Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

May 3, 2008

CHANGE NOTICE NO. 3
TO
CONTRACT NO. 071B4200333

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF VENDOR	TELEPHONE (616) 364-4558 **Daniel J. Klaver**
West Michigan Tree Service **2146 Dean Lake Road** **Grand Rapids, MI 49505**	VENDOR NUMBER/MAIL CODE
	BUYER (517) 373-6535 **William C. Walsh, CPPB**

Contract Compliance Inspector: Kenneth Rauscher (517) 373-1087 rauscherk@michigan.gov
EAB Pesticide Application – Department of Agriculture

CONTRACT PERIOD 3 Years	From: **July 12, 2004**	To: **June 30, 2009**
TERMS **2% - 10 / Net 30**	SHIPMENT **N/A**	
F.O.B. **Delivered**	SHIPPED FROM **N/A**	
MINIMUM DELIVERY REQUIREMENTS **N/A**		

NATURE OF CHANGE (S):

Effective May 1, 2008, the following Contract CHANGES are authorized:

This Contract is hereby EXTENDED to June 30, 2009, per section II-D of the Contract.

All other terms, conditions, and pricing not noted above shall remain the same.

AUTHORITY/REASON:

Per request of Dept. of Agriculture (PRF dated 4/10/08) and vendor agreement (fax dated 4/24/08).

TOTAL ESTIMATED CONTRACT VALUE REMAINS: $100,000.00

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET **May 3, 2007**
ACQUISITION SERVICES
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B4200333

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF VENDOR **West Michigan Tree Service** **2146 Dean Lake Road** **Grand Rapids, MI 49505**	TELEPHONE (616) 364-4558 **Daniel J. Klaver** VENDOR NUMBER/MAIL CODE BUYER (517) 373-6535 **William C. Walsh, CPPB**
Contract Compliance Inspector: Kenneth Rauscher (517) 373-1087 rauscherk@michigan.gov **EAB Pesticide Application – Department of Agriculture**	
CONTRACT PERIOD 3 Years From: **July 12, 2004** To: **June 30, 2008**	
TERMS **2% - 10 / Net 30**	SHIPMENT **N/A**
F.O.B. **Delivered**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	

NATURE OF CHANGE (S):

Effective May 1, 2007, the following Contract CHANGES are authorized:

This Contract is hereby EXTENDED to June 30, 2008, per section II-D of the Contract.

The Contract Compliance Inspector is hereby CHANGED to Kenneth Rauscher.

All other terms, conditions, and pricing not noted above shall remain the same.

AUTHORITY/REASON:

Per request of Dept. of Agriculture (PRF dated 4/20/07) and vendor agreement (fax dated 4/25/07).

TOTAL ESTIMATED CONTRACT VALUE REMAINS: $100,000.00

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET **March 29, 2006**
ACQUISITION SERVICES
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B4200333
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR	TELEPHONE (616) 364-4558 **Daniel J. Klaver**
West Michigan Tree Service **2146 Dean Lake Road** **Grand Rapids, MI 49505**	VENDOR NUMBER/MAIL CODE
	BUYER (517) 373-6535 **William C. Walsh, CPPB**
Contract Compliance Inspector: Gary King (517) 373-9747	CS138# N/A
EAB Pesticide Application – Department of Agriculture	
CONTRACT PERIOD 3 Years From: **July 12, 2004**	To: **June 30, 2007**
TERMS **2% - 10 / Net 30**	SHIPMENT **N/A**
F.O.B. **Delivered**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	

NATURE OF CHANGE (S):

Effective March 27, 2006 the following CHANGES are incorporated to this Contract:

This Contract is for the application of pesticides for the control of the Emerald Ash Borer (EAB) on public or private property. Pesticide applications will be on an as needed basis in support of the Emerald Ash Borer (EAB) eradication program strategies of containment and suppression of EAB populations under the direction of the Michigan Department of Agriculture (MDA). Pesticide applications **may** apply to trees in landscape, ornamental, **forestry (woodlot) or right-of-way settings.** This activity could take place within or outside municipal boundaries.

