

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

December 6, 2007

CHANGE NOTICE NO. 1  
TO  
CONTRACT NO. 071B5200054  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF VENDOR		TELEPHONE (309) 665-5010
<b>Pinnacle Actuarial Resources, Inc.</b> <b>2817 Reed Road, Suite #2</b> <b>Bloomington, IL 61704</b>		<b>Steven Lehmann</b>
		VENDOR NUMBER/MAIL CODE <b>(001)</b>
		BUYER/CA (517) 241-1916 <b>Jim Wilson</b>
Contract Compliance Inspector: Robert Lamberjack <b>Actuarial Services for Property/Casualty – OFIS/DLEG</b>		
CONTRACT PERIOD: From: <b>December 1, 2004</b> To: <b>November 30, 2008</b>		
TERMS	<b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B.	<b>N/A</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>		

**NATURE OF CHANGE(S):**

Effective immediately, this Contract is hereby EXTENDED through November 30, 2008. The Buyer for this Contract is changed to Jim Wilson (517) 241-1916. All other terms, conditions, specifications, and pricing remain unchanged.

**AUTHORITY/REASON:**

Per request of DLEG and approval of DMB/Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: **\$500,000.00**

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

October 20, 2004

**NOTICE  
 TO  
 CONTRACT NO. 071B5200054  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>Pinnacle Actuarial Resources, Inc.          2817 Reed Road, Suite #2          Bloomington, IL 61704</b>		TELEPHONE (309) 665-5010 <b>Steven Lehmann</b>
		VENDOR NUMBER/MAIL CODE <b>(001)</b>
		BUYER/CA (517) 241-1646 <b>Greg Faremouth</b>
Contract Compliance Inspector: Robert Lamberjack <b>Actuarial Services for Property/Casualty – OFIS/DLEG</b>		
CONTRACT PERIOD: From: <b>December 1, 2004</b> To: <b>November 30, 2007</b>		
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>	
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>	
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>		

The terms and conditions of this Contract are those enclosed. 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: \$500,000.00

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

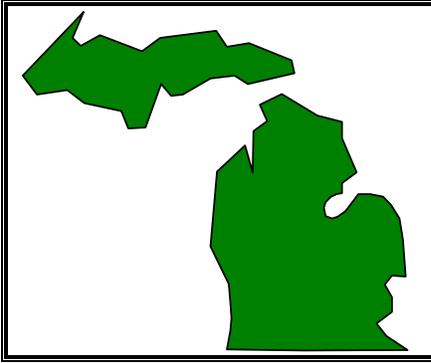
**CONTRACT NO. 071B5200054  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>Pinnacle Actuarial Resources, Inc.          2817 Reed Road, Suite #2          Bloomington, IL 61704</b>	TELEPHONE (309) 665-5010 <b>Steven Lehmann</b> VENDOR NUMBER/MAIL CODE <b>(001)</b> BUYER/CA (517) 241-1646 <b>Greg Faremouth</b>
Contract Compliance Inspector: Robert Lamberjack <b>Actuarial Services for Property/Casualty – OFIS/DLEG</b>	
CONTRACT PERIOD: From: <b>December 1, 2004</b> To: <b>November 30, 2007</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:  <p><b>The terms and conditions of this Contract are those enclosed. 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.</b></p> <p><b>Estimated Contract Value: \$500,000.00</b></p>	

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071I4001365. A Purchase Order Form will be issued only as the requirements of the State Departments are submitted to Acquisition Services. 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.

<p><b>FOR THE VENDOR:</b></p> <p style="text-align: center;"><b>Pinnacle Actuarial Resources, Inc.</b>          _____          Firm Name</p> <p style="text-align: center;">_____          Authorized Agent Signature</p> <p style="text-align: center;">_____          Authorized Agent (Print or Type)</p> <p style="text-align: center;">_____          Date</p>	<p><b>FOR THE STATE:</b></p> <p style="text-align: center;">_____          Signature  <b>Greg Faremouth, CPPB, Buyer Specialist</b>          _____          Name  <b>Strategic Business Development          Acquisition Services</b>          _____          Title</p> <p style="text-align: center;">_____          Date</p>
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**STATE OF MICHIGAN  
Department of Management and Budget  
Acquisition Services**

Invitation to Bid No. 071B5200054  
Actuarial Services

Buyer Name: Greg Faremouth  
Telephone Number: 517 241-1646  
E-Mail Address: faremouthg@michigan.gov

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**Appendices**

**Appendix A – Statement of Work - P & C**

**Appendix B – Statement of Work - Life**

**Appendix C – Contractor’s Proposal**

**Appendix D – Contractor’s Pricing**



## Article 1 – Statement of Work (SOW)

### 1.0 Project Identification

#### 1.001 PROJECT REQUEST

The purpose of this Contract is to provide life/health and property/casualty actuarial services and to pre-qualify actuarial service vendors for either one or both services.

Pre-qualified vendor qualifications and availability will be accessed by the Office of Financial and Insurance Services (OFIS) under a second tier, competitive selection process. OFIS may then enter into a work contract with the vendor offering the best overall value for the specific OFIS examination.

#### 1.002 BACKGROUND

The Office of Financial and Insurance Services (OFIS) regulates a wide range of entities including but not limited to the following:

- Full and single line HMO's
- Blue Cross Blue Shield of Michigan
- Multiple Employer Welfare Arrangements
- Property, Casualty, Life and Health Insurance Companies
- US Branches of Canadian Insurers
- Limited Liability Pools
- Reciprocal Exchanges
- Municipal Pools

Specifically the OFIS is responsible for regulating the financial solvency and compliance with National Association of Insurance Commissioners (NAIC) requirements and the Michigan Insurance Code by the above regulated entities. The OFIS attempts to insure compliance with the regulations and Code through periodic examinations of the regulated entities. The examinations can occur throughout the United States and Canada. The staff of the OFIS conducts the examinations, but the Division has no fully certified actuaries (actuaries who have taken and passed all ten exams) with training or experience in the fields of life, health, property or casualty insurance actuarial science. An analysis and evaluation by a Fellow of the Society of Actuaries/Fellow of the Casualty Society of Actuaries of the adequacy of reserves of regulated entities are critical to the Commissioner's ability to adequately examine the entities and ensure compliance with standards, regulations and Code.

Also, it is imperative that the actuarial firms or individuals assisting the OFIS with specific examinations not be associated, either financially or contractually, with the entity being examined and that there shall be no financial or contractual relationship, either written or oral, for two years prior to, during the life of and for two years after any contract awarded or any subsequent contract work order without the written consent of the OFIS. Failure by the firm to comply with this provision may result in the cancellation of services.

It is because of the concern about conflict of interest that the OFIS feels it is imperative to have a pool of contract actuaries available to assist with examinations. The pool of pre-qualified firms is also required because it is anticipated that there may be 60 or more examinations annually, with many examinations going on simultaneously.

A pool of a minimum of six (maximum of 10) life/health and a minimum of six (maximum of 10) property/casualty actuarial firms will be developed. It is possible for firms to be qualified to provide actuarial services in both the life/health and property/casualty categories as long as the firm can certify to all reserves in both categories.

### 1.1 Scope of Work and Deliverables

#### 1.101 IN SCOPE

When specific company examinations require actuarial services, the OFIS Contract Administrator will prepare a written work statement detailing the line items where the State needs an actuary to analyze and opine to the adequacy of the reserves.



The OFIS may also, on occasion, require experience in particular lines of business such as medical malpractice and liquor liability. Also, from time to time, OFIS may have a need for actuarial services to conduct reviews under Section 830(3) of the Michigan Insurance Code regarding requests by domestic insurers for changes in actuarial methodologies. Other actuarial services that may be requested are reviews of mortality tables and reviews of concerns regarding adequacy of reserving. If such experience is required, it will be described in the work statement. Also, there are some examinations where several members within an insurance holding company are being examined at the same time. One property and casualty contractor will be awarded all property and casualty companies within the insurance holding company and one life and health contractor will be awarded all life and health companies within the insurance holding company. When awarding individual contracts, additional consideration may be given firms that can render opinions on all members of an insurance group (both life/health and property/casualty). However, the firm must be one of the pre-qualified firms in both pools. Each statement of work will be initiated by the contract administrator and submitted via e-mail to all pre-qualified firms. Each statement of work will contain the following information:

- Name of company to be analyzed
- The last examination period
- Period to be covered by this examination
- Items needing analysis
- Excerpts from Company's Annual Statement and Actuarial Opinion.

A sample work statement is provided in Appendix A and B. Each category of examination, Life/Health and Property/Casualty, will receive a work Statement.

The pre-qualified vendors will have two weeks to submit via e-mail a work plan in response to the work statement. Pre-qualified vendors will respond to the statement of work with a task proposal by the date specified in the statement of work. In detailing costs, the contractor must not exceed the hourly rate included in their response. Each Task proposal will include the following:

1. Introduction – statement of the assignment
2. End product of the assignment
3. Services to be provided (activities, tasks and individuals assigned to each task or activity)
4. Background information and relevant specific experience of firm and names, experience and resumes of individuals assigned to the project
5. Detail of Costs:
  - Indicating who will be assigned
  - The hours they will be assigned
  - The hourly rate
  - Travel costs\*
  - Total cost

\*Travel costs will be billed at state rates in effect at the time the expense is incurred. Travel costs should include any costs that may be incurred by the contractor during the normal course of the examination. Should the contractor be required to defend their findings at a hearing, the OFIS will reimburse the contractor for any specific travel costs incurred while defending the findings. This reimbursement is in addition to the total cost bid and accepted by the OFIS. Travel costs incurred for defending the contractor's findings will only be reimbursed if prior approval for the travel is received from the Contractor Administrator.

The pre-qualified firm that presents the highest quality proposal, price considered, will be selected to perform the analysis. Whenever possible, the OFIS will ensure that no contractor will be awarded a contract to examine a company that they examined during the last state audit. Persons/firms selected may be expected to begin work one week following the receipt of a contract release. Should none of the contractors offer an acceptable proposal, the State may pursue acquisition of services from other vendors. The OFIS may interview the proposed staff before making a final decision on the award of a contract release.



The average bid price for P&C proposals is approximately \$7,500 and the average bid price for Life proposals is approximately \$25,000. The total cost for very complex examinations often exceeds these averages and the total cost for relatively straight-forward examinations often is less than these averages.

#### **1.102 OUT OF SCOPE**

**RESERVED**

#### **1.103 TECHNICAL ENVIRONMENT**

**RESERVED**

#### **1.104 WORK AND DELIVERABLE**

Contractor shall provide Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

- A. Review and opine on actuarial items in connection with financial examinations of domestic insurance companies, including Canadian and alien insurance companies using Michigan as the state of entry into the United States or other liabilities or assets specifically determined by the OFIS which need to be reviewed by an actuary.
- B. The actuarial items to be reviewed may include but are not limited to, policy reserves, policy holder dividend scales and philosophy, tax liability, product features, risk based capital and surplus requirements, cash flow tests, asset adequacy testing and loss and loss adjustment expense reserves.
- C. The actuary is responsible for reconciling all the data provided by the company back to the annual statement. Specifically, the property and casualty actuary must tie its loss data back to Schedule P, Part I.
- D. The liabilities and assets to be reviewed and certified by the contractor will be determined at the beginning of each examination. The contractor must use, if available, the Company's actuarial opinion, report and work papers to the greatest extent possible without compromising the contractor's responsibility to perform the necessary tests to render his/her opinion on the agreed upon areas as defined in the work statement.
- E. The contractor must work closely with the examiner-in-charge (EIC) and other staff assigned to the examination to ensure the appropriate underlying master file and other data used by the contractor in rendering his opinion is tested for completeness and accuracy by the OFIS staff. The contractor must give the EIC progress reports throughout the examination. These reports can be verbal. The contractor must immediately notify the EIC of any exceptions and important issues.
- F. It is also imperative that the contractor(s) not be associated with (either financially or contractually) the entity regulated by the OFIS to which the contractor is providing services and that such a relationship not be entered into for two years prior to, during the life of and for two years after the contract award without the written consent of the OFIS. Failure by the Contractor(s) to comply with this provision may result in the cancellation of any contract.
- G. The reports and opinions for life and health entities must be signed by a Fellow of the Society of Actuaries (FSA); and reports and opinions for property and casualty entities must be signed by a Fellow of the Casualty Actuarial Society (FCAS). The fellow must play a significant role in the analysis and oversight of the project.
- H. The contractor must be available for meetings with the regulated entity and the OFIS. Also, from time to time, the contractor may be called upon to appear at a place designated by the OFIS, to discuss the issues of an emergency nature on short notice. Further, the contractor is required to be flexible in changing their work efforts to accommodate the concerns of the OFIS. The contractor must be prepared and available to defend the contractor's findings in a hearing. The contractor must be willing to testify as an expert witness and perform other tasks related to the area of expertise as needed.



I. The contractor may be called upon to help the OFIS analyze complex reinsurance agreements and transactions or any other special assignment, where actuarial assistance may be deemed necessary by the OFIS.

J. From time to time, there may be special projects that may be performed on non-domestic insurers or in areas which may be considered beyond the scope of a routine examination, which the contractor may be asked to provide to the OFIS. The scope of the project or area will be defined by the OFIS and agreed upon with the contractor before the work begins.

K. The actuary should be able to perform most of the analysis from their work location. Due to the nature of the life insurance products, actuaries should plan to make one visit on-site to the company. All visits by the actuary to the company being examined must be coordinated with the approval by the Examiner-in-Charge.

L. The contractor must agree to comply with Section 222(4) of the Michigan Insurance Code regarding the confidentiality of all information and knowledge obtained by the contractor during an examination of an entry under this contract. Section 222(4) states, in part, all work papers, correspondence, memoranda, reports, records and other written or oral information related to an examination report or an investigation shall be withheld from public inspection, shall be confidential, shall not be subject to subpoena, and shall not be divulged to any person, except as provided for in Section 222(4). If the contractor receives a subpoena for any information related to an examination under contract, the contractor must contact the OFIS immediately. The contractor should also be aware of Section 226 of the Michigan Insurance Code that states, in part, a person appointed or acting under this act who discloses any fact or information that is confidential under this act is guilty of a misdemeanor, punishable by a fine of not more than \$1,000, or imprisonment of not more than one (1) year, or both.

M. All of the contractor's work papers are the property of the OFIS and should be sent to the OFIS at the conclusion of the examination.

N. Contractors will not be allowed to bid on a company if the contractor performed the analysis and review for the OFIS during the last examination.

## 1.2 Roles and Responsibilities

### 1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

See Work and Deliverables Section 1.104.

### 1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

The OFIS will oversee the amount of work to be performed under the contract by making assignments and sending financial statements to the contractor at the beginning of each examination. In all cases, the number and type of tasks will be specified by the OFIS.

### 1.203 OTHER ROLES AND RESPONSIBILITIES

**RESERVED**

## 1.3 Project Plan

### 1.301 PROJECT PLAN MANAGEMENT

The contractor will carry out this project under the direction and control of:

Bob Lamberjack, Chief Examiner  
Office of Financial and Insurance Services  
Michigan Department of Labor & Economic Growth  
611 W. Ottawa Street  
P.O. Box 30220  
Lansing, Michigan 48909  
(517) 335-1746  
[bclambe@michigan.gov](mailto:bclambe@michigan.gov)



### **1.302 REPORTS**

The contractor must give the EIC progress reports throughout the examination. These reports can be verbal. The contractor must immediately notify the EIC of any exceptions and important issues.

Although there will be continuous liaison with the Contractor team, the OFIS Contract Administrator will meet as needed with the Contractor's project manager for the purpose of receiving progress reports and providing necessary guidance to the Contractor in solving problems which arise.

## **1.4 Project Management**

### **1.401 ISSUE MANAGEMENT**

**RESERVED**

### **1.402 RISK MANAGEMENT**

**RESERVED**

### **1.403 CHANGE MANAGEMENT**

**RESERVED**

## **1.5 Acceptance**

### **1.501 CRITERIA**

The following criteria will be used by the State to determine Acceptance of the Services and/or Deliverables provided under this SOW.

