|------|---|------------------|
| 4. | 192-46-38-6254 | MP | CMA De-icer; Bulk Delivered to: MDOT 3502 E. Washington Saginaw, MI 48601 Brand: Cryotech CMA Product: 2875100 | \$ <u>972.00</u> |
| 5. | 192-46-38-6254 | MP | CMA De-icer; Bulk Delivered to: MDOT - Blue Water Bridge 1410 Elmwood Port Huron, MI 48060 Brand: Cryotech CMA Product: CF7 2875100 | \$ <u>972.00</u> |
| | | | | |

CONTACT PERSON(S) FOR CRYOTECH DEICING TECHNOLOGY:

NAME/TITLE: ROXANNA J. HUFFMAN, MANAGER NAME/TITLE: DAWN POWERS, MARKETING COORDINATOR

TELEPHONE #: 319/372-6012

TELEPHONE #: 319/372-6012

FASCIMILE #: 319/372-2662

FACSIMILE #: 319/372-2662

TOLL FREE #: 800/346-7237

TOLL FREE #: 800/346-7237

CALCIUM MAGNESIUM ACETATE (CMA) DE-ICER

SPECIFICATIONS

Description:

Calcium Magnesium Acetate (CMA) to be provided for use as a de-icer shall be a production grade with the following properties:

Composition:

Calcium Magnesium Acetate (CMA)

3:7 Ca to Mg molar ratio

| | |
|----------------|-------------|
| Hydrated CMA | 96% minimum |
| Inert Material | 4% maximum |

Particle Size:

| <u>Sieve size</u> | <u>Percent passing</u> |
|-------------------|------------------------|
| # 4 | 90% |
| # 14 | 10% |

Shape:

Hard, spherical pellet, or angular, asymmetrical granules

Bulk Density:

40 lbs./CuFt to 44 lbs./CuFt
(0.65 g/cm³ to 0.79 g/cm³)

Residual Base:

Maximum 0.4 meg base/gm

pH:

8 to 10 in a 10% solution

Reference Brand: General Atomics (Cryotech) CMA

Acceptance of Material:

All bagged products shall be packaged in nylon, re-inforced, moisture resistant bags which are capable of being lifted by cranes. Each bag shall contain 2,205 pounds of material. All bagged deliveries shall be made on non-returnable pallets (2,205 pounds maximum per pallet), and delivery trucks shall be equipped with removable side rails. The minimum order for bulk deliveries is 22 tons, for bagged deliveries is 20 tons, for liquid deliveries is 4,200 gallons. Delivery shall be made within seven (7) calendar days after receipt of an order. Deliveries will be accepted Monday through Friday between 7:00 a.m. and 3:00 p.m. 48 hour notice is required prior to delivery.

GENERAL:

Quotations are requested for the commodities or services specified to be furnished during the period as noted on the "Invitation to Bid" (ITB) form. Exact quantities to be purchased are unknown except that should a Contract result from the inquiry, the successful bidder will be required to furnish all such materials as may be ordered during the CONTRACT period. Quantities specified if any, are estimates based on prior purchases, and the state is not obligated to purchase in these or any other quantities. Orders for delivery will be issued directly to the contractor by the Michigan Department of Transportation on the Departmental Purchase Order/Contract Release Form and by the Office of Purchasing on the Purchase Order Form.

Indicated on the item listing are the "ship to" addresses for the participating agencies. However, if the contractor and the state agree, additional state agencies may participate should the need develop. Orders may also be issued by local units of government.

In order of precedence, this CONTRACT will consist of published addenda modifying the ITB, the contents of the ITB, and the contractor's response to the ITB requirements. In case of disagreement, the ITB as modified by the published addenda will rule. The State of Michigan shall not be bound by any part(s) of any bidder's response to the ITB which contains information, options, conditions, terms, or prices not requested nor required in the ITB.

The failure of a party to insist upon strict adherence to any term of this CONTRACT shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term or any other term of the CONTRACT.

This CONTRACT may not be modified, amended, extended, or augmented except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.

Each provision of this CONTRACT shall be deemed to be severable from all other provisions of the CONTRACT and, if one or more of the provisions of the CONTRACT shall be declared invalid, the remaining provisions of the CONTRACT shall remain in full force and effect.

This CONTRACT shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan.

CONTRACT TERM:

The term of this contract will be for a five (5) year period and will commence with the issuance of the CONTRACT. This will be approximately July 15, 1999 through July 14, 2004.