STATEMENT OF WORK

The United States Department of Agriculture, in an environmental assessment report, has evaluated and selected an integrated eradication program that includes the application of pesticide treatments for the control of and eradication of the Emerald Ash Borer using EPA **and Michigan** registered pesticides in support of the Emerald Ash Borer eradication program strategies of containment and suppression of EAB populations. The use of pesticides will be one component of an integrated response strategy. Pesticide applications **may** apply to trees in landscape, ornamental, **forestry (woodlot), or right-of-way** setting**s**.

The Contractor will furnish and transport all labor, equipment, and materials necessary for the pesticide treatment of trees as designated by the Michigan Department of Agriculture (MDA). The Contractor must comply with all applicable state and federal laws and regulations.

Contractor must be licensed and applicators must be certified in the following: Category 2 Forestry, Category 3B Ornamental, Category 6 Right-of-Way. The Michigan Department of Agriculture will provide a Tree Inventory Form of trees that have been marked for pesticide treatment. MDA will determine the pesticide to be used, rate of application and method of application. This information will be listed as a site-specific requirement on the Tree Inventory Form. The approved methods of application are:

1. Trunk Injection using Imidacloprid or Dicrotophos
2. Soil injection using Imidacloprid
3. Bark and foliage cover spray using Bifenthrin or Cyfluthrin. This method of application is pending USDA approval.

The Michigan Department of Agriculture will have sole authority over all pesticide treatments.

AUTHORITY/REASON:

Per request of agency (e-mail from Jonathan Henker dated) and Purchasing Operations approval.

Increase: $0.00

TOTAL ESTIMATED CONTRACT VALUE REMAINS: $100,000.00

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

July 27, 2004

NOTICE
TO
CONTRACT NO. 071B4200333
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR **West Michigan Tree Service** **2146 Dean Lake Road** **Grand Rapids, MI 49505**	TELEPHONE (616) 364-4558 **Daniel J. Klaver** VENDOR NUMBER/MAIL CODE BUYER/CA (517) 373-6535 **William C. Walsh, CPPB**
Contract Compliance Inspector: Gary King (517) 373-9747 **EAB Pesticide Application – Department of Agriculture**	
CONTRACT PERIOD: From: **July 12, 2004**	To: **June 30, 2007**
TERMS **2%-10 / Net 30**	SHIPMENT **N/A**
F.O.B. **Delivered**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	

The terms and conditions of this Contract are attached.

Estimated Contract Value: $100,000.00

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

CONTRACT NO. 071B4200333
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR **West Michigan Tree Service** **2146 Dean Lake Road** **Grand Rapids, MI 49505**	TELEPHONE (616) 364-4558 **Daniel J. Klaver** VENDOR NUMBER/MAIL CODE BUYER/CA (517) 373-6535 **William C. Walsh, CPPB**
Contract Compliance Inspector: Gary King (517) 373-9747 **EAB Pesticide Application – Department of Agriculture**	
CONTRACT PERIOD: From: **July 12, 2004**	To: **June 30, 2007**
TERMS **2%-10 / Net 30**	SHIPMENT **N/A**
F.O.B. **Delivered**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION: **The terms and conditions of this Contract are attached.** **Estimated Contract Value: $100,000.00**	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry and your quote. A Purchase Order Form will be issued only as the requirements of the Department of Agriculture are submitted to Acquisition Services. Orders for delivery may be issued directly by the Department of Agriculture 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:**
West Michigan Tree Service Firm Name	Signature
Authorized Agent Signature	**William C. Walsh, CPPB, Buyer Manager** Name
Authorized Agent (Print or Type)	**Tactical Purchasing, Acquisition Services** Title
Date	Date

EMERALD ASH BORER PESTICIDE APPLICATION

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Attachments:

Attachment A – Tree Inventory Form
Attachment B – Tree Bid Form

SECTION I - REQUIREMENTS

I-A INTRODUCTION

This Contract is for the application of pesticides for control of the Emerald Ash Borer (EAB) on public or private property. Pesticide applications will be on an as needed basis in support of the Emerald Ash Borer (EAB) eradication program strategies of containment and suppression of EAB populations under the direction of the Michigan Department of Agriculture (MDA). Pesticide applications will only apply to trees in a landscape or ornamental setting. This activity could take place within or outside municipal boundaries.