The OFIS will require a deliverable work product in the form of an appropriately detailed written report and actuarial opinion for each assignment. The detailed report should adequately support the actuarial opinion. The report should include a discussion of the scope of the work performed and assumptions used, a summary of findings, any recommendations to the company for improving its system, loss developments, the accuracy of the aggregate reserves and other provisions for policy obligations and any other pertinent information used to render the opinion. The actuarial opinion should be in the format of and contain the information required by the NAIC Annual Statement Instructions. The final detailed report and opinion must be delivered to the OFIS prior to the end of the on-site examination by the OFIS staff examiners unless prior consent is given by the OFIS. The contractor will provide four copies of the report. The certification will not be attached or bound with the actuarial report but will be a separate document. The actuarial opinion must be submitted with the actuarial report. The detailed report and supporting work papers will become part of the OFIS work papers which are confidential and are only available to other parties as defined by specific statutes. The regulated entity will also have a copy of the actuarial report supporting the certification. The regulated entity may provide a copy of the actuarial report and opinion to its appointed actuary.

### **1.502 FINAL ACCEPTANCE**

Final Acceptance is when the project is completed and functions according to the requirements. Any intermediate acceptance of sub-Deliverables does not complete the requirement of Final Acceptance.

## **1.6 Compensation and Payment**

All rates quoted in bidder's response to this CONTRACT will be firm for the duration of the Contract. No price changes will be permitted.

## **1.7 Additional Terms and Conditions Specific to this SOW**

**RESERVED**



## Article 2 – General Terms and Conditions

### 2.0 Introduction

#### 2.001 GENERAL PURPOSE

The Contract is for *actuarial services* for the State of Michigan. Orders will be issued directly to the Contractor by various State Agencies on the Purchase Order Contract Release Form. Bids are due and will be publicly identified at the time noted on the Invitation To Bid (ITB) Form.

#### 2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

The Contract is issued by Acquisition Services, State of Michigan, Department of Management and Budget, hereinafter known as Acquisition Services, for the *Office of Financial and Insurance Services*, hereinafter known as *OFIS*. 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 contractual matters relating to the commodities and/or services described herein. Acquisition Services is the only office authorized to negotiate, change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of the Contract.

**Contractor proceeds at its own risk if it takes negotiation, changes, modification, alterations, amendments, clarification, etc., of the specifications, terms, or conditions of the contract from any individual or office other than Acquisition Services and the listed contract administrator**

All communications covering this procurement must be addressed to contract administrator indicated below:

Department of Management and Budget  
Acquisition Services  
Attn: Greg Faremouth  
2nd Floor, Mason Building  
P.O. Box 30026  
Lansing, Michigan 48909  
(517) 241-1646  
*faremouthg@michigan.gov*

#### 2.003 NOTICE

Any notice given to a party under this Contract must be written and shall be deemed effective, if addressed to such party as addressed below upon (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

#### 2.004 CONTRACT TERM

The term of this Contract will be for three (3) years and will commence with the issuance of a Contract. This will be approximately 10/01/04 through 09/30/07.

**Option.** The State reserves the right to exercise two (2) one-year options, at the sole option of the State. Contractor performance, quality of products, price, cost savings, 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 exercise an option year.

**Extension.** At the sole option of the State, the contract may also be extended. Contractor performance, quality of products, price, cost savings, 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 exercise an option year.



Written notice will be provided to the Contractor within 30 days, provided that the State gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension. If the Government exercises this option, the extended contract shall be considered to include this option clause.

## **2.005 GOVERNING LAW**

The Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. By signing this agreement, vendor consents to personal jurisdiction in the state of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.

## **2.006 APPLICABLE STATUTES**

The following statutes, rules, and laws are applicable to the performance of this contract; some statutes are reflected in the clauses of this contract. This list is NOT exhaustive.

MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)

MI OSHA MCL §§ 408.1001 – 408.1094

Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.

Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.

MI Consumer Protection Act MCL §§ 445.901 – 445.922

Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551 – 408.558, 408.471 – 408.490, 1965 PA 390.

Department of Civil Service Rules and regulations

Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.

Persons with disabilities Civil Rights Act MCL §§ 37.1101, et seq.

MCL §§ 423.321, et seq.

MCL § 18.1264 (law regarding debarment)

Davis-Bacon Act (DBA) 40 USCU §§ 276(a), et seq.

Contract Work Hours and Safety Standards Act (CWHSA) 40 USCS § 327, et seq.

Business Opportunity Act for Persons with Disabilities MCL §§ 450.791 – 450.795

Rules and regulations of the Environmental Protection Agency

Internal Revenue Code

Rules and regulations of the Equal Employment Opportunity Commission (EEOC)

The Civil Rights Act of 1964, USCS Chapter 42

Title VII, 42 USCS §§ 2000e et seq.

The Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.

The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.

The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.

The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.

The Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.

Pollution Prevention Act of 1990 (PPA) 42 U.S.C. §13106

Sherman Act, 15 U.S.C.S. § 1 et seq.

Robinson-Patman Act, 15 U.S.C.S. § 13 et. seq.

Clayton Act, 15 U.S.C.S. § 14 et seq.

## **2.007 RELATIONSHIP OF THE PARTIES**

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.

**2.008 HEADINGS**

Captions and headings used in the 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.

**2.009 MERGER**

This document constitutes the complete, final, and exclusive agreement between the parties. All other prior writings and negotiations are ineffective.

**2.010 SEVERABILITY**

Each provision of the 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.

**2.011 SURVIVORSHIP**

Any provisions of the 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 the Contract for any reason.

**2.012 NO WAIVER OF DEFAULT**

The failure of a party to insist upon strict adherence to any term of the 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.

**2.013 PURCHASE ORDERS**

Orders for delivery of commodities and/or services may be issued directly by the State Departments through the issuance of a Purchase Order Form referencing this Contract (Blanket Purchase Order) agreement and the terms and conditions contained herein. Contractor is asked to reference the Purchase Order Number on all invoices for payment.

**2.1 Vendor/Contractor Obligations****2.101 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 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.

**2.102 NOTIFICATION OF OWNERSHIP**

The Contractor shall make the following notifications in writing:

1. When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Acquisition Services within 30 days.
2. The Contractor shall also notify the Acquisition Services within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.



The Contractor shall:

1. Maintain current, accurate, and complete inventory records of assets and their costs;
2. Provide Acquisition Services or designated representative ready access to the records upon request;
3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership or officer changes; and
4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership or officer change.

### **2.103 SOFTWARE COMPLIANCE**

**RESERVED**

### **2.104 IT STANDARDS**

**RESERVED**

### **2.105 PERFORMANCE AND RELIABILITY EVALUATION (PARE)**

**RESERVED**

### **2.106 PREVAILING WAGE**

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall not be less than the wage rates and fringe benefits established by the Michigan Department of Consumer and Industry Service, Bureau of Safety and Regulation, Wage/Hour Division schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor shall include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

The Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Consumer and Industry Services, the office responsible for enforcement of the wage rates and fringe benefits. You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this contract. This record shall be available to the State upon request for reasonable inspection. If any trade is omitted from the list of wage rates and fringe benefits to be paid to each class of individuals by the Contractor, it is understood that the trades omitted shall also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

### **2.107 PAYROLL AND BASIC RECORDS**

Payrolls and basic records relating to the performance of this contract shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.



The Contractor shall submit a copy of all payrolls to the Contract Administrator upon request. The payrolls submitted shall set out accurately and completely all of the information required to be maintained as indicated above.

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors upon request from the Contract Administrator

The Contractor or subcontractor shall permit the Contract Administrator or representatives of the Contract Administrator or the State of Michigan to interview employees during working hours on the job.

If the Contractor or subcontractor fails to submit required records or to make them available, the Contract Administrator may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment.

#### **2.108 COMPETITION IN SUB-CONTRACTING**

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

#### **2.109 CALL CENTER DISCLOSURE**

Vendor and/or all subcontractors involved in the performance of this contract providing call or contact center services to the State of Michigan must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information shall be a material breach of this agreement.

### **2.2 Contract Performance**

#### **2.201 TIME IS OF THE ESSENCE**

Contractor/Vendor is on notice that time is of the essence in the performance of this contract. Late performance will be considered a material breach of this contract, giving the State a right to invoke all remedies available to it under this contract.

#### **2.202 CONTRACT PAYMENT SCHEDULE**

All invoices should reflect actual work done. The total amount billed shall not exceed the maximum bid amount. One invoice shall be submitted at the completion of the assignment.

#### **2.203 POSSIBLE PROGRESS PAYMENTS**

**RESERVED**

#### **2.204 POSSIBLE PERFORMANCE-BASED PAYMENTS (Actual performance rendered)**

**RESERVED**

#### **2.205 ELECTRONIC PAYMENT AVAILABILITY**

Electronic transfer of funds is available to State contractors. Vendors are 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](http://www.cpexpress.state.mi.us).

#### **2.206 PERFORMANCE OF WORK BY CONTRACTOR**

**RESERVED**



## 2.3 Contract Rights and Obligations

### 2.301 INCURRING COSTS

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

### 2.302 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 the anticipated Contract. If any part of the work is to be subcontracted, the 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 the Contract. Any change in subcontractors must be approved by the State, in writing, prior to such change.

### 2.303 ASSIGNMENT AND DELEGATION

The Contractor shall not have the right to assign this Contract, to assign its rights under this contract, or delegate any of its duties or obligations under the 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 Director of Acquisition Services. The Contractor shall not delegate any duties or obligations under the 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.

**Bidder must obtain the approval of the Director of Acquisition Services before using a place of performance that is different from the address that bidder provided in the bid.**

### 2.304 TAXES

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.

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.

The State's Tax Exempt Certification is available for vendor viewing upon request to the Contract Administrator.

### 2.305 INDEMNIFICATION

#### 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.

#### 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.

#### Code Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.



### 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 sub clauses, 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 sub clause.

### 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.

### Indemnification Procedures

The procedures set forth below shall apply to all indemnity obligations under this Contract.

- (a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to so notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.
- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the Defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.



- (c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.

### **2.306 LIMITATION OF LIABILITY**

The Contractor's liability for damages to the State shall be limited to two times the value of the Contract or \$200,000 (*for low risk contracts – Select a higher amount for moderate to high risk contracts*) which ever is higher. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; to Contractor's indemnification obligations (2.305); or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor shall be limited to the value of the Contract.

### **2.307 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.

### **2.308 FORM, FUNCTION, AND UTILITY**

If the Contract is for use of more than one State agency and if the good or service provided under this Contract do not 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.

### **2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION**

For and in consideration of the opportunity to submit a quotation and other good and valuable consideration, the bidder 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.

### **2.310 RESERVED**

### **2.311 TRANSITION ASSISTANCE**

**RESERVED**

### **2.312 WORK PRODUCT**

Work Products shall be considered works made by the Contractor for hire by the State and shall belong exclusively to the State and its designees, unless specifically provided otherwise by mutual agreement of the Contractor and the State. If by operation of law any of the Work Product, including all related intellectual property rights, is not owned in its entirety by the State automatically upon creation thereof, the Contractor agrees to assign, and hereby assigns to the State and its designees the ownership of such Work Product, including all related intellectual property rights. The Contractor agrees to provide, at no additional charge, any assistance and to execute any action reasonably required for the State to perfect its intellectual property rights with respect to the aforementioned Work Product.



Notwithstanding any provision of this Contract to the contrary, any preexisting work or materials including, but not limited to, any routines, libraries, tools, methodologies, processes or technologies (collectively, the "Development Tools") created, adapted or used by the Contractor in its business generally, including any and all associated intellectual property rights, shall be and remain the sole property of the Contractor, and the State shall have no interest in or claim to such preexisting work, materials or Development Tools, except as necessary to exercise its rights in the Work Product. Such rights belonging to the State shall include, but not be limited to, the right to use, execute, reproduce, display, perform and distribute copies of and prepare derivative works based upon the Work Product, and the right to authorize others to do any of the foregoing, irrespective of the existence therein of preexisting work, materials and Development Tools, except as specifically limited herein.

The Contractor and its subcontractors shall be free to use and employ their general skills, knowledge and expertise, and to use, disclose, and employ any generalized ideas, concepts, knowledge, methods, techniques or skills gained or learned during the course of performing the services under this Contract, so long as the Contractor or its subcontractors acquire and apply such information without disclosure of any confidential or proprietary information of the State, and without any unauthorized use or disclosure of any Work Product resulting from this Contract.

### 2.313 PROPRIETARY RIGHTS

RESERVED

### 2.314 WEBSITE INCORPORATION

State expressly states that it will not be bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of such content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representation of the State.

## 2.4 Contract Review and Evaluation

### 2.401 CONTRACT COMPLIANCE INSPECTOR

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

Bob Lamberjack, Chief Examiner  
Office of Financial and Insurance Services  
Michigan Department of Labor & Economic Growth  
611 W. Ottawa Street  
P.O. Box 30220  
Lansing, Michigan 48909  
(517) 335-1746  
[bclambe@michigan.gov](mailto:bclambe@michigan.gov)

### 2.402 PERFORMANCE REVIEWS

Acquisition Services in conjunction with the OFIS may review with the Contractor their performance under the 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 the 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.

#### **2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS**

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.

### **2.5 Quality and Warranties**

#### **2.501 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 the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Acquisition Services has approved a change.

#### **2.502 RESERVED**

#### **2.503 RESERVED**

#### **2.504 GENERAL WARRANTIES (goods)**

*Warranty of Merchantability* – Goods provided by vendor under this agreement shall be merchantable. All goods provided under this contract shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the vendor or on the container or label.

*Warranty of fitness for a particular purpose* – When vendor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the vendor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

*Warranty of title* – Vendor shall, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by vendor shall be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by vendor, under this agreement, shall be delivered free of any rightful claim of any third person by of infringement or the like.

#### **2.505 CONTRACTOR WARRANTIES**

The Contract will contain customary representations and warranties by the Contractor, including, without limitation, the following:

1. The Contractor will perform all services in accordance with high professional standards in the industry;
2. The Contractor will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services;
3. The Contractor will use its best efforts to use efficiently any resources or services necessary to provide the services that are separately chargeable to the State;



4. The Contractor will use its best efforts to perform the services in the most cost effective manner consistent with the required level of quality and performance;
5. The Contractor will perform the services in a manner that does not infringe the proprietary rights of any third party;
6. The Contractor will perform the services in a manner that complies with all applicable laws and regulations;
7. The Contractor has duly authorized the execution, delivery and performance of the Contract;
8. The Contractor is capable in all respects of fulfilling and shall fulfill all of its obligations under this contract.
9. The contract appendices, attachments, and exhibits identify all equipment and software services necessary for the deliverable(s) to perform and operate in compliance with the contract's requirements.
10. The Contractor is the lawful owner or licensee of any Deliverable licensed or sold to the state by Contractor or developed by Contractor under this contract, and Contractor has all of the rights necessary to convey to the state the ownership rights or license use, as applicable, of any and all Deliverables.
11. If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items as set forth in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
12. The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter this contract, on behalf of Contractor.
13. The Contractor is qualified and registered to transact business in all locations where required.
14. Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
15. All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the ITB or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor. All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

#### **2.506 STAFF**

The State reserves the right to approve the Contractor's assignment of key actuarial personnel to this project and to recommend reassignment of personnel deemed unsatisfactory by the State.



The Contractor shall not remove or reassign, without the State's prior written approval any of the key actuarial personnel until such time as the key actuarial personnel have completed all of their planned and assigned responsibilities in connection with performance of the Contractor's obligations under this Contract. The Contractor agrees that the continuity of key actuarial personnel is critical and agrees to the continuity of key actuarial personnel. Removal of key actuarial personnel without the written consent of the State may be considered by the State to be a material breach of this Contract. The prohibition against removal or reassignment shall not apply where key actuarial personnel must be replaced for reasons beyond the reasonable control of the Contractor including but not limited to illness, disability, resignation or termination of the key actuarial personnel's employment.