ADDITIONAL PRODUCTS:

The state reserves the right to add an item(s) that is not described on the item listing and is available from the contract vendor. The item(s) may be included on the contract, only if prior written approval has been granted by the Office of Purchasing.

CONTRACT DISTRIBUTION:

The Office of Purchasing shall retain the sole right of contract distribution to all state agencies and local units of government unless other arrangements are authorized by the purchasing office.

ISSUING OFFICE:

This contract is issued by the Office of Purchasing, State of Michigan, Department of Management and Budget, hereinafter known as the Office of Purchasing, for the Michigan Department of Transportation hereinafter known as M.D.O.T. Where actions are a combination of those of the Office of Purchasing and M.D.O.T., the authority will be known as the state.

The Office of Purchasing is the sole point of contact in the state with regard to all procurement and contractual matters relating to the commodities and/or services described herein. The Office of Purchasing is the only office authorized to change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of this contract. The Office of Purchasing will remain the **SOLE POINT OF CONTACT** throughout the procurement process until such time as the Director of Purchasing shall direct otherwise in writing. All communications covering this procurement must be addressed to:

Department of Management and Budget
Office of Purchasing
Attn: Lymon C. Hunter
2nd Floor, Mason Building
P. O. Box 30026
Lansing, Michigan 48909

ACCOUNTING RECORDS:

The contractor and all subcontractors shall maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and other procedures specified by the State of Michigan. Financial and accounting records shall be made available, upon request, to the State of Michigan, its designees, or the Michigan Department of Auditor General at any time during the contract period and any extension thereof, and for three years from expiration date and final payment on the contract or extension thereof.

INCURRING COSTS:

The State of Michigan is not liable for any cost incurred by the bidder prior to signing of a [contract](#). The State fiscal year is October 1st through September 30th. The prospective Contractor(s) should realize that payments in any given fiscal year are contingent upon enactment of legislative appropriations. Total liability of the State is limited to terms and conditions of this contract.

PRIME CONTRACTOR RESPONSIBILITIES:

The prime contractor will be required to assume responsibility for all contractual activities offered in this contract, whether or not that contractor performs them. Further, the state will consider the prime contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from this contract. If any part of the work is to be subcontracted, this contract must include a list of subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted and descriptive information concerning subcontractor's organizational abilities. The state reserves the right to approve subcontractors and to require the primary contractor to replace subcontractors found to be unacceptable. The contractor is totally responsible for adherence by the subcontractor to all provisions of the contract. Any change in subcontractors must be approved by the state, in writing, prior to such change.

TAXES:

The State of Michigan is exempt from Federal Excise Tax, State and Local Sales Tax, and Use Tax, and such taxes shall not be included in the bid price. Sales to the State of Michigan are not exempt from the environmental protection regulatory fee imposed pursuant to Section 8 of Act 152 of the Public Acts of the State of Michigan of 1989.

ASSIGNMENT:

The Contractor shall not have the right to assign this contract or to assign or delegate any of its duties or obligations under this contract to any other party (whether by operation of law or otherwise), without the prior written consent of the State. Any purported assignment in violation of this Section shall be null and void. Further, the Contractor may not assign the right to receive money due under the contract without the prior written consent of the State Purchasing Director.

DELEGATION:

The Contractor shall not delegate any duties or obligations under this Contract to a subcontractor other than a subcontractor named in the bid unless the State Purchasing Director has given written consent to the delegation.

F.O.B. POINT:

Prices are "F.O.B. Delivered" with transportation charges prepaid on all orders of 22 tons (bulk), 20 tons (bagged), and 4,200 gallons (liquid) or more to the state. Other F.O.B. terms will not be accepted.

NEWS RELEASES:

News releases pertaining to this contract, or to the commodity/service to which they relate shall not be made without prior written state approval, and then only in accordance with the explicit written instructions from the state.

DELIVERY:

All orders shall be delivered within seven (7) calendar days after receipt of an order. Delivery trucks shall be equipped with removable side rails. Deliveries will be accepted Monday through Friday between 7 a.m. and 3 p.m. 48-hour notice is required prior to delivery.