I-B STAFFING AND SUB-CONTRACTORS

a) The Contractor must be able to provide appropriate staff to properly service the Contract. The key person for this Contract is:

Daniel J. Klaver
President
West Michigan Tree Service
2146 Dean Lake Rd.
Grand Rapids, MI 49505
(616) 364-4558

b) Sub Contractor Information:

Mike Barger
Mike's Tree Surgeons
263 Park Street
Troy, MI 48083

I-C EQUIPMENT

Minimum equipment specifications are:

a) Trunk Injection: To be determined by the type of pesticide to be used for application.
b) Soil Injection: Hydraulic sprayer operating at 80 – 100 PSI with flow meter at hose end and minimum of 400 ft of hose.
c) Bark and Foliage Spray: Hydraulic sprayer with pressure sufficient to cover bark and foliage of a 50 ft high tree.

I-D STATEMENT OF WORK

The United States Department of Agriculture, in an environmental assessment report, has evaluated and selected an integrated eradication program that includes the application of pesticide treatments for the control of and eradication of the Emerald Ash Borer using EPA registered pesticides in support of the Emerald Ash Borer eradication program strategies of containment and suppression of EAB populations. The use of pesticides will be one component of an integrated response strategy. Pesticide applications will only apply to trees in a landscape or ornamental setting.

The Contractor will furnish and transport all labor, equipment, and materials necessary for the pesticide treatment of trees as designated by the Michigan Department of Agriculture (MDA). The Contractor must comply with all applicable state and federal laws and regulations.

The Michigan Department of Agriculture will provide a Tree Inventory Form of trees that have been marked for pesticide treatment. MDA will determine the pesticide to be used, rate of application and method of application. This information will be listed as a site specific requirement on the Tree Inventory Form. The approved methods of application are:

1. Trunk Injection using Imidacloprid or Dicrotophos
4. Soil injection using Imidacloprid
5. Bark and foliage cover spray using Bifenthrin or Cyfluthrin. This method of application is pending USDA approval.

The Michigan Department of Agriculture will have sole authority over all pesticide treatments.

I-E DESCRIPTION OF WORK

The Contractor shall perform all the work as follows:

1. Contractor to perform trunk injection with a pesticide as determined by MDA.
2. Contractor to perform soil injection with a pesticide as determined by MDA.
3. Contractor to perform bark and foliage cover spray with a pesticide as determined by MDA.
4. Rapid Response – On occasion MDA may have a need for a rapid response to treat a small number of trees. When this occurs, work must be completed within 24 hours after notification by MDA.
5. Safety Precautions – Contractor must be in compliance with all applicable state and federal laws and regulations regarding pesticide application.

I-F PRICING

Contract is based on a unit price per tree and additional site requirements. Please see Attachment B. Exact quantities to be purchased are unknown, however, the Contractor will be required to furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified if any, are estimates, 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 Department of Agriculture on the Purchase Order Contract Release Form.

SECTION II - GENERAL CONTRACT PROVISIONS

II-A GENERAL

This Contract is for the as needed application of pesticides for the control of the Emerald Ash Borer for the State of Michigan in support of the Emerald Ash Borer Eradication Program strategies of containment and suppression of EAB populations under the direction of the Michigan Department of Agriculture (MDA). The use of pesticides is one component of an integrated response strategy. Exact quantities to be purchased are unknown, however the Contractor will be required to furnish all such materials and services as may be ordered during the CONTRACT period.

This Contract will be based upon size categories per Tree Bid Form.

II-B ISSUING OFFICE

This Contract is issued by Acquisition Services, State of Michigan, Department of Management and Budget, hereinafter known as Acquisition Services, for the Michigan Department of Agriculture, hereinafter known *as MDA* Where actions are a combination of those of Acquisition Services and the State agencies, the authority will be known as the State.