#### **2.507 SOFTWARE WARRANTIES**

RESERVED

#### **2.508 EQUIPMENT WARRANTY**

RESERVED

#### **2.509 PHYSICAL MEDIA WARRANTY**

RESERVED

### **2.6 Breach of Contract**

#### **2.601 BREACH DEFINED**

Failure to comply with articles, sections, or subsections of this agreement, or making any false statement in this agreement will be considered a material breach of this agreement giving the state authority to invoke any and all remedies available to it under this agreement.

In addition to any remedies available in law and by the terms of this contract, if the Contractor breaches Sections 2.508, 2.509, or 2.510, such a breach may be considered as a default in the performance of a material obligation of this contract.

#### **2.602 NOTICE AND THE 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.

#### **2.603 EXCUSABLE FAILURE**

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.



2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected services from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor. The Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the Contractor cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

## 2.7 Remedies

### 2.701 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.

## 2.702 RIGHTS UPON CANCELLATION

**Termination Assistance.** If this Contract (or any Statement of Work issued under it) is terminated for any reason prior to completion, Contractor agrees to provide for up to six (6) months after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of this Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. Such termination assistance shall be at no additional charge to the State if the termination is for Contractor's Default pursuant to Section 2.602; otherwise the State shall compensate Contractor for such termination assistance on a time and materials basis in accordance with the Amendment Labor Rates identified within this Contract agreement.

**OR**

### **A. Rights and Obligations Upon Termination**

- (1) If this Contract is terminated by the State for any reason, Contractor shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) in the event that the Contractor maintains title in equipment and software that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables and other Developed Materials intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.



- (2) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for partially completed Deliverables, on a percentage of completion basis. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.
- (3.) If any such termination by the State is for cause, the State shall have the right to set-off against any amounts due Contractor the amount of any damages for which Contractor is liable to the State under this Contract or pursuant to law or equity.
- (4.) Upon a good faith termination, the State shall have the right to assume, at its option, any and all subcontracts and agreements for services and materials provided under this Contract, and may further pursue completion of the Services under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

#### **B. Termination Assistance**

If the Contract (or any Statement of Work issued under it) is terminated for any reason before completion, Contractor agrees to provide for up to two-hundred seventy (270) calendar days after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of the Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. The State shall compensate Contractor for such termination assistance at the same rates and charges set forth in the Contract on a time and materials basis in accordance with the Labor Rates indicated within Contractors pricing section. If the Contract is terminated by Contractor under **Section 20**, then Contractor may condition its provision of termination assistance under this Section on reasonable assurances of payment by the State for such assistance, and any other amounts owed under the Contract.

#### **C. Reservation of Rights**

Any termination of the Contract or any Statement of Work issued under it by a party shall be with full reservation of, and without prejudice to, any rights or remedies otherwise available to such party with respect to any claims arising prior to or as a result of such termination.

#### **D. End of Contract Transition**

In the event the Contract is terminated, for convenience or cause, or upon expiration, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. In the event of termination or the expiration of the Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 270 calendar days. These efforts shall include, but are not limited to, the following:

- (1) Personnel - The Contractor shall work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor shall allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by the Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors.



- (2) Knowledgeable Personnel. Contractor will make available to the State or a Third Party Provider knowledgeable personnel familiar with the operational processes and procedures used to deliver products and services to the State. The Contractor personnel will work with the State or third party to help develop a mutually agreeable transition plan, work to transition the process of ordering, shipping and invoicing equipment and services to the State.
- (3) Information - The Contractor agrees to provide reasonable detailed specifications for all Services needed by the State, or specified third party, to properly provide the services required under the Contract. The Contractor will also provide any licenses required to perform the Services under the Contract.
- (4) Software. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services under the Contract. This shall include any documentation being used by the Contractor to perform the Services under the Contract. If the State transfers any software licenses to the Contractor, those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level.
- (5) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of the Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after Contract expiration that result from transition operations). The hourly rates or fixed price to be charged will be agreed upon prior to the work commencing.
- (6) Single Point of Contact. Contractor will maintain a Single Point of Contact (SPOC) for the State after termination of the Contract until all product and service obligations have expired.

#### **E. Transition out of this Contract**

- (1) In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the Contractor agrees to perform the following obligations, and any others upon which the State and the Contractor agree:
  - (i) Cooperating with any contractors, vendors, or other entities with whom the State contracts to meet its telecommunication needs, for at least two hundred and seventy (270) days after the termination of this Contract;
  - (ii) Reserved.
  - (iii) Providing the State with all asset management data generated from the inception of this Contract through the date on which this Contract is terminated, in a comma-delimited format unless otherwise required by the Program Office;
  - (iv) Reconciling all accounts between the State and the Contractor;
  - (v) Allowing the State to request the winding up of any pending or ongoing projects at the price to which the State and the Contractor agreed at the inception of the project;
  - (vi) Freezing all non-critical software changes;
  - (vii) Notifying all of the Contractor's subcontractors of procedures to be followed during the transition out phase;
  - (viii) Assisting with the communications network turnover, if applicable;
  - (ix) Assisting in the execution of a parallel operation until the effective date of termination of this Contract
  - (x) Answering questions regarding post-migration services;
  - (xi) Delivering to the State any remaining owed reports and documentation still in the Contractor's possession.
- (2) In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:
  - (i) Reconciling all accounts between the State and the Contractor;
  - (ii) Completing any pending post-project reviews.

**2.703 LIQUIDATED DAMAGES****RESERVED****2.704 STOP WORK**

1. The State may, at any time, by written stop work order to the Contractor, require that the Contractor stop all, or any part, of the work called for by this Contract for a period of up to 90 days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this section. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either:
  - a) Cancel the stop work order; or
  - b) Cancel the work covered by the stop work order as provided in the cancellation section of this Contract.
2. If a stop work order issued under this section is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
  - a) The stop work order results in an increase in the time required for, or in the Contractor's costs properly allocable to the performance of any part of this Contract; and
  - b) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
3. If the stop work order is not canceled and the work covered by the stop work order is canceled for reasons other than material breach, the State shall allow reasonable costs resulting from the stop work order in arriving at the cancellation settlement.
4. If a stop work order is not canceled and the work covered by the stop work order is canceled for material breach, the State shall not allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop work order under this section. The State shall not be liable to the Contractor for loss of profits because of a stop work order issued under this section.

**2.705 SUSPENSION OF WORK**

The Contract Administrator may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contract Administrator determines appropriate for the convenience of the Government.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contract Administrator in the administration of this contract, or (2) by the Contract Administrator's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.



A claim under this clause shall not be allowed:

- (1) For any costs incurred more than 20 days before the Contractor shall have notified the Contract Administrator in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and
- (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

## 2.8 Changes, Modifications, and Amendments

### 2.801 APPROVALS

The 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.

### 2.802 TIME EXTENTIONS

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of performance as described in the statement of work. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

### 2.803 MODIFICATION

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.**

**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 Acquisition Services.

### 2.804 AUDIT AND RECORDS UPON MODIFICATION

DEFINITION: records includes books, documents, accounting procedures and practices, and other data, regardless of whether such items are in written form, electronic form, or in any other form

Contractor shall be required to submit cost or pricing data with the pricing of any modification of this contract to the Contract Administrator in Acquisition Services. Data may include accounting records, payroll records, employee time sheets, and other information the state deems necessary to perform a fair evaluation of the modification proposal. Contract Administrator or authorized representative of the state shall have the right to examine and audit all of the contractor's records, including computations and projections, related to:

1. The proposal for modification;
2. The discussions conducted on the proposal, including those related to negotiation;
3. Pricing of the modification; or
4. Performance of the modification.

Contractor shall make available at its office at all reasonable times the materials described in the paragraphs above.



If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

#### 2.805 CHANGES

- (a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:
  - (1) In the specifications (including drawings and designs);
  - (2) In the method or manner of performance of the work;
  - (3) In the Government-furnished facilities, equipment, materials, services, or site; or
  - (4) Directing acceleration in the performance of the work.
  
- (a) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contract Administrator written notice stating:
  - (1) The date, circumstances, and source of the order; and
  - (2) That the Contractor regards the order as a change order.
  
- (b) Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.



ITB No. 07114001365

**Article 3 – Certifications and Representations**

All bidders shall complete this section and submit with their bid or proposal. Failure or refusal to submit any of the information requested in this section may result in the bidder being considered non-responsive and therefore ineligible for award consideration. The State may also pursue debarment vendors that fail or refuse to submit any of the requested information.

In addition, if it is determined that a business purposely or willfully submitted false information, the bidder will not be considered for award, the State will pursue debarment of the vendor, and any resulting contract that was established will be cancelled.

**3.0 Vendor/Contractor Information**

**3.001 TAXPAYER IDENTIFICATION NUMBER (TIN)**

Vendor Name: Pinnacle Actuarial Resources, Inc.

TIN: \_\_\_\_\_

TIN has been applied for

TIN is not required because:

Vendor/Contractor is a nonresident, alien, foreign business that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal agent in the U.S.

Vendor/Contractor is an agency or instrumentality of a foreign government. If checked, which foreign government \_\_\_\_\_

Vendor/Contractor is an agency or instrumentality of a federal, state, or local government. If checked, which government \_\_\_\_\_

Other basis: \_\_\_\_\_

Bidder is not owned or controlled by a common parent as described below. Common Parent means a corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which bidder is a member.

Bidder is owned or controlled by a common parent

Name and TIN of common parent

Name: \_\_\_\_\_

TIN: \_\_\_\_\_

**3.002 EXPATRIATED BUSINESS ENTITY**

DEFINITIONS: "Expatriated business entity" means a corporation or an affiliate of the corporation incorporated in a tax haven country after September 11, 2001, but with the United



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States as the principal market for the public trading of the corporation's stock, as determined by the Director of the Department of Management and Budget

"Tax haven country" means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, and the Republic of the Seychelles.

Vendor hereby certifies that it IS \_\_\_\_\_, IS NOT  an expatriated business entity located in a tax haven country.

Vendor hereby certifies that it IS \_\_\_\_\_, IS NOT  an affiliate of an expatriated business located in a tax haven country.

### 3.003 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER

Vendor is not required to have a DUNS number. If vendor does have a DUNS number it must be listed below.

DUNS No.: \_\_\_\_\_  
(nine digit number assigned by Dun & Bradstreet)

DUNS+4 No.: \_\_\_\_\_  
(DUNS + a 4-character suffix)

If the contractor/vendor does not have a DUNS number and would like to, it should contact Dun & Bradstreet directly to obtain one. Contractor may obtain a DUNS number by calling Dun & Bradstreet at 1-866-705-5711 or via the Internet at [www.dnb.com](http://www.dnb.com).

### 3.004 RESERVED for Vendor Registration Into a Central Database

### 3.005 RESERVED for annual certifications and representations in Central Data Base

The bidder has (check the appropriate block):

(  ) Submitted to the contracting office issuing this solicitation, annual representations and certifications dated August 30, 2004 (insert date of signature on submission), which are incorporated herein by reference, and are current, accurate, and complete as of the date of this bid, except as follows (insert changes that affect only this solicitation; if "none," so state): \_\_\_\_\_

(  ) Enclosed its annual representations and certifications.

### 3.006 EXTENDED PURCHASING TO LOCAL UNITS OF GOVERNMENT/INSTITUTIONS OF HIGHER LEARNING

Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Management and Budget, to provide purchasing services to any city, village, county, township, school district, intermediate school district, nonprofit hospital, institution of higher learning, or community or junior colleges. As a result of the enactment of this legislation, the Extended Purchasing Program has been developed. This program extends the use of State



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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 Acquisition Services, 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 the authorized Extended Purchasing member on a direct and individual basis in accordance with Contract terms will remit payment.

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. Upon request, 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.

\_\_\_\_\_  
 Steven G. Lehmann  
 Authorized Agent Name (print or type)

*Steven G. Lehmann*  
 \_\_\_\_\_  
 Authorized Agent Signature

Please Visit Mi DEAL at [www.mi.gov/localgov](http://www.mi.gov/localgov).

**3.1 Disclosure Issues**  
**3.101 CONFIDENTIALITY**

Contractor and the State each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor shall mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) that is marked confidential, restricted, proprietary, or with a similar designation. "Confidential Information" of the State shall mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State pursuant to applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State pursuant to its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. In the case of information of either Contractor or the State



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“Confidential Information” shall exclude any information (including this Contract) that is publicly available pursuant to the Michigan FOIA.

Protection of Confidential Information

The State and Contractor will each use at least the same degree of care to prevent is closing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access thereto in order to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

News releases

News releases (including promotional literature and commercial advertisements) pertaining to the ITB and 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 the ITB and Contract are to be released without prior written approval of the State and then only to persons designated.

Exclusions

Notwithstanding the foregoing, the provisions of this Section will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose such Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of such disclosure as reasonably requested by the furnishing party.



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No Implied Rights

Nothing contained in this Section shall be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

Remedies

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under this Section, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach).

Survival

The parties' respective obligations under this Section shall survive the termination or expiration of this Contract for any reason.

Destruction of Confidential Information

Promptly upon termination or cancellation of the Contract for any reason, Contractor shall certify to the State that Contractor has destroyed all State Confidential Information.

SGL (Initial)

**3.102 FREEDOM OF INFORMATION ACT**

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

SGL (Initial)

**3.103 DISCLOSURE OF LITIGATION**

The Contractor shall notify the State in its bid proposal, if it, or any of its subcontractors, or their officers, directors, or key personnel under this Contract, have ever been convicted of a felony, or any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception. Contractor shall promptly notify the State of any criminal litigation, investigations or proceeding which may have arisen or may arise involving the Contractor or any of the Contractor's subcontractor, or any of the foregoing entities' then current officers or directors during the term of this Contract and three years thereafter.

The Contractor shall notify the State in its bid proposal, and promptly thereafter as otherwise applicable, of any civil litigation, arbitration, proceeding, or judgments that may have arisen against it or its subcontractors during the five years preceding its bid proposal, or which may occur during the term of this Contract or three years thereafter, which involve (1) products or services similar to those provided to the State under this Contract and which either involve a claim



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in excess of \$250,000 or which otherwise may affect the viability or financial stability of the Contractor, or (2) a claim or written allegation of fraud by the Contractor or any subcontractor hereunder, arising out of their business activities, or (3) a claim or written allegation that the Contractor or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Contractor or subcontractor, in any amount less than \$250,000 shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Contractor or subcontractor.

All notices under subsection 1 and 2 herein shall be provided in writing to the State within fifteen business days after the Contractor learns about any such criminal or civil investigations and within fifteen days after the commencement of any proceeding, litigation, or arbitration, as otherwise applicable. Details of settlements, which are prevented from disclosure by the terms of the settlement, shall be annotated as such. Semi-annually, during the term of the Contract, and thereafter for three years, Contractor shall certify that it is in compliance with this Section. Contractor may rely on similar good faith certifications of its subcontractors, which certifications shall be available for inspection at the option of the State.

Assurances - In the event that such investigation, litigation, arbitration or other proceedings disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract, causes the State to be reasonably concerned about:

- a. The ability of the Contractor or its subcontractor to continue to perform this Contract in accordance with its terms and conditions, or
- b. Whether the Contractor or its subcontractor in performing services is engaged in conduct which is similar in nature to conduct alleged in such investigation, litigation, arbitration or other proceedings, which conduct would constitute a breach of this Contract or violation of Michigan or Federal law, regulation or public policy, then

The Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that: (a) the Contractor or its subcontractors hereunder will be able to continue to perform this Contract in accordance with its terms and conditions, (b) the Contractor or its subcontractors will not engage in conduct in performing services under this Contract which is similar in nature to the conduct alleged in any such litigation, arbitration or other proceedings.

\*\*\* The Contractor's failure to fully and timely comply with the terms of this section, including providing reasonable assurances satisfactory to the State, may constitute a material breach of this Contract.