CONTRACT ADMINISTRATOR:

Upon receipt at the Office of Purchasing of the properly executed Contract Agreement(s), it is anticipated that the Director of Purchasing will direct that M.D.O.T. be authorized to administer the contract on a day-to-day basis during the term of the contract. However, administration of this contract implies no authority to change, modify, clarify, amend, or otherwise alter the terms, conditions, and specifications of such contract(s). That authority is retained by the Office of Purchasing. The contract administrator for this project is:

Bard Lower
Michigan Department of Transportation
Maintenance Division
6333 Old Lansing Road
Lansing, MI 48917
517/322-3332

INDEMNIFICATION:

1. General Indemnification

The Contractor shall indemnify, defend and hold harmless the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

- (a) any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.
- (b) any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Contract;
- (c) any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;
- (d) any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;
- (e) any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

INDEMNIFICATION: (Continued)

2. Patent/Copyright Infringement Indemnification

The Contractor shall indemnify, defend and hold harmless the State, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in the Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

In any and all claims against the State of Michigan, or any of its agents or employees, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in subclauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other subclause.

UNFAIR LABOR PRACTICES:

Pursuant to Act 278 of the Public Acts of the State of Michigan of 1980, the State shall not award a contract, or subcontract, to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to Section 2 of the Act. A contractor of the State, in relation to that contract shall not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this register. The State may void a contract if, subsequent to award of the contract the name of the contractor as an employer, or the name of subcontractor manufacturer, or supplier of the contractor appears in this register.

RECYCLED CONTAINERS:

Bidders are encouraged to offer products packaged in containers using recovered materials suitable for the intended use. 'Recovered material' is defined as post-consumer waste (any products generated by a business or consumer which have served their intended end use, and which have been separated or diverted from solid waste for the purpose of collection, recycling, and disposition) and 'secondary waste' (industrial by-products and wastes generated after completion of a manufacturing process that would normally not be reused).

CONTRACTOR'S LIABILITY INSURANCE:

The Contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the Contractor's operations under the Purchase Order/Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (1) Claims under workers' disability compensation, disability benefit and other similar employee benefit act. A non-resident Contractor shall have insurance for benefits payable under Michigan's Workers' Disability Compensation Law for any employee resident of and hired in Michigan; and as respects any other employee protected by workers' disability compensation laws of any other state the Contractor shall have insurance or participate in a mandatory state fund to cover the benefits payable to any such employee.
- (2) Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees.
- (3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees, subject to limits of liability of not less than \$300,000 each occurrence and, when applicable \$300,000 annual aggregate, for non-automobile hazards and as required by law for automobile hazards.
- (4) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom, subject to a limit of liability of not less than \$50,000 each occurrence for non-automobile hazards and as required by law for automobile hazards.
- (5) Insurance for Subparagraphs (3) and (4) non-automobile hazards on a combined single limit of liability basis shall not be less than \$300,000 each occurrence and when applicable, \$300,000 annual aggregate.

The insurance shall be written for not less than any limits of liability herein specified or required by law, whichever is greater, and shall include contractual liability insurance as applicable to the Contractor's obligations under the Indemnification clause of the Purchase Order/Contract.

BEFORE STARTING WORK THE CONTRACTOR MUST FURNISH TO THE OFFICE OF PURCHASING, CERTIFICATE(S) OF INSURANCE VERIFYING LIABILITY COVERAGE. THE PURCHASE ORDER/CONTRACT NUMBER MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING. These certificates shall contain a provision that coverages afforded under the policies will not be cancelled until at least fifteen days prior written notice bearing the Purchase Order Number or Contract Number has been given to the Director of Purchasing.

PALLETIZING:

All bagged deliveries shall be made on non-returnable pallets and shall conform to the following:

- *Manufacturers standard 4-way shipping pallets are acceptable.
- *Maximum height: 5'6" (including pallet).
- *Maximum weight: 2,205 pounds (including pallet).
- *Pallets are to be securely banded or shrink-wrapped.
- *The cost of palletizing must be included in the unit price.

NON-DISCRIMINATION CLAUSE:

In the performance of any contract resulting herefrom, the bidder agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, physical or mental handicap or disability. The bidder further agrees that every subcontract entered into for the performance of any purchase order or blanket purchase order resulting herefrom will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each subcontractor. This covenant is required pursuant to Acts 220 and 453 of the Public Acts of the State of Michigan of 1976, as amended, and any breach thereof may be regarded as a material breach of the contract.

INVOICING:

The contractor shall submit two (2) copies of invoices, one (1) to the "Bill To" address and one (1) to the "Ship To" address.