Acquisition Services 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. Acquisition Services is the only office authorized to change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of the Contract. Acquisition Services will remain the SOLE POINT OF CONTACT throughout the procurement process. All communications covering this procurement must be addressed to:

Department of Management and Budget
Acquisition Services
Attn: William C. Walsh, CPPB
2nd Floor, Mason Building
P.O. Box 30026
Lansing, Michigan 48909
(517) 373-6535
walshw@michigan.gov

II-C CONTRACT COMPLIANCE INSPECTOR

Upon receipt at Acquisition Services of the properly executed Contract Agreement, the person named below will be allowed to administer the Contract on a day-to-day basis during the term of the Contract. However, administration of the Contract implies no authority to change, modify, clarify, amend, or otherwise alter the terms, conditions, and specifications of such Contract. That authority is retained by Acquisition Services. The Contract Compliance Inspector for this project is:

Gary King
Michigan Department of Agriculture
Pesticide & Plant Pest Management Division
P.O. Box 30017
Lansing, MI 48909
Kingg1@michigan.gov

II-D CONTRACT TERM

The term of this Contract will be 3 (three) years and will commence with the issuance of a Contract. This will be approximately July 12, 2004 through June 30, 2007. At the sole option of the State, the Contract may be extended for up to 2 (two) additional years. Contractor performance, quality of products, price, and the Contractor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Acquisition Services to extend the Contract.

II-E ENTIRE AGREEMENT

This Contract supercedes all proposals or other prior agreements, oral or written, and all other communications between the parties relating to this subject. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the Contractor, those of the State take precedence.

II-F NO WAIVER OF DEFAULT

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 this Contract.

II-G REVISIONS, CONSENTS, AND APPROVALS

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.

II-H SEVERABILITY

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

II-I SURVIVOR

Any provisions of this Contract that impose continuing obligations on the parties including, but not limited to the Contractor's indemnity and other obligations shall survive the expiration or cancellation of this Contract for any reason.

II-J GOVERNING LAW

This Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.

II-K RELATIONSHIP OF THE PARTIES (INDEPENDENT CONTRACTOR)

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

II-L HEADINGS

Captions and headings used in this Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of this Contract.

II-M INCURRING COSTS

The State of Michigan is not liable for any cost incurred by the Contractor prior to signing of this Contract. The State fiscal year is October 1st through September 30th. The Contractor 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.

II-N NEWS RELEASES

News releases (including promotional literature and commercial advertisements) pertaining to this Contract or project to which it relates shall not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with this Contract are to be released without prior written approval of the State and then only to persons designated.

II-O CONTRACTOR RESPONSIBILITIES

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the 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. The State reserves the right to approve subcontractors and to require the Contractor to replace subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the subcontractor to all provisions of this Contract. Any change in subcontractors must be approved by the State, in writing, prior to such change.

II-P PERFORMANCE REVIEWS

Acquisition Services in conjunction with the Michigan Department of Agriculture may review with the Contractor their performance under this Contract. Performance reviews shall be conducted quarterly, semi-annually or annually depending on Contractor's past performance with the State. Performance reviews shall include, but not limited to, quality of products/services being delivered and provided, timeliness of delivery, percentage of completion of orders, the amount of back orders, status of such orders, accuracy of billings, customer service, completion and submission of required paperwork, the number of substitutions and the reasons for substitutions, and other requirements of this Contract.

Upon a finding of poor performance, which has been documented by Acquisition Services, the Contractor shall be given an opportunity to respond and take corrective action. If corrective action is not taken in a reasonable amount of time as determined by Acquisition Services, the Contract may be canceled for default. Delivery by the Contractor of unsafe and/or adulterated or off-condition products to any State agency is considered a material breach of Contract subject to the cancellation provisions contained herein.

II-Q AUDIT OF CONTRACT COMPLIANCE

The Contractor agrees that the State may, upon 24-hour notice, perform an audit at Contractor's location(s) to determine if the Contractor is complying with the requirements of the Contract. The Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.