Sbl (Initial)

### 3.2 Vendor/Contractor Compliance with Laws

#### 3.201 GENERALLY

Contractor/vendor shall keep informed of federal, state, and local laws, ordinances, rules, regulations, orders, and decrees of bodies or tribunals having any jurisdiction/authority that in any manner affects those engaged in or employed on the work done under this agreement or that in any manner affects the conduct of the work done under this agreement. Contractor shall observe and comply with such laws, ordinances, rules, regulations, orders, and decrees. Contractor shall indemnify the state for any civil claim or liabilities arising from a violation of such laws,



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ordinances, rules, regulations, orders, or decrees, whether by itself or its employees, even if wholly or in part caused by a violation of such laws, ordinances, rules, regulations, orders, or decrees by the state or its agents or representatives.

### 3.202 INDEPENDENT PRICE DETERMINATION

1. By submission of a proposal, the bidder certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:
  - a. The prices in the proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such prices with any other bidder or with any competitor; and
  - b. Unless otherwise required by law, the prices which have been quoted in the proposal have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to award directly or indirectly to any other bidder or to any competitor; and
  - c. No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.
2. Each person signing the proposal certifies that she/he:
  - a. Is the person in the bidder's organization responsible within that organization for the decision as to the prices being offered in the proposal and has not participated (and will not participate) in any action contrary to l. a., b., and c. above; or
  - b. Is not the person in the bidder's organization responsible within that organization for the decision as to the prices being offered in the proposal but has been authorized, in writing, to act as agent for the persons responsible for such decision in certifying that such persons have not participated (and will not participate) in any action contrary to l. a., b., and c. above.
3. Should a bidder be awarded a Contract resulting from this RFP, and be found to have failed to abide by the provisions set forth in this section, said entity will be in default of the Contract. Consequences may include cancellation of the Contract (see section I-U Cancellation).

### 3.203 VENDOR/CONTRACTOR COMPLIANCE WITH STATE AND FEDERAL LAW AND DEBARMENT

The bidder certifies, to the best of its knowledge that within the past (3) years, the bidder, an officer of the bidder, or an owner of a 25% or greater interest in the vendor:

- 1) Has \_\_\_\_\_, Has Not  X  been convicted of a criminal offense incident to the application for or performance of a state contract or subcontract;
- 2) Has \_\_\_\_\_, Has Not  x  been convicted of any offense which negatively reflects on the vendor's business integrity, including but not limited to embezzlement, theft, forgery,



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bribery, falsification or destruction of records, receiving stolen property, state or federal antitrust statutes;

- 3) Has \_\_\_\_\_, Has Not  been convicted of any other offense, violated any other state or federal law, as determined by a court of competent jurisdiction or an administrative proceeding, which, in the opinion of the Department, indicates that the vendor is unable to perform responsibly or which reflects a lack of integrity that could negatively impact or reflect upon the State of Michigan. An offense or violation under this paragraph may include, but is not limited to, an offense under or violation of: Natural Resources and Environmental Protection Act, 1994 PA 451, MCL §§ 324.101 – 324.90106; the Michigan Consumer Protection Act, 1976 PA 331, MCL §§ 445.901 – 445.922; 1965 PA 390 (law relating to prevailing wages on state projects), MCL §§ 408.551 – 408.558; 1978 PA 390 (law relating to payment of wages and fringe benefits) MCL §§ 408.471 – 408.490; or a willful or persistent violation of the Michigan Occupational Safety and Health Act, 1974 PA 154, MCL §§ 408.1001 – 408.1094;
- 4) Has \_\_\_\_\_, Has Not  failed to substantially perform a state contract or subcontract according to its terms, conditions, and specifications within specified time limits;
- 5) Has \_\_\_\_\_, Has Not  violated Department bid solicitation procedures or violated the terms of a solicitation after bid submission;
- 6) Has \_\_\_\_\_, Has Not  refused to provide information or documents required by a contract including, but not limited to information or document necessary for monitoring contract performance;
- 7) Has \_\_\_\_\_, Has Not  failed to respond to requests for information regarding vendor performance, or accumulated repeated substantiated complaints regarding performance of a contract/purchase order; and
- 8) Has \_\_\_\_\_, Has Not  failed to perform a state contract or subcontract in a manner consistent with any applicable state or federal law, rule, regulation, order, or decree.
- 9) The vendor certifies and represents, to the best of his knowledge that the supplier and/or any of it's Principles:
  - A. Are \_\_\_\_\_, Are Not  presently debarred, suspended, proposed for debarment, or declared ineligible for the award of a purchase by any state or federal agency
  - B. Has \_\_\_\_\_, Has Not  not with in a 3-year period preceding this bid, been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) purchase.
  - C. Are \_\_\_\_\_, Are Not  presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, the commission of the any of the offenses enumerated in section 3.1(c) of this contract.



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- D. The vendor Has \_\_\_\_\_, Has Not X within a 3-year period preceding this solicitation had one or more purchases terminated for default by any state or federal agency.

### 3.204 CERTIFICATION REGARDING DEBARMENT AND PROPOSED DEBARMENT

- 1) Principals for purposes of section 3.203(9) means officers, directors, owners, partners, and any other persons having primary management or supervisory responsibilities within a business entity
- 2) The supplier shall provide immediate written notice to the state if, at any time before the purchase award, the supplier learns that its certification was erroneous when submitted or has since become erroneous because of changed circumstances
- 3) A certification that any of the items in paragraph 3.203(9)(A) of this provision exists will not necessarily result in withholding an award under this solicitation. However, the certification will be considered in connection with a determination of the supplier's responsibility. Failure to furnish the certification or provide such information as requested by the state may render the supplier non-responsive
- 4) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph 3.203(9)(a) of this provision. The knowledge and information of a supplier is not required to exceed that which is normally possessed by a prudent person in the ordinary course of commercially reasonable dealings.
- 5) If it is later determined that supplier knowingly rendered an erroneous certification under this provision, in addition to the other remedies available to the state, the state may terminate this purchase for default.

#### **VENDOR CAN REVIEW THE STATE'S DEBARMENT POLICY AT:**

[www.michigan.gov/doingbusiness](http://www.michigan.gov/doingbusiness) (click on the link to Debarment Policy)

### 3.205 DEBARMENT OF SUB-CONTRACTORS

Contractor shall require each primary sub-contractor, whose sub contract will exceed \$25,000, to disclose to the contractor, in writing, whether as of the time of the award of the sub contract, the sub-contractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the State of Michigan. The contractor shall then inform the state of the sub-contractor's status and reasons for contractor's decision to use such sub-contractor, if contractor so decides.

### 3.206 ETHICS: GRATUITIES and INFLUENCE

#### Gratuities

The right of the contractor to proceed may be terminated by written notice, if the contracting agency head or contract administrator determines that the contractor, its agent, or its representative has offered or gave a gratuity, kickback, money, gift, or any thing of value to an officer, official, or employee of the state intended, by the gratuity, to obtain a contract or favorable treatment under a contract.



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Vendor/Contract Has \_\_\_\_\_, Has Not X given or offered to give a gratuity, kickback, money, gift, or any thing of value to a state official, officer, or employee intended to effectuate the awarding of a contract or favorable treatment under a contract.

### Influence

The vendor/contractor by signing its proposal/bid hereby certifies to best of his or her knowledge that no funds have been given to any state officer, official, or employee for influencing or attempting to influence such officer, official, or employee of the state.

### 3.3 Vendor/Contractor Workplace Fitness

#### 3.301 DRUG-FREE WORK PLACE

The vendor/contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the vendor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- B. Establishing a drug-free awareness program to inform employees about (1) the dangers of drug abuse in the workplace; (2) the vendor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the work place; and
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction; and
- D. Notifying the contracting state agency with in 15 days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and
- E. Within 30 days after receiving notice under subdivision (C)(2), imposing the proper sanctions as communicated to the employee through the statement required by subparagraph (A); and
- F. Making a good-faith effort to maintain a drug-free work place through the implementation of sub paragraphs (A) through (E) above.

SBL (Initial)

#### 3.302 WORKPLACE SAFETY

1. In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably



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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 the Contract subject to the cancellation provisions contained herein.

2. 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](http://www.michigan.gov/mdcs).

SFL (Initial)

### 3.303 WORKPLACE DISCRIMINATION

The Contractor represents and warrants that in performing services for the State pursuant to 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 any Contract or purchase order resulting here from 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.

Vendor hereby represents that in performing this contract it will not violate The Civil Rights Act of 1964, USCS Chapter 42, including, but not limited to, Title VII, 42 USCS §§ 2000e et seq.; the Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.; or The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.; the Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626 et seq.; the Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.; or the Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.

SFL (Initial)

### 3.304 LABOR RELATIONS

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 the 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 any Contract if, subsequent to award of the 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.



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The Contractor represents and warrants that the company does not appear in the current register of employers failing to correct an unfair labor practice.

SGL (Initial)

**3.305 RESERVED**

**3.306 AFFIRMATIVE ACTION**

Vendor represents that it Has   x  , Has Not \_\_\_\_\_ developed and has on file an entity wide affirmative action program.

**3.307 LIABILITY INSURANCE**

**A. 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.

All insurance coverage 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 specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. Companies that have been approved to do business in the State shall issue all policies of insurance required in this Contract.

See [www.michigan.gov/cis](http://www.michigan.gov/cis)

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits.

Before both parties sign the Contract 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 ("Certificates"). The Certificate must be on the standard



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“accord” form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverage afforded under the policies **WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED** without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Acquisition Services, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Acquisition Services, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State’s sole option, result in this Contract’s termination.

The Contractor is required to pay for and provide the type and amount of insurance checked below:

1. Commercial General Liability with the following minimum coverage:

\$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 INSURED**s on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

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 INSURED**s on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

3. Workers’ compensation coverage must be provided in accordance with applicable laws governing the employees and employers work activities in the state of the Contractor’s domicile. If a self-insurer provides the applicable coverage, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees’ activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.



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The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. 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
5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).
6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.
7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.
8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

**B. Subcontractors**

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) shall fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

**C. Certificates of Insurance and Other Requirements**



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Contractor shall furnish to the Office of Acquisition Services certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds, but only to the extent of liabilities assumed by Contractor as set forth in Indemnification Section of this Contract, under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

### 3.308 ENVIRONMENTAL AWARENESS

**Definition** - '*Environmentally preferable products*' means products that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.

**Environmental Purchasing Policy** - Bidders able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals.

- A. **Recycled Packaging.** Bidders may offer some or all of the following items listed below or provide alternative proposal as to how packaging materials can be reduced, eliminated or otherwise made more environmentally preferable. It is desirable that Bidders offer packaging which:
- a. is made from recycled content which meets or exceeds all federal and state recycled content guidelines (currently 35% post-consumer for all corrugated cardboard)
  - b. minimizes or eliminates the use of polystyrene or other difficult to recycle materials
  - c. minimizes or eliminates the use of disposable containers such as cardboard boxes
  - d. provides for a return program where packaging can be returned to a specific location for recycling
  - e. contains materials which are easily recyclable in Michigan..



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- B. Recycled Content of Products Offered** Bidders are expected to offer products using recovered materials suitable for the intended use whenever possible. The following definitions apply to 'Recovered Material':

'Post-Consumer Waste', is defined as 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 recycling into a usable commodity or product

'Secondary Waste', is defined as industrial by-products and wastes generated after completion of a manufacturing process that would normally be disposed.

All Bidders are requested to indicate below an estimate of the percentage of recycled materials, if any, contained in each item bid. Higher percentages of recycled materials are preferred. All recycled products and packaging are required to perform at the level outlined in bid requests.

\_\_\_ 50 \_\_\_ % (Total estimated percentage of recovered material)

\_\_\_ 30 \_\_\_ % (Estimated percentage of post-consumer material)

\_\_\_ -- \_\_\_ % (Estimated percentage of secondary waste)

**Certification**

I, Steven J. Lehman (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the percentage of recovered material content for EPA-designated products met the applicable contract specifications.

SJL (Initial)

- C. Clean Air and Water**

Vendor certifies that any facility to be used in the performance of this contract IS \_\_\_\_, IS NOT  x  listed on the Environmental Protection Agency (EPA) List of Violating facilities.

The vendor will immediately notify the state, before award, of the receipt of any communication from the EPA or the state, indicating that any facility that the vendor proposes to use in the performance of this contract is under consideration to be listed on the EPA List of Violating Facilities or any enforcement action.

- D. Mercury Content.** It is the clear intent of state agencies to avoid purchasing products that contain mercury whenever possible. Bidders shall offer mercury-free products when available. Should mercury-free alternatives not exist, as presently is the case with fluorescent lamps, bidders shall offer the lowest mercury content available. Bidders shall disclose whenever products contain added mercury by using the following format.

(N/A) Product does not contain Mercury



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- ( ) Product does contain Mercury (attach an explanation that includes: the amount or concentration of mercury, and justification as to why that particular product is being proposed)

Bidders shall ensure that mercury added products containing mercury in excess of 1 gram or 250 ppm, shall be labeled: "contains mercury".

- E. **Polybrominated Flame Retardents (BFR).** Bidders shall disclose whether the products being offered contain toxic flame retardants. Bidders are encouraged to provide BFR-free alternatives when available.

(N/A) Product does not contain BFR's

- ( ) Product does contain BFR's (attach an explanation)

- F. **Hazardous Material Identification.** 'Hazardous material', as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

- (1) The bidder must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (if none, insert 'None')	Identification Number
N/A	

- (2) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (3) The apparently successful bidder agrees to submit, for each item as required prior to award, a **Material Safety Data Sheet** for all hazardous material identified in paragraph (1) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful bidder is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful bidder being considered non-responsive and ineligible for award.
- (4) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted



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under paragraph (3) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

- (5) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.
- (6) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (7) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:
  - (a) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to:
    - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
    - (ii) Obtain medical treatment for those affected by the material; and
    - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
  - (b) To use, duplicate, and disclose data furnished under this clause, in precedence over any other clause of this contract providing for rights in data.
  - (c) The Government is not precluded from using similar or identical data acquired from other sources.

- G. Waste Reduction Program** Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, *et seq.*). The following definitions apply to 'Waste Reduction':

'Recycling', means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products." This definition excludes the use of these materials as a fuel substitute or for energy production.

'Waste prevention', means any action undertaken to eliminate or reduce the amount, or the toxicity, of materials before they enter the waste stream. This action is intended to conserve resources, promote efficiency, and reduce pollution." Waste prevention includes reduction and reuse, but not recycling.

'Waste reduction', means any practice, such as an equipment or technology modification, a process or procedure modification, a reformulation or redesign of a produce, a substitution of raw materials, or improved management, training, or inventory control, which practice is undertaken by a person to directly or indirectly



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reduce the volume or quantity or toxicity of waste that may be released into the environment or that is treated at a location other than the location where it is produced.

'Pollution Prevention' is defined as the practice of minimizing the generation of waste at the source and, when wastes can not be prevented, utilizing environmentally sound on-site or off-site recycling or reuse. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

#### H. Ozone Depleting Substances

'Ozone-depleting substance', as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR part 82 as:

- (1) Class I, including, but not limited to, chlorofluorocarbons, halos, carbon tetrachloride, and methyl chloroform; or
- (2) Class II, including, but not limited to, hydro chlorofluorocarbons.

The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR part 82, Subpart E, as follows:

'Warning: Contains (or manufactured with, if applicable)

N/A (insert the name of the substance(s).), a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.'

#### I. Refrigeration and Air Conditioning

The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

#### J. Emergency Planning and Community Right-to-Know Reporting - By signing this offer, the bidder certifies that:

- (1) The owner or operator of facilities that will be used in the performance of this contract is in compliance with the filing and reporting requirements described in sections 302, 304, 311, 312 and 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001, et. seq.) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101, et. seq.). EPCRA filing and reporting requirements include emergency planning notification, release reporting, hazardous chemical inventory reporting, and toxic chemical release inventory (TRI) reporting.
- (2) The owner or operator of facilities that will be used in the performance of this contract will maintain compliance with the filing and reporting requirements described in sections 302, 304, 311, 312 and 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001, et. seq.) and section 6607 of the



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Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101, et. seq.) for the life of the contract.