RIGHT TO KNOW ACT (Act 80 of 1986):

The "Right to Know Act" is intended to provide protection and information to employees who encounter hazardous substances in the workplace. To comply with this act, it is necessary that you fulfill the following:

Labels on all incoming containers of hazardous chemicals must (1) clearly state the identity of the contents, (2) display appropriate hazard warning(s), (3) include first aid information, and (4) list the name and address of the chemical manufacturer, importer, or other responsible party.

A service contractor must comply with the requirements of Act 80 of 1986 with respect to the labeling of hazardous chemicals and the provision of Material Safety Data Sheets before such materials are introduced into the workplaces of a contracted service agency. Otherwise, such materials will not be allowed on the premises.

Material Safety Data Sheets related to hazardous chemicals must be presented to the appropriate state building supervisors prior to the introduction of such substances into buildings housing agencies of the State of Michigan. It is recommended that the format of OSHA Form 174, dated September 1985, be used as a standard for Material Safety Data Sheets.

This document must be included with shipment of chemical or hazardous material to the receiving state agency. It is necessary to send this document only on the first shipment for each chemical formulation or hazardous material ordered by a specific agency except when there has been a change in the formulation of the specified chemical or hazardous material, in which case, a revised material safety data sheet shall accompany the first shipment of the changed formulation. It is the responsibility of the shipping vendor to maintain this record. The receiving agency will not accept first shipment unless the above is complied with. It is recommended that OSHA Material Safety Data Sheet No. 174 be used.

MINIMUM ORDER:

The minimum orders are **22 tons for bulk deliveries, 20 tons for bagged deliveries, and 4,200 gallons for liquid deliveries** per individual delivery location.

CANCELLATION:

(a) The State may cancel the contract for default of the Contractor. Default is defined as the failure of the Contractor to fulfill the obligations of the quotation or contract. In case of default by the Contractor, the State may immediately and/or upon 30 days prior written notice to the Contractor cancel the contract without further liability to the State, its departments, divisions, agencies, sections, commissions, officers, agents and employees, and procure the services from other sources, and hold the Contractor responsible for any excess costs occasioned thereby.

(b) The State may cancel the contract in the event the State no longer needs the services or products specified in the contract, or in the event program changes, changes in laws, rules or regulations, relocation of offices occur, or the State determines that statewide implementation of the contract is not feasible, or if prices for additional services requested by the State are not acceptable to the State. The State may cancel the contract without further liability to the State, its departments, divisions, agencies, sections, commissions, officers, agents and employees by giving the Contractor written notice of such cancellation 30 days prior to the date of cancellation.

(c) The State may cancel the contract for lack of funding. The Contractor acknowledges that, if this contract extends for several fiscal years, continuation of this contract is subject to appropriation of funds for this project. If funds to enable the State to effect continued payment under this contract are not appropriated or otherwise made available, the State shall have the right to terminate this contract without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Contractor. The State shall give the Contractor written notice of such non-appropriation within 30 days after it receives notice of such non-appropriation.

(d) The State may immediately cancel the contract without further liability to the State its departments, divisions, agencies, sections, commissions, officers, agents and employees if the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects on the Contractor's business integrity.

(e) The State may immediately cancel the contract in whole or in part by giving notice of termination to the Contractor if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, Section 5, and Civil Service Rule 4-6.

(f) The State may, with 30 days written notice to the Contractor, cancel the contract in the event prices proposed for contract modification/extension are unacceptable to the State.

USAGE REPORTING:

The contractor may be required to report the CONTRACT usage by the Michigan Department of Transportation and by local units of government. Such usage shall be reported when requested by the buyer in the Office of Purchasing, Department of Management and Budget.

PACKAGING:

All bagged product shall be packaged in nylon, re-inforced, moisture resistant bags which are capable of being lifted by cranes. Each bag shall contain 2,205 pounds of material.

Packaging and containers, etc., shall be in accordance with supplier's commercial practice and shall meet the requirements of Department of Transportation (D.O.T.) and rail and motor carrier freight classifications in effect at time of shipment, which will permit application of the lowest freight rate.

Unless otherwise specifically noted in the CONTRACT, the cost of all reels, drums, pallets and containers is included in the bid price, and become the property of the State of Michigan. Charges for returnable shipping containers together with return instructions for shipment to contractor's plant, transportation charges "collect", are as stated in the contract, where applicable.