II-R SAFETY AND ACCIDENT PREVENTION

In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in this Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation by the Contractor of such safety requirements, rules, laws or regulations shall be a material breach of this Contract subject to the cancellation provisions contained herein.

II-S WORKPLACE SAFETY AND DISCRIMINATORY HARASSMENT

In performing services for the State pursuant to this Contract, the Contractor shall comply with Department of Civil Service Rules 2-20 regarding Workplace Safety and 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service Regulations governing workplace safety and discriminatory harassment and any applicable state agency rules on these matters that the agency provides to the Contractor. Department of Civil Service Rules and Regulations can be found on the Department of Civil Service website at www.michigan.gov/mdcs.

II-T 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 this Contract without the prior written consent of the Director of Acquisition Services.

II-U DELEGATION

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

II-V DISCLOSURE

All information in the Contractors proposal and this Contract is subject to the provisions of the Freedom of Information Act 1976 Public Act No. 442, as amended, MCL 15.231, et seq.

II-W TAXES

A. Sales Tax: For purchases made directly by the State of Michigan, the State is exempt from State and Local Sales Tax. Prices shall not include such taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

B. Federal Excise Tax: The State of Michigan may be exempt for Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under this Contract are used for the State's exclusive use. Certificates exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent to the Contractor upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax.

C. Contractors are expected to collect and pay all applicable federal, state, and local employment taxes for all persons involved in the resulting Contract. Also, bidders shall maintain appropriate payroll information on a system that can produce any reports that may be needed by Acquisition Services.

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II-X ADDITIONAL PRODUCTS/SERVICES

The State reserves the right to add an item(s) that is not described on the item listing and is available from the Contractor. The item(s) may be included on the Contract, only if prior written approval has been granted by Acquisition Services.

II-Y CONTRACTOR'S LIABILITY INSURANCE

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain pursuant to this Contract. The Contractor also agrees to provide evidence that all applicable insurance policies contain a waiver of subrogation by the insurance company.

All insurance coverages provided relative to this Contract/Purchase Order is PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The Insurance shall be written for not less than any minimum coverage herein specified or required by law, whichever is greater. All deductible amounts for any of the required policies are subject to approval by the State.

The State reserves the right to reject insurance written by an insurer the State deems unacceptable.

BEFORE THE CONTRACT IS SIGNED BY BOTH PARTIES OR BEFORE THE PURCHASE ORDER IS ISSUED BY THE STATE, THE CONTRACTOR MUST FURNISH TO THE DIRECTOR OF ACQUISITION SERVICES, CERTIFICATE(S) OF INSURANCE VERIFYING INSURANCE COVERAGE. THE CERTIFICATE MUST BE ON THE STANDARD "ACCORD" FORM. THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING. All such Certificate(s) are to be prepared and submitted by the Insurance Provider and not by the Contractor.

All such Certificate(s) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Acquisition Services, Department of Management and Budget. Such NOTICE must include the CONTRACT NUMBER affected and be mailed to: Director, Acquisition Services, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909.

The Contractor is required to provide the type and amount of insurance checked (☑) below:

☑ 1. Commercial General Liability with the following minimum coverages:

$2,000,000 General Aggregate Limit other than Products/Completed Operations
$2,000,000 Products/Completed Operations Aggregate Limit
$1,000,000 Personal & Advertising Injury Limit
$1,000,000 Each Occurrence Limit
$500,000 Fire Damage Limit (any one fire)

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the Commercial General Liability policy.

☑ 2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor‘s business for bodily injury and property damage as required by law.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the vehicle liability policy.