GH (Initial)

**3.309 KNOWLEDGE OF CHILD LABOR FOR LISTED END PRODUCTS**

- (a) 'Forced or indentured child labor', means all work or service:
  - (1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or
  - (2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.
- (b) *Listed end products.* The following end product(s) being acquired under this solicitation is (are) included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, identified by their country of origin. There is a reasonable basis to believe that listed end products from the listed countries of origin may have been mined, produced, or manufactured by forced or indentured child labor.

Listed End Product	Listed Country of Origin
N/A	

- (c) *Certification.* The State will not make award to a bidder unless the bidder, by checking the appropriate block, certifies to one of the following:
  - (N/A) The bidder will not supply any end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in a corresponding country as listed for that end product.
  - ( ) The bidder may supply an end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The bidder certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture such end product. On the basis of those efforts, the bidder certifies that it is not aware of any such use of child labor.

**3.310 FORCED LABOR, CONVICT LABOR, OR INDENTURED SERVITUDE MADE MATERIALS**

Contractor hereby represents and certifies that, to the best of his /her knowledge and belief no foreign (outside of the U.S.) made equipment, materials, or supplies, furnished to the state under



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this agreement, have been produced in whole or in part by forced labor, convict labor, or indentured servitude.

     (Initial)

**3.4 Vendor/Contractor Demographics**

**3.401 SMALL BUSINESS REPRESENTATION**

The vendor represents and certifies that it IS \_\_\_\_\_, IS NOT \_\_\_\_\_ a small business concern and that all \_\_\_\_\_, NOT ALL \_\_\_\_\_ end items to be furnished will be manufactured or produced by a small business concern in the US, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands

Provide the following information:

\_\_\_\_\_ (Estimate # of employees)

\$\_\_\_\_\_ (Estimate of annual revenue)

**3.402 WOMEN, MINORITY, OR VETERAN-OWNED SMALL BUSINESS REPRESENTATION**

**DEFINITIONS:**

'Women-owned business', means a small business that is at least 51% owned by a woman or women who are US citizens and who control and operate the business

The vendor represents that it IS \_\_\_\_\_, IS NOT \_\_\_\_\_ a women-owned small business.

'Minority-owned business', means a small business that is at least 51% owned by a minority or minorities who are US citizens and who control and operate the business

The vendor represents that it IS \_\_\_\_\_, IS NOT \_\_\_\_\_ a minority owned small business.

'Veteran-owned business', means a small business that is at least 51% owned by a veteran or veterans who are U.S. citizens and who control and operate the business

The vendor represents that it IS \_\_\_\_\_, IS NOT \_\_\_\_\_ a veteran owned small business.

The Contractor represents and warrants that the company meets the above (when checked) and can provide supportive documentation upon request.

**3.403 OWNERS AND OFFICERS**

Vendor must list all owners or officers that hold a 25% interest or more in the company (use attachment if necessary):

Name and Title	% of Interest or Ownership



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Steven G. Lehmann	33%
Joseph A. Herbers	33%

**3.404 RESERVED**

**3.5 State Concerns**

**3.501 GENERAL COMPANY DEMOGRAPHICS**

1. Company Name: Pinnacle Actuarial Resources, Inc.
2. Company Address: 2817 Reed Road, Suite #2  
Bloomington, IL 61704
3. Principle Place of Business (zip code): 61704
4. Organization type
  - ( ) Limited Liability Company
  - ( ) Limited Liability partnership
  - ( X ) Corporation
  - ( ) Partnership
  - ( ) Health Care Provider
  - ( ) Hospital or extended care facility
  - ( ) Sole Proprietorship
  - ( ) Other: \_\_\_\_\_
5. Year of establishment 2003

**3.502 BUSINESS OWNED BY PERSONS WITH DISABILITIES**

DEFINITION: 'Business owned by persons with disabilities', means a business in which all of the following apply:

1. More than 50% of the voting shares or interest in the business is owned, controlled, and operated by 1 or more persons with disabilities
2. More than 50% of the net profit or loss is attributable to the business accrues to shareholders who are persons with disabilities
3. More than 50% of the employees of the business are residents of this State of Michigan DMB

The vendor represents that it IS \_\_\_\_\_, IS NOT X a small business owned by persons with disabilities.



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Fraudulently representing information about the use of businesses owned by persons with disabilities to procure this contract is a violation of the Business Opportunity Act For Persons with Disabilities of 1988, PA 112, MCL 450.791 – 450.795. A person who knowingly violated this act is guilty of a felony, punishable by imprisonment up to 2 years in prison, or a fine not less than \$5,000. A person found guilty of violating this act shall be barred from obtaining future contracts with the state.

### 3.503 COMMUNITY REHABILITATION ORGANIZATION (Formerly Sheltered workshops)

DEFINITION: 'Community rehabilitation organization', means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers, which provides those individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

The vendor represents that it IS \_\_\_\_\_, IS NOT  a community rehabilitation organization

### 3.504 CERTIFICATION OF A MICHIGAN BASED BUSINESS

DEFINITION: To qualify as a Michigan business, vendor must have during the 12 months immediately preceding this bid deadline, or if the business is newly established, for the period the business has been in existence, it has (check all that apply):

- Filed a Michigan single business tax return showing a portion or all of the income tax base allocated or apportioned to the State of Michigan pursuant to the Michigan Single Business Tax Act, 1975 PA 228, MCL §§ 208.1 – 208.145; or
- Filed a Michigan income tax return showing income generated in or attributed to the State of Michigan; or
- Withheld Michigan income tax from compensation paid to the bidder's owners and remitted the tax to the Department of Treasury; or

I certify that I have **personal knowledge** of such filing or withholding, that it was more than a nominal filing for the purpose of gaining the status of a Michigan business, and that it indicates a significant business presence in the state, considering the size of the business and the nature of its activities.

I authorize the Michigan Department of Treasury to verify that the business has or has not met the criteria for a Michigan business indicated above and to disclose the verifying information to the procuring agency.

Steven G. Lehmann

Authorized Agent Name (print or type)

Authorized Agent Signature

Fraudulent Certification as a Michigan business is prohibited by MCL 18.1268 § 268. A BUSINESS THAT PURPOSELY OR WILLFULLY SUBMITS A FALSE CERTIFICATION THAT IT IS A MICHIGAN BUSINESS OR FALSELY INDICATES THE STATE IN WHICH



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IT HAS ITS PRINCIPAL PLACE OF BUSINESS IS GUILTY OF A FELONY, PUNISHABLE BY A FINE OF NOT LESS THAN \$25,000.

Bidder shall also indicate one of the following:

- Bidder qualifies as a Michigan business (provide zip code: \_\_\_\_\_)
- Bidder does not qualify as a Michigan business (provide name of State: Illinois)
- Principle place of business is outside the State of Michigan, however service/commodity provided by a location within the State of Michigan (provide zip code: \_\_\_\_\_)

**3.505 PLACE OF PERFORMANCE**

Bidder must obtain the approval of the Director of Acquisition Services before using a place of performance that is different from the address that bidder provided in their bid.

- (a) The bidder, in the performance of the contract, INTENDS \_\_\_\_\_, DOES NOT INTEND x to use one or more plants or facilities located at a different address from the address of the bidder as indicated in this bid.
- (b) If the bidder checks "intends" in paragraph (a) of this provision, it shall insert in the spaces provided below the required information:

Place of Performance Full address	Owner/Operator of facility to be used	Percent (%) of Contract value to be Performed at listed Location

**3.506 FORMER STATE EMPLOYEES**

Vendor certifies that there ARE \_\_\_\_\_, ARE NOT X former state employees involved in the performance of this contract.

If former state employees are involved in the performance of this contract, vendor must provide the following information

Vendor hereby represents that the following employees involved in the performance of this contract are former state employees (use attachment if necessary).

Name	Department, Division	Date of Employment



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**3.507 DOMESTIC END PRODUCT**

DEFINITION: ‘Domestic end product’, means one that is manufactured within the United States and the cost of the domestic components exceeds 50% of the cost of all the components.

The vendor hereby certifies that the product to be provided, **except those listed below**, are a domestic end product, and that components of unknown origin have not been mined, produced, or manufactured outside the United States (use attachment if needed):

Excluded End Products	Country of Origin
N/A	

SGL (Initial)

**3.508 USE TAX**

Companies (and their affiliated organizations) that are awarded contracts are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services **delivered into the state of Michigan**. This is required of all companies that are awarded contracts. Those companies that lack sufficient “presence” in Michigan to be required to register and pay tax must do so as a “volunteer”. This requirement extends to: (1) ALL MEMBERS OF ANY CONTROLLED GROUP AS DEFINED IN § 1563(A) OF THE Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make **sales at retail for delivery into the state of Michigan** are registered with the State of Michigan for the collection and remittance of sales and use taxes. In applying treasury regulations defining “two or more trades or businesses under common control” the term “organization” means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

The requirement of remittance could be limited to the bidder only without including affiliate companies.

Contractors and their affiliates as defined in the paragraph above must register for and remit sales and use tax on all taxable sales of tangible personal property or services **delivered to the state of Michigan**.

SGL (Initial)



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### 3.509 TAX EXCLUDED FROM PRICE

Contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The Contractor shall state separately on its invoices taxes excluded from the contract price, and the Government agrees either to pay the amount of the taxes to the Contractor or provide evidence necessary to sustain an exemption.

CBL (Initial)

### 3.510 TAX PAYMENT

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes for all persons involved in the resulting Contract.

The State may refuse to award a contract to any vendor who has failed to pay any applicable state taxes. The State may refuse to accept vendor's bid, if vendor has any outstanding debt with the State of Michigan. Prior to any award, the State will verify whether vendor has any outstanding debt with the State.

Vendor hereby certifies that all applicable state taxes are paid as of the date of bid submission, and that vendor owes no outstanding debt to the State of Michigan.

CBL (Initial)

### 3.511 USE OF OTHER SOURCES AS SUBCONTRACTORS

The State has sources of supply and services that are mandatory. The state may use the information provided under this section and 3.502 and 3.503 in determining future awards and vendor standing with the state.

#### (1) Persons with disabilities

See Paragraph 3.502 for definition and penalty for fraudulent represents this information.

Vendor IS \_\_\_\_, IS NOT x purchasing supplies and/or service from a business owned by persons with disabilities in the performance of this contract.

Vendor has contracted for \_\_\_\_\_% of supplies and services needed for the performance of this contract, which equals \$\_\_\_\_\_, from a business owned by persons with disabilities (estimates or approximates are acceptable).

Vendor(s) Name: \_\_\_\_\_

#### (2) Community Rehabilitation Organizations (CRO) (formerly sheltered workshops)

See Paragraph 3.503 for definition.



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Vendor IS \_\_\_\_, IS NOT x purchasing supplies and/or service from a community rehabilitation organization in the performance of this contract.

Vendor has contracted for \_\_\_\_\_% of supplies and services needed for the performance of this contract, which equals \$\_\_\_\_\_, from a community rehabilitation organization (estimates or approximates are acceptable).

Vendor(s) Name: \_\_\_\_\_

**3.512 UTILIZATION OF BUSINESS CONCERNS**

It is the policy of the State of Michigan that small business concerns, veteran-owned small business concerns, persons with disabilities-owned small business concerns, small disadvantaged business concerns, minority-owned small business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any state agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems.

The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the State of Michigan or the awarding agency of the State of Michigan as may be necessary to determine the extent of the Contractor's compliance with this clause.

**3.513 RESERVED**

**3.514 RESERVED**

**3.515 PLACE OF SUBCONTRACTING**

Indicate below ALL work to be subcontracted under this agreement (use additional attachment if necessary; estimates are acceptable):

Description of Work to be sub-contracted	Percent (%) of total contract value to be sub-contracted	Sub-contractor's name and principal place of business (City and State)



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**3.516 RESERVED**

**3.517 SERVICES NEEDED IN PERFORMANCE**

Vendor hereby certifies that services to be purchased to enable vendor to perform this agreement will be purchased from a business having its principle place of business in the State of Michigan, **except those listed below** (use additional attachment if necessary; estimates are acceptable):

Description of Service to be purchased	Percent (%) of total contract value to be purchased	Service providers principal place of business (City and State)

**3.518 EMPLOYEE AND SUBCONTRACTOR CITIZENSHIP**

Vendor hereby certifies that all employees, contractors, subcontractors, and any other individual involved in the performance of this contract, **except those listed below**, are citizens of the United States, legal resident aliens, or individuals with valid visa (use additional attachment if necessary; estimates are acceptable):

Employee Name	Title

**3.6 Changes to Disclosures**

If any of the certifications, representations, or disclosures indicated in this document change after awarding of a contract, the Contract is required to report those changes immediately to the Department of Management and Budget, Acquisition Services.

**3.7 State Assertions**

If the state finds that grounds to debar exist, it shall send notice to the vendor of proposed debarment indicating the grounds for proposed debarment and the procedures for requesting a hearing. If the vendor



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does not respond with a written request for a hearing with in twenty (20) calendar days, the state shall issue the decision to debar without a hearing. The debarment period may be of any length up to eight (8) years. After the debarment period expires, the vendor may reapply for inclusion on bidder lists through the regular application process. Authority given by Executive order 2003-1.

ANY FALSE CERTIFICATION OF ANY OF THE PRECEEDING PROVISIONS IS GROUNDS FOR DEBARMENT AND WILL GIVE THE STATE THE RIGHT TO INVOKE ALL REMEDIES AVAILABLE TO IT UNDER THIS CONTRACT.

I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THE REPRESENTATIONS AND CERTIFICATIONS MADE HEREIN BY THE VENDOR/CONTRACTOR/SUPPLIER ARE ACCURATE AND CURRENT AS OF THE DATE INDICATED BELOW

Pinnacle Actuarial Resources, Inc.  
Name of Vendor/contractor/supplier

2817 Reed Road, Suite #2  
Bloomington, IL 61704

Address of supplier

(309) 665-5010 Fax: (309) 662-8116  
Telephone and fax No. of supplier

*Steven G. Schramm*  
Signature of supplier's authorized representative

President  
Title of Supplier representative

August 30, 2004  
Date

**APPENDIX A**

**STATEMENT OF WORK – P&C**

We have scheduled an examination of \_\_\_\_\_, a property and casualty insurance company. The scheduled examiner-in-charge is \_\_\_\_\_. The approximate timeframe for the examination is \_\_\_\_\_. We anticipate the actuarial work to commence approximately \_\_\_\_\_. This examination will cover the period from \_\_\_\_\_. Attached electronically is pertinent financial data as of December 31, \_\_\_\_\_. Additional financial information is available electronically on the NAIC's website at www.naic.org.

The Office of Financial and Insurance Services (OFIS) needs a property and casualty actuary to opine to the adequacy of the actuarially determined assets and liabilities of the Company as of December 31, \_\_\_\_\_. The following is a list of the annual statement line items that the NAIC requires actuaries to opine to at a minimum and the balance at December 31, \_\_\_\_\_:

Page 3, line 1	Losses	\$
Page 3, line 3	Loss Adjustment Expenses	

The actuarial firm awarded this contract is responsible for opining on all actuarially determined items in the annual statement.

The certification must be on both gross and net reserves as of \_\_\_\_\_. The certification must meet the standards as set forth by the NAIC. As a point of clarification, the actuarial firm awarded this examination is responsible for reconciling all data used back to schedule P - Part 1.

The Company's independent actuary is \_\_\_\_\_.

The actuarial firm must deliver a draft actuarial report no later than the completion of OFIS on-site fieldwork. At least four copies of the finalized actuarial report and opinion must be delivered to OFIS no later than one week after the actuarial firm receives approval from OFIS to finalize the report and opinion. The actuarial firm that performed the analysis during the last examination is precluded from award of this actuarial work. Please do not submit a proposal if your firm performed the analysis during the last examination.