FREIGHT CHARGES:

Should an agency order below the minimum requirements, one of the following carriers must be used by the Contractor for shipping products. Orders being shipped from or to the **State of Michigan or the States of Illinois, Indiana, Ohio and Wisconsin, use ALVAN MOTOR FREIGHT, (Tel: (800) 632-4172, ATTN: EARL BATENBURG.**

Orders being shipped from or to **ALL OTHER STATES, use ROADWAY EXPRESS, INC., Tel: (800) 253-3193; ATTN: DAVID LEWIS.**

United Parcel Service (UPS) must be used in instances where the weight of the shipment is less than 150 lbs., or where shipments could be separated into smaller parcels such as three (3) 50 lb. packages. Also if the shipment weighs less than 150 lbs. but costs \$3000 or more, it must be sent by the appropriate carrier listed above.

If the Contractor fails to follow these shipping instructions, the State shall pay the carrier used and deduct the difference from the Contractor's invoice for the amount which was charged and the amount which would have been charged if the requested carrier had been used.

QUALITY ASSURANCE:

The state reserves the right to periodically test products which have been received to verify compliance with specifications. If laboratory analysis shows that the product does not meet specifications or fails to perform satisfactorily at any time, the contractor shall be responsible for:

1. All costs of testing and laboratory analysis.
2. Disposal and/or replacement of all products which fail to meet specifications including all shipping costs.
3. All costs of repair and/or replacement of equipment deemed to have been damaged by substandard products as determined by the state.

DISCLOSURE:

Public Act No. 442 of 1976 known as the "Freedom of Information Act" provides for the complete disclosure of purchase orders and contracts and attachments hereto. Nothing in this section shall preclude the State of Michigan from disclosing information marked proprietary if the state is legally bound to do so.

PRICE:

Prices quoted are the maximum for a period of 365 days from date contract becomes effective.

Prices may be subject to revision at the end of each 365 day period if there are changes in the general industry. Revisions may be either increases or decreases and may be requested by either party. Evidence of general industry changes, such as revised printed price lists or notices, and evidence that the change actually affected the contractor's costs for materials must accompany the request. The prices quoted shall be firm for 365 days. Requests for price changes shall be received in writing at least thirty (30) days prior to their effective date and are subject to written acceptance before becoming effective. If proposed prices are not acceptable to either party, the contract may be cancelled. The contractor remains responsible for performing according to the contract terms at the contract price for all orders received before price revisions are approved or before the contract is cancelled.

The postmark date on the Contract Release will determine prices to be charged on orders (requesting a single shipment to be delivered prior to the effective date of the price revision) which may already be in transit to the contractor prior to the new price implementation date. Orders issued by agencies requesting multiple deliveries, over a specified period of time, which may overlap two price periods, shall reflect the current price at the time of delivery.

SPECIFICATIONS:

Definite Specifications - All commodities and services to be furnished hereunder shall conform to the specifications as noted in the "Item Listing" and/or copies of specifications attached. The material to be supplied will be tested and/or certified. The contractor shall contact the MDOT Materials and Testing Division at 517/322-1087 for instructions.

NON-STATE AGENCY STATEMENT:

Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Management and Budget, to provide purchasing services to services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community or junior college. As a result of the enactment of this legislation, the Extended Purchasing Program has been developed. This program extends the use of State contracts to program members. The governmental agency must enter into an agreement with the State of Michigan to become authorized to participate, thus ensuring that local units of government secure a greater return for the expenditure of public funds. It is the policy of the Office of Purchasing, Department of Management and Budget, that the final approval to utilize any such contract in this manner must come from the contract vendor.

In such cases, contract vendors supply merchandise at the established State of Michigan contract prices and terms. Inasmuch as these are non-State agencies, all purchase orders will be submitted by, invoices will be billed to, and payment will be remitted by the authorized Extended Purchasing member on a direct and individual basis in accordance with contract terms.

Therefore, it is required that all bidders indicate, by checking the appropriate box below, whether they will (first box) or will not (second box) honor orders on any contract resulting from this Request for Quotation from State of Michigan authorized Extended Purchasing members. It is the responsibility of the Contractor to ensure the non-State agency is an authorized Extended Purchasing member prior to extending the State contract price.

BIDDER MUST CHECK ONE BOX BELOW

- Commodities and/or services on this Request for Quotation will be supplied to State of Michigan departments and agencies, and authorized Extended Purchasing Program members in accordance with the terms and prices quoted. A complete listing of eligible participants in the Extended Purchasing Program will be provided if this option is selected.

- Commodities and/or services on the Request for Quotation will not be supplied to State of Michigan authorized Extended Purchasing members. We will supply to State of Michigan departments and agencies only.

Vendor Name

Authorized Agent Name (print or type)

Authorized Agent Signature