☑ 3. Worker’s disability compensation, disability benefit or other similar employee benefit act with minimum statutory limits. NOTE: (1) If coverage is provided by a State fund or if Contractor has qualified as a self-insurer, separate certification must be furnished that coverage is in the state fund or that Contractor has approval to be a self-insurer; (2) Any citing of a policy of insurance must include a listing of the States where that policy’s coverage is applicable; and (3) Any policy of insurance must contain a provision or endorsement providing that the insurers’ rights of subrogation are waived. This provision shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

☑ 4. Employers liability insurance with the following minimum limits:

$100,000 each accident
$100,000 each employee by disease
$500,000 aggregate disease

II-Z INDEMNIFICATION

A. General Indemnification

To the fullest extent permitted by law, 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:

1. 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.

2. 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;

3. 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;

4. 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;

5. 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.

B. Patent/Copyright Infringement Indemnification

To the fullest extent permitted by law, 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.

C. Indemnification Obligation Not Limited

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.

D. Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect not withstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

II-AA CONTRACT DISTRIBUTION

Acquisition Services shall retain the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Acquisition Services.

II-BB ACCOUNTING RECORDS

The Contractor and all subcontractors shall maintain all pertinent financial and accounting records and evidence pertaining to this 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 Auditor General at any time during the Contract period and any extension thereof, and for three years from expiration date and final payment on this Contract or extension thereof.

II-CC NON-DISCRIMINATION CLAUSE

In the performance of this Contract, the Contractor 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,

marital status, physical or mental handicap or disability. The Contractor further agrees that every subcontract entered into for the performance of this Contract will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 Public Act 453, as amended, MCL 37.2201, et seq, and the Persons With Disabilities Civil Rights Act, 1976 Public Act 220, as amended, MCL 37.1101, et seq, and any breach thereof may be regarded as a material breach of the Contract or purchase order.

II-DD CANCELLATION

The State may cancel this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents, and employees for any of the following reasons:

1. Material Breach by the Contractor. In the event that the Contractor breaches any of its material duties or obligations under the Contract, which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State, or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of cancellation to the Contractor, cancel this Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.

   In the event that this Contract is cancelled for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Contractor shall be responsible for all costs incurred by the State in canceling the Contract, including but not limited to, State administrative costs, attorneys fees and court costs, and any additional costs the State may incur to procure the services required by this Contract from other sources. All excess re-procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Contract.

   In the event the State chooses to partially cancel this Contract for cause charges payable under this Contract will be equitably adjusted to reflect those services that are cancelled.

   In the event this Contract is cancelled for cause pursuant to this section, and it is therefore determined, for any reason, that the Contractor was not in breach of contract pursuant to the provisions of this section, that cancellation for cause shall be deemed to have been a cancellation for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in the Contract for a cancellation for convenience.

2. Cancellation For Convenience By the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation.

If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.

3. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.

4. Criminal Conviction. In the event 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 upon the Contractor's business integrity.

5. Approvals Rescinded. The State may terminate this Contract without further liability or penalty in the event 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 7. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

II-EE NOTICE AND RIGHT TO CURE

In the event of a curable breach by the Contractor, the State shall provide the Contractor written notice of the breach and a time period to cure said breach described in the notice. This section requiring notice and an opportunity to cure shall not be applicable in the event of successive or repeated breaches of the same nature or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage or destruction of any real or tangible personal property.

II-FF ELECTRONIC FUNDS TRANSFER

Electronic transfer of funds is available to State contractors. The Contractor is encouraged to register with the State of Michigan Office of Financial Management so the State can make payments related to this Contract electronically at www.cpexpress.state.mi.us.

II-GG MODIFICATION OF CONTRACT

Acquisition Services reserves the right to modify this Contract at any time during the Contract term. Such modification may include changing the locations to be serviced, additional locations to be serviced, method or manner of performance of the work, number of days service is to be performed, addition or deletion of tasks to be performed, addition or deletion of items, and/or any other modifications deemed necessary. Any changes in pricing proposed by the Contractor resulting from the proposed changes are subject to acceptance by the State. Changes may be increases or decreases. IN THE EVENT PRICES ARE NOT ACCEPTABLE TO THE STATE, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.