Please be aware that the scheduling of the examination activity is subject to change. If for some unforeseen reason an examination listed above is rescheduled for next year, the contractor awarded this examination will be given the opportunity to perform the certification for the same price as originally quoted. If the contractor does not want to perform the certification, the examination will be sent out to the entire pool for an opportunity to bid.

Proposal Due Date:

If you have done work for the Company in the previous two years, you cannot be considered for this examination. To bid on this examination, prepare and submit your bid in electronic format (i.e., Microsoft Word, Adobe Acrobat PDF) via e-mail to OFIS by 5 p.m., \_\_\_\_\_. Responses received after this date and time will not be considered.

Proposal Format and Content:

Your proposal should provide a flowchart of the tasks that will be performed, the individual assigned to perform each task and the time that will be spent in completing the task. You must specifically detail previous experience in analyzing companies of similar size and complexity, and the amount of work with similar companies. The proposal should also address how work will be performed and reports prepared in a timely manner if you are awarded the maximum of three contracts in any one round of bidding.

A price bid must provide a breakdown of the total estimated number of hours to complete a project and the total cost of the certification, including travel costs. The travel costs should be provided as a separate amount added to the total cost of certification. Once a contract has been awarded, the bid price will remain firm. Additional funds will not be paid due to cost overruns.

## APPENDIX B

### STATEMENT OF WORK – LIFE

We have scheduled an examination of \_\_\_\_\_, a life and health insurance company. The scheduled examiner-in-charge is \_\_\_\_\_. The approximate timeframe for the examination is \_\_\_\_\_. We anticipate the actuarial work to commence approximately \_\_\_\_\_. This examination will cover the period from \_\_\_\_\_. Attached electronically is pertinent financial data as of December 31, \_\_\_\_\_. Additional financial information is available electronically on the NAIC's website at [www.naic.org](http://www.naic.org).

The Office of Financial and Insurance Services (OFIS) needs a life and health actuary to opine to the adequacy of the actuarially determined assets and liabilities the Company as of December 31, \_\_\_\_\_. The following is a list of the annual statement line items that the NAIC requires actuaries to opine to at a minimum and the balance at December 31, \_\_\_:

Aggregate Reserve for Life Policies and Contracts (Exhibit 5)(Pg 3, Line1)	\$
Aggregate Reserve for Accident and Health Policies (Exhibit 6)(Pg 3, Line 2)	
Liability for Deposit-type Contracts (Exhibit 7)(Pg 3, Line 3)	
Policy and Contract Claims (Exhibit 8)(Pg 3, Line 4)	
Policyholders' Dividends Due and Unpaid (Exhibit 4)(Pg. 3, Line 5)	
Provision for Policyholders' Dividends Payable in Following Year (Pg. 3, Line 6)	
Separate Accounts (Pg. 3, Line 27)	
Net Deferred and Uncollected Premiums (Pg 2, Line 16 &17)	

The actuarial firm awarded this contract is responsible for opining on all actuarial items in Exhibits 4, 5, 6, 7 and 8, and any other actuarially determined items in the annual statement. The certification must meet the standards as set forth by the NAIC.

The Company's independent actuary is \_\_\_\_\_.

As part of the work on this examination, the actuarial firm is expected to review asset/liability cash flow issues. The firm should perform the following, if necessary:

- review propriety of Company procedures to determine that reserves are supported by assets with suitable maturities and cash flows,
- review cash flow projections of the Company and determine the impact on reserves, if any. Factors reviewed shall include, at a minimum:
  1. asset default, credit quality and liquidity risks inherent in the underlying assets (C-1 risk),
  2. profit margin inherent in the book of business (C-2 risk),
  3. degree of asset/liability mismatch (C-3 risk),
  4. degree of conservatism in the valuation basis (really a component of C-2 risk),
  5. the assumed sensitivity of the liabilities to interest rate movements (a component of C-3 risk), and
  6. the strategies utilized for reinvestment and interest crediting.

The actuarial firm must deliver a draft actuarial report no later than the completion of the OFIS on-site fieldwork. At least four copies of the finalized actuarial report and opinion must be delivered to OFIS no later than one week after the actuarial firm receives approval from OFIS to finalize the report and opinion. The actuarial firm that did the analysis on the last exam is precluded from award of this actuarial work. Please do not submit a proposal if your firm performed the analysis during the last examination.

Please be aware that the scheduling of the examination activity is subject to change. If for some unforeseen reason an examination listed above is rescheduled for next year, the contractor awarded this examination will be given the opportunity to perform the certification for the same price as originally quoted. If the contractor does not want to perform the certification, the examination will be sent out to the entire pool for an opportunity to bid.

Proposal Due Date:

If you have done work for the Company in the previous two years, you cannot be considered for this examination. To bid on this examination, prepare and submit your bid in electronic format (i.e., Microsoft Word, Adobe Acrobat PDF) via e-mail to OFIS by 5 p.m.,\_\_\_\_\_. Responses received after this date and time will not be considered.

Proposal Format and Content:

Your proposal should provide a flowchart of the tasks that will be performed, the individual assigned to perform each task and the time that will be spent in completing the task. You must specifically detail previous experience in analyzing companies of similar size and complexity, and the amount of work with similar companies. The proposal should also address how work will be performed and reports prepared in a timely manner if you are awarded the maximum of three contracts in any one round of bidding.

A price bid must provide a breakdown of the total estimated number of hours to complete a project and the total cost of the certification, including travel costs. The travel costs should be provided as a separate amount added to the total cost of certification. Once a contract has been awarded, the bid price will remain firm. Additional funds will not be paid due to cost overruns.

**APPENDIX C**  
**Contractors Proposal**

STATE OF MICHIGAN  
INVITATION TO BID

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-----  
RETURN BID TO :  
DMB - ACQUISITION SERVICES  
P O BOX 30152  
LANSING , MI, 48909  
-----

SEALED BID  
DUE : 09/01/2004 03:00 PM

-----  
DATE ISSUED: 08/05/04  
BID NUMBER: 071I4001365  
-----

CONTACT: GREG FAREMOUTH  
517 335-0230 EXT:

REQUESTING DEPARTMENT/AGENCY:  
DMB-OOP-TECHNOLOGY & PROF. SVS DIV.

-----  
VENDOR ID : 2113669570 /

VENDOR PHONE :

THE UNDERSIGNED CERTIFIES THAT HE/SHE OFFERS  
TO FURNISH MATERIALS AND/OR SERVICE IN STRICT  
ACCORDANCE WITH THE REQUIREMENTS OF THE BID  
INCLUDING INSTRUCTIONS AND CONDITIONS; THAT  
PRICES QUOTED ARE CORRECT; AND THIS BID MAY  
NOT BE WITHDRAWN FOR A PERIOD OF 90 DAYS  
FROM THE DUE DATE NOTED ABOVE.

X Steven G. Lehmann  
SIGNATURE [IN INK] DATE

Steven G. Lehmann  
NAME [PRINT OR TYPE]

CASH DISC \_\_\_\_\_ 30 DAYS

SHIPMENT \_\_\_\_\_ DAYS ARO

F.O.B. \_\_\_\_\_

SHIP PT. \_\_\_\_\_

EST. SHIP WT. \_\_\_\_\_

TOTAL BID \$ \_\_\_\_\_

SHIP TO : MI DEPT OF LABOR & ECONOMIC GROWTH  
FINANCIAL & INSURANCE SERVICES  
OTTAWA BUILDING, 3RD FLOOR  
611 W. OTTAWA  
LANSING , MI, 48933

-----  
ITEM COMMODITY ID QTY U/M UNIT COST AMOUNT  
-----

## ACTUARIAL SERVICES AND RETIREMENT PLANNING

THE STATE IS INTERESTED IN ENTERING INTO CONTRACTS WITH 10 LIFE/HEALTH AND 10 PROPERTY/CASUALTY FIRMS (20 TOTAL CONTRACTS) TO PROVIDE FULLY

STATE OF MICHIGAN  
INVITATION TO BID

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VENDOR NAME :

BID NUMBER :  
071I4001365

ITEM	COMMODITY ID	QTY	U/M	UNIT COST	AMOUNT
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CERTIFIED ACTUARIES WITH TRAINING AND EXPERIENCE IN THE FIELDS OF LIFE/HEALTH AND PROPERTY/CASUALTY TO ANALYZE AND EVALUATE THE ADEQUACY OF RESERVES TO ASSIST THE DIVISION IN EXAMINING THE ENTITIES AND ENSURING COMPLIANCE WITH STANDARDS, REGULATIONS AND MICHIGAN INSURANCE CODE ALL IN ACCORDANCE WITH THE ATTACHED WORK STATEMENT AND SPECIFICATIONS.

**\*\*THE CONTRACT WILL BE FOR A THREE (3) YEAR PERIOD\*\***  
FOR SAMPLES OF ATTACHMENTS A (WORK STATEMENT: PROPERTY/CASUALTY) AND B (WORK STATEMENT: LIFE/HEALTH) AND C (STATE REIMBURSEMENT GUIDELINES) PLEASE CONTACT DMB PURCHASING.

## ADDITIONAL REQUIREMENTS :

SEALED BID SUBMISSION - RESPONSES TO ITB'S MUST BE RECEIVED AND TIME-STAMPED IN ACQUISITION SERVICES ON OR BEFORE THE DATE SPECIFIED ON THE COVER PAGE OF THIS REQUEST IN ORDER FOR THE BID TO BE CONSIDERED FOR AWARD. PROPERLY COMPLETE AND SIGN THE COVERSHEET OF THE INVITATION TO BID (ITB) (FORM DMB-285) SENT AS PART OF THIS PACKET OF INFORMATION. RETURN THAT SIGNED FORM WITH YOUR BID ACCORDING TO THE INSTRUCTIONS BELOW. BIDDERS ARE RESPONSIBLE FOR TIMELY RECEIPT OF THEIR QUOTATION IN ACQUISITION SERVICES. FOLLOWING THE INSTRUCTIONS BELOW WILL INSURE THAT THE INTEGRITY OF THE SEALED BID PROCESS IS PROTECTED:

1. EACH ENVELOPE/CONTAINER SUBMITTED MUST CONTAIN THE RESPONSE TO ONLY ONE ITB. DO NOT SUBMIT RESPONSES TO MORE THAN ONE ITB IN ONE ENVELOPE/CONTAINER. ALSO, FAXED BIDS WILL NOT BE ACCEPTED UNLESS SPECIFICALLY REQUESTED BY ACQUISITION SERVICES.
2. TO INSURE CORRECT AND TIMELY PROCESSING OF THE BID, THE ADDRESS INDICATED UNDER "RETURN BID TO" SHOULD BE USED ON THE ENVELOPE CONTAINING THE BID, OR ON AN INTERIOR ENVELOPE/CONTAINER IF USING A COURIER SERVICE.

3. THE ITB NUMBER (I.E., BID NUMBER) SHOULD BE ENTERED ON THE ENVELOPE ITSELF. IT IS IMPERATIVE THAT BIDDERS RECORD THE ITB NUMBER ON THE OUTSIDE OF THE SUBMITTAL ENVELOPE TO INSURE THE INTEGRITY OF THE SEALED BID PROCESS. FAILURE TO COMPLY WITH THIS INSTRUCTION MAY RESULT IN AUTOMATIC DISQUALIFICATION OF YOUR BID. THE DATE DUE AND THE VENDOR ID NUMBER IS OPTIONAL INFORMATION.
4. THE BID, IN THE PROPERLY LABELED ENVELOPE, MUST BE RECEIVED IN ACQUISITION SERVICES NOT LATER THAN 3:00 PM ON THE DUE DATE INDICATED ON THE FACE OF THE ITB, UNLESS OTHERWISE SPECIFIED ELSEWHERE IN THE ITB.

STATE OF MICHIGAN  
INVITATION TO BID

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-----  
VENDOR NAME :

BID NUMBER :  
071I4001365  
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5. THE BID MAY BE SUBMITTED AS DESCRIBED IN A, B, OR C BELOW:
  - A. THE BID MAY BE DELIVERED TO ACQUISITION SERVICES, 2ND FLOOR, STEVENS T. MASON BUILDING.
  - B. BY U.S. MAIL TO: STATE OF MICHIGAN  
DEPARTMENT OF MANAGEMENT AND BUDGET  
ACQUISITION SERVICES  
P.O. BOX 30152  
LANSING, MICHIGAN 48909
  - C. BY COURIER TO: STATE OF MICHIGAN  
DEPARTMENT OF MANAGEMENT AND BUDGET  
ACQUISITION SERVICES  
530 WEST ALLEGAN STREET  
MASON BUILDING, 2ND FLOOR  
LANSING, MICHIGAN 48933

PLEASE VISIT THE ACQUISITION SERVICES WEBSITE AT:  
WWW.MICHIGAN.GOV/DOINGBUSINESS. THIS SITE INCLUDES LINKS TO ACTIVE INVITATIONS TO BIDS, A LISTING OF CURRENT STATE CONTRACTS, GENERAL INFORMATION INTENDED TO ASSIST BUSINESSES IN GAINING AN UNDERSTANDING OF THE STATE'S PROCUREMENT PROCESSES AND OTHER PURCHASING PROGRAMS AND SERVICES. THIS INFORMATION IS ALSO AVAILABLE BY CALLING: (517) 335-0230.

REGISTER AS A VENDOR ONLINE AT: WWW.CPEXPRESS.STATE.MI.US

EFFECTIVE JUNE 1, 2003, MOST INVITATIONS TO BID FROM ACQUISITION SERVICES WILL ONLY BE AVAILABLE ONLINE. IN CERTAIN SITUATIONS, BIDS

WILL CONTINUE TO BE SENT THROUGH U.S. MAIL, HOWEVER, THOSE SITUATIONS WILL BE ON A VERY LIMITED BASIS.

VISIT WWW.MICHIGAN.GOV/DOINGBUSINESS TO VIEW INVITATIONS TO BID ON THE INTERNET AND ANY SUBSEQUENT UPDATES. CLICK ON "BIDS & PROPOSALS" ON THE LEFT HAND SIDE OF THE SCREEN, THEN CLICK ON "COMMODITIES & SERVICES".

FOR THOSE BUSINESSES WITHOUT INTERNET ACCESS, PUBLIC COMPUTERS ARE TYPICALLY AVAILABLE AT PUBLIC LIBRARIES AND COMMERCIAL PRINT/COPY CENTERS. ASSISTANCE IS ALSO PROVIDED THROUGH THE MICHIGAN ECONOMIC DEVELOPMENT CORPORATION'S PTAC'S (PROCUREMENT TECHNICAL ASSISTANCE CENTERS). FOR FURTHER PTAC INFORMATION, CALL (517) 373-9808 OR VISIT WWW.MEDC.MICHIGAN.ORG.

WHEN ACCESSING BIDS ONLINE, MAKE SURE TO ACCESS THE ENTIRE DOCUMENT (THE ITB DOCUMENT AND ALL CORRESPONDING ATTACHMENTS, WHICH ARE LISTED SEPARATELY).

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INVITATION TO BID

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VENDOR NAME :

BID NUMBER :  
07114001365  
-----

QUESTIONS CONCERNING THIS BID MAY BE DIRECTED TO THE BUYER ON  
OR BEFORE 8/18/04 PLEASE SEE SECTION 4 OF THE ITB FOR INFORMATI  
ON.

--- END OF DOCUMENT ---



Express Mail: 2817 Reed Road, Suite # 2, Bloomington, IL 61704  
Regular Mail: P.O. Box 6139, Bloomington, IL 61702-6139  
Phone: (309) 665-5010 Fax: (309) 662-8116

Shawna S. Ackerman, FCAS, MAAA  
LeRoy A. Boison, FCAS, MAAA, LLC  
Erich A. Brandt, FCAS, MAAA  
Charles C. Emma, FCAS, MAAA  
Joseph A. Herbers, ACAS, MAAA  
Jeffrey L. Kucera, FCAS, MAAA

Steven G. Lehmann, FCAS, FSA, FCIA, MAAA  
Richard A. Lino, FCAS, MAAA  
Roosevelt C. Mosley, FCAS, MAAA  
John E. Wade, ACAS, MAAA  
Robert J. Walling, III, FCAS, MAAA

August 30, 2004

Mr. Robert Lamberjack  
State of Michigan  
Department of Management and Budget  
Acquisition Services  
2<sup>nd</sup> Floor, Mason Building  
530 West Allegan Street  
Lansing, MI 48933

Dear Bob:

Pinnacle Actuarial Resources, In. is pleased to submit a proposal in response to the State of Michigan Dept. of Labor and Economic Growth, Bid # 07114001365, specifically property and casualty actuarial consulting services in connection with financial examinations. This proposal shall remain valid until December 1, 2004, (90 days from the September 1, 2004, due date of the ITB).

As documented throughout this proposal for services, Pinnacle's staff has the experience and expertise to efficiently and effectively perform the required services. Our qualifications are highlighted briefly below:

- We are led by five managing principals, most with experience in senior actuarial positions. Our principals are involved in leadership positions within the actuarial profession.
- Our staff includes ten Fellows of the Casualty Actuarial Society and two Associates of the Casualty Actuarial Society. We have eight actuarial analysts working toward their professional designations as well as technical and clerical support staff. Twelve of our staff are members of the American Academy of Actuaries, and as members of that organization, each has maintained the required continuing education credits to permit the rendering of a public actuarial opinion.
- Our firm has experience in financial examinations, ratemaking, rate filings, reserving, expert testimony, costing of proposed legislation, design of actuarial data systems,

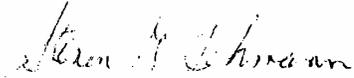
*Bloomington • Chicago • New York • San Francisco*  
*www.pinnacleactuaries.com*

development of financial plans and the organization and management of insurance companies. Our clients include insurance companies, state regulators, insurance industry trade organizations, self-insured entities, captive insurers and risk retention groups.

- We maintain state-of-the-art computer hardware and software which allow us to perform client work efficiently and effectively. Our computers are networked such that we can easily move files and documents between our offices and client offices.
- We have a reputation for providing objective, actuarial opinions within the standards of practice and principles defined by our profession. To that end, we have a formal peer review process which applies to all of the work done on behalf of our clients.

We appreciate the opportunity to respond to the Request for Proposal and look forward to continuing our work with the Michigan Department of Labor and Economic Growth. Should you need further clarification of our proposal, please call me at 309-665-5010.

Sincerely,



Steven G. Lehmann, FCAS, FSA, FCIA, MAAA  
Principal and Consulting Actuary

SGL:dp

Enclosure

PINNACLE ACTUARIAL RESOURCES, INC.

#### **4.301 CAPABILITIES AND QUALIFICATIONS OF ORGANIZATION**

Pinnacle Actuarial Resources, Inc., is an Illinois corporation privately owned by its actuarial staff, specializing in property and casualty actuarial consulting. Headquartered in Bloomington, Illinois, Pinnacle also maintains offices in the Chicago, New York, San Francisco, and Lawrenceville, NJ, metropolitan areas. While the majority of work under this ITB would be performed at our Bloomington headquarters, we will also call on actuaries from our other offices if the need requires. Our Bloomington address is as follows:

Pinnacle Actuarial Resources, Inc.  
2817 Reed Road, Suite 2  
Bloomington, Illinois 61704

Pinnacle is a registered vendor in Michigan (Vendor ID #2113669570).

Our firm has over 250 clients including insurers of all sizes, captive insurance companies, self-insured entities, municipal pools, risk retention groups and state insurance regulators. As a result of this broad client base, we are called on to provide a wide variety of actuarial and management consulting services. The diversity of our experience in supporting and evaluating the actuarial management process is best realized by the following brief descriptions of some of the services we have provided.

Our actuaries have provided loss reserve analysis studies and funding studies for commercial insurers, self-insured entities and captives. As a part of this practice area, we serve as appointed actuaries and provide public Statements of Actuarial Opinion for a number of insurers in accordance with NAIC Annual Statement instructions. In order to assist us with these engagements, we maintain a current copy of the American Academy of Actuaries Property/Casualty Loss Reserve Law Manual.

We have provided consulting services for numerous state insurance departments. This work has ranged from loss reserve analyses to rate reviews to staff training seminars. Pinnacle is a current provider of property and casualty actuarial consulting services in relation to financial examinations to the state of Michigan.

In the area of ratemaking, we have provided actuarial rate reviews and rate filings for numerous insurers and industry organizations.

Also included among our practice specialties is the costing of proposed legislation. In this regard, we have performed costing studies of proposed insurance legislation in California, Colorado, Hawaii, Louisiana, Maryland, New Jersey, New York, Pennsylvania and Texas.

Finally, we provide clients with electronic data management services, including the development and redesign of actuarial databases used for the generation of ratemaking data.

A brief listing of our consulting engagements is highlighted in Appendix A.

Our consultants have been in property and casualty actuarial consulting since 1984. On January 1, 2003, ten consulting actuaries, each with extensive actuarial consulting and industry leadership experience, formed Pinnacle Actuarial Resources, Inc. Our staff currently ranks among the ten largest property & casualty consulting firms in the United States. Our sales volume in 2003 was approximately \$5, million and is on a similar pace for 2004.

Currently, we have thirty personnel, including twelve designated actuaries, eight actuarial analysts working toward their professional designations, and technical support staff. We have assembled a team experienced in serving Insurance Departments which will be able to coordinate services for you, drawing on staff resources as needed for the type of work you require. We are noted for our commitment to quality and ability to customize solutions to the needs of our clients. Included in our scope of services are actuaries who specialize in all property/casualty lines of business.

#### **4.302 PRIOR EXPERIENCE**

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Pinnacle has 12 Members of the American Academy of Actuaries qualified to render Statements of Actuarial Opinions. In addition to being the opining actuaries of various insurance companies, Pinnacle provides actuarial support to numerous state insurance departments. In the area of financial reviews, Pinnacle has provided property and casualty actuarial support to the states of Michigan, Iowa, and Oregon and has recently been selected by the state of Indiana to conduct special financial studies. The following individuals may be contacted:

- Robert Lamberjack  
Michigan Office of Financial and Insurance Services  
611 W. Ottawa, 3<sup>rd</sup> Floor  
Lansing, MI 48909  
517-373-0246
  
- James Armstrong  
Iowa Department of Insurance  
Lucas State Office Bldg, 6<sup>th</sup> Floor  
Des Moines, IA 50309  
515-281-5705
  
- Patrick Huth  
Oregon Insurance Division  
PO Box 14480  
Salem, OR 97309  
503-947-7980
  
- Mark Pufahl  
Indiana Department of Insurance  
311 W. Washington Street, Suite #300  
Indianapolis, IN 46204  
317-232-2390

#### **4.303 QUALIFIED PERSONNEL/STAFFING**

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Our lead actuary for this engagement will be Mr. Steven G. Lehmann, FCAS, FSA, FCIA, MAAA. In addition to pricing and rate filings, Mr. Lehmann's experience includes loss reserve opinions and studies for a number of insurance carriers, reserve opinions in connection with financial examinations of insurance carriers, development of pricing strategies including coordination of underwriting and rating programs, residual market studies and rate of return analysis. He has testified before numerous regulatory and legislative bodies on a variety of insurance matters including ratemaking, risk classification and rate of return.

Mr. Lehmann will be assisted in this assignment by the remainder of our professional consulting staff, which includes ten Fellows of the Casualty Actuarial Society and two Associates of the Casualty Actuarial Society. We anticipate that the primary consultant on this engagement will either be Mr. Robert J. Walling, FCAS, MAAA or Mr. John E. Wade, ACAS, MAAA. Mr. Walling and Mr. Wade are part of Pinnacle's commercial and personal lines practice teams, respectively, and both have extensive reserving backgrounds in various lines of insurance.

Pinnacle requires, and our governing professional organization encourages, that all actuarial work products be peer reviewed before release. This peer review is important to our clients because it assures adherence to professional standards and serves to increase the confidence in our opinions by all users of those opinions. While any of our qualified actuaries may be called upon to provide this part of an assignment, this task will generally fall either to Mr. Walling or to Mr. Charles C. Emma, FCAS, MAAA. Mr. Walling's and Mr. Emma's professional practices have been heavily focused on reserve analysis and opinion work. Pinnacle's peer review procedures are set forth in attached Appendix C.

These individuals are committed to full availability during the course of this examination. Biographies of the professional staff for this assignment are attached as Appendix B.

The professional staff will be supported on this engagement by our staff of actuarial analysts and technicians who are proficient in the use of actuarial software.

We provide leadership to the actuarial profession by volunteering our services to various professional organizations. Some of the leadership positions and activities of our consulting staff are set forth below:

Steven G. Lehmann

Mr. Lehmann has served the American Academy of Actuaries (AAA) as a member of the Board of Directors, Vice President, and Chairman of the Casualty Practice Council. He is a Past President of the Casualty Actuarial Society (CAS). He has also served the CAS as Vice President and as a member of the Board of Directors. He has chaired various committees and task forces within the CAS.

Robert J. Walling

Mr. Walling has served the CAS as the chairman of the Committee on the Dynamic Financial Analysis Seminar and the Committee on the Ratemaking Seminar. He currently serves as Vice Chair of the New Fellows Committee and a member of the Editorial Board of *The Actuarial Review*.

John E. Wade

Mr. Wade is a new member of the Casualty Actuarial Society and is currently serving the CAS on their Membership Advisory Panel.

Charles C. Emma

Mr. Emma is a Fellow of the Casualty Actuarial Society and a member of the American Academy of Actuaries. He is the Chairman of the Dynamic Financial Analysis Research Committee of the Casualty Actuarial Society.

Professional biographies for all of our consulting staff are included in the proposal as Appendix B.

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#### **4.304 SCOPE OF WORK AND DELIVERABLES**

Pinnacle acknowledges and accepts the Scope of Work and Deliverables as described in sections 1.101 and 1.104 (including all items A – N), and Appendix A (Statement of Work – P&C) of the ITB. The general approach we follow in carrying out examination assignments is outlined below:

- As required by Actuarial Standard of Practice No. 21, entitled The Actuary's Responsibility to the Auditor, we will conduct our actuarial review consistent with a written plan which clearly sets forth the nature and scope of our responsibilities in the specific examination. This plan would ordinarily be developed through the combined efforts of Pinnacle and the examiner-in-charge and prepared consistent with AICPA Statement of Position 92-4 (Auditing Insurance Entities Loss Reserves).
- Consistent with Actuarial Standard of Practice No. 23, entitled Data Quality, we will review the data for reasonableness and consistency. Our report will document for the examiner the sources of the data which we review and disclose any reservations we may have concerning the reliability of the data.
- Our actuarial analyses, including reserve adequacy tests or rate level adequacy tests, will be performed in accordance with generally accepted actuarial principles and standards of practice.
- We will prepare a report which is consistent with the requirements of Actuarial Standard of Practice No. 9, entitled Documentation and Disclosure in Property and Casualty Insurance Ratemaking, Loss Reserving, and Valuations and provide sufficient explanations of our work so that another actuary practicing in the same field can evaluate the work. The Report will include an actuarial opinion in the format of, and contain the information required by, the NAIC Annual Statement instructions.

Given the size of our firm, we will be able to commit the necessary number of personnel to provide a complete, professional work product in a timely fashion.

We will work closely with OFIS through a combination of on-site work (as necessary) and telephone contact in order to fully coordinate our work with that of the examiners. We will be available to provide on-site support through our consultants and our actuarial analyst staff as necessary.

The technical approach we follow in carrying out examination assignments is described below:

In order to identify key areas of review for the examination, we will begin our work by meeting with examination staff (most likely via conference call) to plan our work strategy and prepare a written plan of work as outlined above. During this preliminary meeting, we will work with examination staff to identify significant exposures, the geographic concentration of exposures, and any other unique liability issues. Prior to this meeting, we will plan to review the last examination report as well as its most recent Statement of Actuarial Opinion and actuarial report. As part of our review, we will schedule a meeting with the management of the organization being examined (again most likely via conference call) which will allow us to gain insight into any shifts in geographic exposure concentration, overall growth in exposure, changes in underwriting and claims or any other significant operational changes which might impact the focus of our review or suggestions for review we might provide examiners.

Following these preliminary steps, we will conduct an analysis of the reserve position for the entity and prepare a Statement of Actuarial Opinion. This work will begin with a review of the data sources provided to us for the analysis and a reconciliation of that data to the detailed supporting schedules of the organization's financial statements. Once we are satisfied as to the integrity of the data, we will organize the data for the analysis of historic development patterns and determine our reserve analysis methodology. There are several different methods we may employ in the development of estimated ultimate losses. These methods may include:

- Paid Loss Development
- Incurred Loss Development
- Paid Counts and Averages Development
- Incurred Counts and Averages Development
- Bornhuetter-Ferguson Method

#### **4.305 WORK PLAN**

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Pinnacle acknowledges and accepts the Work Plan as described in section 1.3 of the ITB.

#### **4.306 PROJECT MANAGEMENT**

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Pinnacle acknowledges that Project Management, as described in section 1.4 of the ITB, has been marked as “*RESERVED.*” As such, no response to this portion of the ITB is required at this time.

#### **4.307 COMPENSATION AND PAYMENT**

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Pinnacle's price proposal has been sealed separately from this proposal as directed under section 4.402 of the ITB.

#### **4.308 COMPLETION OF ARTICLE 3 – CERTIFICATIONS AND REPRESENTATIONS**

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The following pages contain the appropriate certifications and representations requested in Article 3 of the ITB. Regarding section 3.307, Liability Insurance, Pinnacle carries liability limits at least as great as those required by the OFIS in contracts awarded in 2004. If additional limits are required in the future, Pinnacle may be willing to discuss increasing its liability limits as necessary.



### **Article 3 – Certifications and Representations**

All bidders shall complete this section and submit with their bid or proposal. Failure or refusal to submit any of the information requested in this section may result in the bidder being considered non-responsive and therefore ineligible for award consideration. The State may also pursue debarment vendors that fail or refuse to submit any of the requested information.

In addition, if it is determined that a business purposely or willfully submitted false information, the bidder will not be considered for award, the State will pursue debarment of the vendor, and any resulting contract that was established will be cancelled.

#### **3.0 Vendor/Contractor Information**

##### **3.001 TAXPAYER IDENTIFICATION NUMBER (TIN)**

Vendor Name: Pinnacle Actuarial Resources, Inc.

- (  ) TIN: 11-3669570
- (  ) TIN has been applied for
- (  ) TIN is not required because:
- (  ) Vendor/Contractor is a nonresident, alien, foreign business that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal agent in the U.S.
- (  ) Vendor/Contractor is an agency or instrumentality of a foreign government. If checked, which foreign government \_\_\_\_\_
- (  ) Vendor/Contractor is an agency or instrumentality of a federal, state, or local government. If checked, which government \_\_\_\_\_
- (  ) Other basis: \_\_\_\_\_
- (  ) Bidder is not owned or controlled by a common parent as described below. Common Parent means a corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which bidder is a member.
- (  ) Bidder is owned or controlled by a common parent
- (  ) Name and TIN of common parent
- Name: \_\_\_\_\_
- TIN: \_\_\_\_\_

##### **3.002 EXPATRIATED BUSINESS ENTITY**

DEFINITIONS: "Expatriated business entity" means a corporation or an affiliate of the corporation incorporated in a tax haven country after September 11, 2001, but with the United



States as the principal market for the public trading of the corporation's stock, as determined by the Director of the Department of Management and Budget

"Tax haven country" means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, and the Republic of the Seychelles.

Vendor hereby certifies that it IS \_\_\_\_\_, IS NOT  an expatriated business entity located in a tax haven country.