II-HH UNFAIR LABOR PRACTICES

Pursuant to 1980 Public Act 278, as amended, MCL 423.231, et seq, 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 this Contract, shall not enter into a Contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to Section 4 of 1980 Public Act 278, MCL 423.324, the State may void this Contract if, subsequent to award of this Contract, the name of the Contractor as an employer, or the name of the subcontractor, manufacturer or supplier of the Contractor appears in the register.

II-II FORM, FUNCTION, AND UTILITY

If this Contract is for use of more than one State agency and if the good or service provided under this Contract do not the meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the good or service from another source.

II-JJ CONTRACT PAYMENT SCHEDULE

The specific payment schedule for this Contract will be mutually agreed upon by the State and the Contractor. The schedule should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy statements shall be forwarded to the designated representative by the 15th day of the following month.

II-KK PROHIBITED PRODUCTS

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of this Contract and may result in cancellation of this Contract by the State. The brand and product number offered for all items shall remain consistent for the term of this Contract, unless Acquisition Services has approved a change.

II-LL 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.

Material Safety Data Sheets 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.

II-MM ASSIGNMENT OF ANTITRUST CAUSE OF ACTION

For and in consideration of the opportunity to submit a quotation and other good and valuable consideration, the Contractor hereby assigns, sells and transfers to the State of Michigan all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of payment and which relate solely to the particular goods, commodities, or services purchased or procured by this State pursuant to this transaction.

Attachment A

SAMPLE

SITE # _____

Michigan Department of Agriculture
Pesticide and Plant Pest Management Division
PO Box 30017, Lansing, MI 48909
Phone (517) 373-1087, Fax (517) 335-4540

TREE INVENTORY FORM

The following inventory of trees is to be treated with pesticides in support of the Emerald Ash Borer control and eradication program. Any additional site requirements are listed below. See site map for location details.

Tree Diameter at Breast Ht**:**	1”-4”	5“-10”	18” +	TOTAL
AREA A:				
Trunk Injection				
Passive Delivery with:				
Imidacloprid	N/A	4	2	6
Dicrotophos				
Pressure Delivery with:		1	3	4
Imidacloprid				
Soil Injection with:				
Imidacloprid				
Bark & Foliage Cover Spray with:				
Bifenthrin				
Cyfluthrin				
AREA B:				
AREA C:				
TOTAL		5	5	10

Additional Site Requirements:

Pesticide Application Quote $ _____
Site Requirement Quote $ _____

Contractor Authorized Signature:

Date: _____

_____
Printed Name and Title

For Office Use Only

PROJECT RECORD: SITE # _____

CERTIFICATION OF COMPLETION OF WORK

Authorized Contractor Signature:

Date:

_____ _____

Printed Name and Title _____ _____

Authorized MDA Signature: _____ _____

Date:

_____ _____

Printed Name and Title

Attachment B

PRICING

The following categories of tree diameter are being used to define a pesticide application cost per tree for trees in each size category specified, in support of the Emerald Ash Borer control and eradication program.

Pricing to include equipment, labor and materials applied a maximum label rate.

Tree Diameter at Breast Height:	1-4”	5-10”	11-17”	18” +*
Quote each application method				
Trunk Injection				
Passive Delivery with:				
Imidacloprid	$ N/A	$ 58.75	$ 143.95	$10.29/Inch
Dicrotophos	$ N/A	$ 52.95	$ 121.49	$8.62/Inch
Pressure Delivery with :				
Imidacloprid	$ N/A	$ 58.75	$ 139.15	$9.75/Inch
Soil Injection with:				
Imedacloprid	$23.47	$ 59.95	$ 127.35	$8.95/Inch
Bark & Foliage Cover Spray with:				
Bifenthrin	$ 6.86	$ 19.55	$ 29.35	$ 2.20/Inch
Cyfluthrin	$ 6.86	$ 19.55	$ 29.35	$ 2.20/Inch

Note: The MDA will determine the pesticide to be used, rate of application and method of application. This information will be listed as a site specific requirement on the Tree Inventory Form.

***For trees greater than 18”price per inch of diameter is listed.**

Bidder’s Authorized Signature:

_____ Date: _____

Printed Name and Title