Vendor hereby certifies that it IS \_\_\_\_\_, IS NOT  an affiliate of an expatriated business located in a tax haven country.

### 3.003 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER

Vendor is not required to have a DUNS number. If vendor does have a DUNS number it must be listed below.

DUNS No.: \_\_\_\_\_  
(nine digit number assigned by Dun & Bradstreet)

DUNS+4 No.: \_\_\_\_\_  
(DUNS + a 4-character suffix)

If the contractor/vendor does not have a DUNS number and would like to, it should contact Dun & Bradstreet directly to obtain one. Contractor may obtain a DUNS number by calling Dun & Bradstreet at 1-866-705-5711 or via the Internet at [www.dnb.com](http://www.dnb.com)

### 3.004 RESERVED for Vendor Registration Into a Central Database

### 3.005 RESERVED for annual certifications and representations in Central Data Base

The bidder has (check the appropriate block):

(  ) Submitted to the contracting office issuing this solicitation, annual representations and certifications dated August 30, 2004 (insert date of signature on submission), which are incorporated herein by reference, and are current, accurate, and complete as of the date of this bid, except as follows (insert changes that affect only this solicitation; if "none," so state): \_\_\_\_\_

(  ) Enclosed its annual representations and certifications.

### 3.006 EXTENDED PURCHASING TO LOCAL UNITS OF GOVERNMENT/INSTITUTIONS OF HIGHER LEARNING

Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Management and Budget, to provide purchasing services to any city, village, county, township, school district, intermediate school district, nonprofit hospital, institution of higher learning, or community or junior colleges. 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 Acquisition Services, 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 the authorized Extended Purchasing member on a direct and individual basis in accordance with Contract terms will remit payment.

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. Upon request, 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.

\_\_\_\_\_  
 Steven G. Lehmann  
 Authorized Agent Name (print or type)

*Steven G. Lehmann*  
 \_\_\_\_\_  
 Authorized Agent Signature

Please Visit Mi DEAL at [www.mi.gov/localgov](http://www.mi.gov/localgov).

**3.1 Disclosure Issues**  
**3.101 CONFIDENTIALITY**

Contractor and the State each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor shall mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) that is marked confidential, restricted, proprietary, or with a similar designation. "Confidential Information" of the State shall mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State pursuant to applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State pursuant to its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. In the case of information of either Contractor or the State



“Confidential Information” shall exclude any information (including this Contract) that is publicly available pursuant to the Michigan FOIA.

#### Protection of Confidential Information

The State and Contractor will each use at least the same degree of care to prevent its closing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access thereto in order to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

#### News releases

News releases (including promotional literature and commercial advertisements) pertaining to the ITB and 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 the ITB and Contract are to be released without prior written approval of the State and then only to persons designated.

#### Exclusions

Notwithstanding the foregoing, the provisions of this Section will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose such Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of such disclosure as reasonably requested by the furnishing party.



No Implied Rights

Nothing contained in this Section shall be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

Remedies

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under this Section, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach).

Survival

The parties' respective obligations under this Section shall survive the termination or expiration of this Contract for any reason.

Destruction of Confidential Information

Promptly upon termination or cancellation of the Contract for any reason, Contractor shall certify to the State that Contractor has destroyed all State Confidential Information.

SG (Initial)

**3.102 FREEDOM OF INFORMATION ACT**

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

SG (Initial)

**3.103 DISCLOSURE OF LITIGATION**

The Contractor shall notify the State in its bid proposal, if it, or any of its subcontractors, or their officers, directors, or key personnel under this Contract, have ever been convicted of a felony, or any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception. Contractor shall promptly notify the State of any criminal litigation, investigations or proceeding which may have arisen or may arise involving the Contractor or any of the Contractor's subcontractor, or any of the foregoing entities' then current officers or directors during the term of this Contract and three years thereafter.

The Contractor shall notify the State in its bid proposal, and promptly thereafter as otherwise applicable, of any civil litigation, arbitration, proceeding, or judgments that may have arisen against it or its subcontractors during the five years proceeding its bid proposal, or which may occur during the term of this Contract or three years thereafter, which involve (1) products or services similar to those provided to the State under this Contract and which either involve a claim

in excess of \$250,000 or which otherwise may affect the viability or financial stability of the Contractor, or (2) a claim or written allegation of fraud by the Contractor or any subcontractor hereunder, arising out of their business activities, or (3) a claim or written allegation that the Contractor or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Contractor or subcontractor, in any amount less than \$250,000 shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Contractor or subcontractor.

All notices under subsection 1 and 2 herein shall be provided in writing to the State within fifteen business days after the Contractor learns about any such criminal or civil investigations and within fifteen days after the commencement of any proceeding, litigation, or arbitration, as otherwise applicable. Details of settlements, which are prevented from disclosure by the terms of the settlement, shall be annotated as such. Semi-annually, during the term of the Contract, and thereafter for three years, Contractor shall certify that it is in compliance with this Section. Contractor may rely on similar good faith certifications of its subcontractors, which certifications shall be available for inspection at the option of the State.

Assurances - In the event that such investigation, litigation, arbitration or other proceedings disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract, causes the State to be reasonably concerned about:

- a. The ability of the Contractor or its subcontractor to continue to perform this Contract in accordance with its terms and conditions, or
- b. Whether the Contractor or its subcontractor in performing services is engaged in conduct which is similar in nature to conduct alleged in such investigation, litigation, arbitration or other proceedings, which conduct would constitute a breach of this Contract or violation of Michigan or Federal law, regulation or public policy, then

The Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that: (a) the Contractor or its subcontractors hereunder will be able to continue to perform this Contract in accordance with its terms and conditions, (b) the Contractor or its subcontractors will not engage in conduct in performing services under this Contract which is similar in nature to the conduct alleged in any such litigation, arbitration or other proceedings.

\*\*\* The Contractor's failure to fully and timely comply with the terms of this section, including providing reasonable assurances satisfactory to the State, may constitute a material breach of this Contract.

SGI (Initial)

### 3.2 Vendor/Contractor Compliance with Laws

#### 3.201 GENERALLY

Contractor/vendor shall keep informed of federal, state, and local laws, ordinances, rules, regulations, orders, and decrees of bodies or tribunals having any jurisdiction/authority that in any manner affects those engaged in or employed on the work done under this agreement or that in any manner affects the conduct of the work done under this agreement. Contractor shall observe and comply with such laws, ordinances, rules, regulations, orders, and decrees. Contractor shall indemnify the state for any civil claim or liabilities arising from a violation of such laws,



ordinances, rules, regulations, orders, or decrees, whether by itself or its employees, even if wholly or in part caused by a violation of such laws, ordinances, rules, regulations, orders, or decrees by the state or its agents or representatives.

### 3.202 INDEPENDENT PRICE DETERMINATION

1. By submission of a proposal, the bidder certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:
  - a. The prices in the proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such prices with any other bidder or with any competitor; and
  - b. Unless otherwise required by law, the prices which have been quoted in the proposal have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to award directly or indirectly to any other bidder or to any competitor; and
  - c. No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.
2. Each person signing the proposal certifies that she/he:
  - a. Is the person in the bidder's organization responsible within that organization for the decision as to the prices being offered in the proposal and has not participated (and will not participate) in any action contrary to 1. a., b., and c. above; or
  - b. Is not the person in the bidder's organization responsible within that organization for the decision as to the prices being offered in the proposal but has been authorized, in writing, to act as agent for the persons responsible for such decision in certifying that such persons have not participated (and will not participate) in any action contrary to 1. a., b., and c. above.
3. Should a bidder be awarded a Contract resulting from this RFP, and be found to have failed to abide by the provisions set forth in this section, said entity will be in default of the Contract. Consequences may include cancellation of the Contract (see section I-U Cancellation).

### 3.203 VENDOR/CONTRACTOR COMPLIANCE WITH STATE AND FEDERAL LAW AND DEBARMENT

The bidder certifies, to the best of its knowledge that within the past (3) years, the bidder, an officer of the bidder, or an owner of a 25% or greater interest in the vendor:

- 1) Has \_\_\_\_\_, Has Not  X  been convicted of a criminal offense incident to the application for or performance of a state contract or subcontract;
- 2) Has \_\_\_\_\_, Has Not  X  been convicted of any offense which negatively reflects on the vendor's business integrity, including but not limited to embezzlement, theft, forgery,



bribery, falsification or destruction of records, receiving stolen property, state or federal antitrust statutes;

- 3) Has \_\_\_\_\_, Has Not  X  been convicted of any other offense, violated any other state or federal law, as determined by a court of competent jurisdiction or an administrative proceeding, which, in the opinion of the Department, indicates that the vendor is unable to perform responsibly or which reflects a lack of integrity that could negatively impact or reflect upon the State of Michigan. An offense or violation under this paragraph may include, but is not limited to, an offense under or violation of: Natural Resources and Environmental Protection Act, 1994 PA 451, MCL §§ 324.101 – 324.90106; the Michigan Consumer Protection Act, 1976 PA 331, MCL §§ 445.901 – 445.922; 1965 PA 390 (law relating to prevailing wages on state projects), MCL §§ 408.551 – 408.558; 1978 PA 390 (law relating to payment of wages and fringe benefits) MCL §§ 408.471 – 408.490; or a willful or persistent violation of the Michigan Occupational Safety and Health Act, 1974 PA 154, MCL §§ 408.1001 – 408.1094;
- 4) Has \_\_\_\_\_, Has Not  X  failed to substantially perform a state contract or subcontract according to its terms, conditions, and specifications within specified time limits;
- 5) Has \_\_\_\_\_, Has Not  X  violated Department bid solicitation procedures or violated the terms of a solicitation after bid submission;
- 6) Has \_\_\_\_\_, Has Not  X  refused to provide information or documents required by a contract including, but not limited to information or document necessary for monitoring contract performance;
- 7) Has \_\_\_\_\_, Has Not  X  failed to respond to requests for information regarding vendor performance, or accumulated repeated substantiated complaints regarding performance of a contract/purchase order; and
- 8) Has \_\_\_\_\_, Has Not  X  failed to perform a state contract or subcontract in a manner consistent with any applicable state or federal law, rule, regulation, order, or decree.
- 9) The vendor certifies and represents, to the best of his knowledge that the supplier and/or any of it's Principles:
  - A. Are \_\_\_\_\_, Are Not  X  presently debarred, suspended, proposed for debarment, or declared ineligible for the award of a purchase by any state or federal agency
  - B. Has \_\_\_\_\_, Has Not  X  not with in a 3-year period preceding this bid, been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) purchase.
  - C. Are \_\_\_\_\_, Are Not  X  presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, the commission of the any of the offenses enumerated in section 3.1(c) of this contract.



- D. The vendor Has \_\_\_\_\_, Has Not  within a 3-year period preceding this solicitation had one or more purchases terminated for default by any state or federal agency.

### 3.204 CERTIFICATION REGARDING DEBARMENT AND PROPOSED DEBARMENT

- 1) Principals for purposes of section 3.203(9) means officers, directors, owners, partners, and any other persons having primary management or supervisory responsibilities within a business entity
- 2) The supplier shall provide immediate written notice to the state if, at any time before the purchase award, the supplier learns that its certification was erroneous when submitted or has since become erroneous because of changed circumstances
- 3) A certification that any of the items in paragraph 3.203(9)(A) of this provision exists will not necessarily result in withholding an award under this solicitation. However, the certification will be considered in connection with a determination of the supplier's responsibility. Failure to furnish the certification or provide such information as requested by the state may render the supplier non-responsive
- 4) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph 3.203(9)(a) of this provision. The knowledge and information of a supplier is not required to exceed that which is normally possessed by a prudent person in the ordinary course of commercially reasonable dealings.
- 5) If it is later determined that supplier knowingly rendered an erroneous certification under this provision, in addition to the other remedies available to the state, the state may terminate this purchase for default.

**VENDOR CAN REVIEW THE STATE'S DEBARMENT POLICY AT:**  
[www.michigan.gov/doingbusiness](http://www.michigan.gov/doingbusiness) (click on the link to Debarment Policy)

### 3.205 DEBARMENT OF SUB-CONTRACTORS

Contractor shall require each primary sub-contractor, whose sub contract will exceed \$25,000, to disclose to the contractor, in writing, whether as of the time of the award of the sub contract, the sub-contractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the State of Michigan. The contractor shall then inform the state of the sub-contractor's status and reasons for contractor's decision to use such sub-contractor, if contractor so decides.

### 3.206 ETHICS: GRATUITIES and INFLUENCE

#### Gratuities

The right of the contractor to proceed may be terminated by written notice, if the contracting agency head or contract administrator determines that the contractor, its agent, or its representative has offered or gave a gratuity, kickback, money, gift, or any thing of value to an officer, official, or employee of the state intended, by the gratuity, to obtain a contract or favorable treatment under a contract.



Vendor/Contract Has \_\_\_\_\_, Has Not X given or offered to give a gratuity, kickback, money, gift, or any thing of value to a state official, officer, or employee intended to effectuate the awarding of a contract or favorable treatment under a contract.

### Influence

The vendor/contractor by signing its proposal/bid hereby certifies to best of his or her knowledge that no funds have been given to any state officer, official, or employee for influencing or attempting to influence such officer, official, or employee of the state.

## 3.3 Vendor/Contractor Workplace Fitness

### 3.301 DRUG-FREE WORK PLACE

The vendor/contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the vendor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- B. Establishing a drug-free awareness program to inform employees about (1) the dangers of drug abuse in the workplace; (2) the vendor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the work place; and
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction; and
- D. Notifying the contracting state agency within 15 days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and
- E. Within 30 days after receiving notice under subdivision (C)(2), imposing the proper sanctions as communicated to the employee through the statement required by subparagraph (A); and
- F. Making a good-faith effort to maintain a drug-free work place through the implementation of sub paragraphs (A) through (E) above.

S&L (Initial)

### 3.302 WORKPLACE SAFETY

- I. In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in the 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 the Contract subject to the cancellation provisions contained herein.

2. 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](http://www.michigan.gov/mdcs).

SGL (Initial)

### 3.303 WORKPLACE DISCRIMINATION

The Contractor represents and warrants that in performing services for the State pursuant to 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 any Contract or purchase order resulting here from 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.

Vendor hereby represents that in performing this contract it will not violate The Civil Rights Act of 1964, USCS Chapter 42, including, but not limited to, Title VII, 42 USCS §§ 2000e et seq.; the Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.; or The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.; the Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626 et seq.; the Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.; or the Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.

SGL (Initial)

### 3.304 LABOR RELATIONS

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 the 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 any Contract if, subsequent to award of the 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.



The Contractor represents and warrants that the company does not appear in the current register of employers failing to correct an unfair labor practice.

SGL (Initial)

**3.305 RESERVED**

**3.306 AFFIRMATIVE ACTION**

Vendor represents that it Has , Has Not  developed and has on file an entity wide affirmative action program.

**3.307 LIABILITY INSURANCE**

**A. 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.

All insurance coverage 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 specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. Companies that have been approved to do business in the State shall issue all policies of insurance required in this Contract.

See [www.michigan.gov/cis](http://www.michigan.gov/cis)

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits.

Before both parties sign the Contract 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 ("Certificates"). The Certificate must be on the standard



"accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverage afforded under the policies **WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED** without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Acquisition Services, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Acquisition Services, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

The Contractor is required to pay for and provide the type and amount of insurance checked below:

1. Commercial General Liability with the following minimum coverage:

\$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 INSURED**s on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

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 INSURED**s on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

3. Workers' compensation coverage must be provided in accordance with applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If a self-insurer provides the applicable coverage, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.



The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. 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
5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).
6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.
7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.
8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

**B. Subcontractors**

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) shall fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

**C. Certificates of Insurance and Other Requirements**



Contractor shall furnish to the Office of Acquisition Services certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds, but only to the extent of liabilities assumed by Contractor as set forth in Indemnification Section of this Contract, under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

### 3.308 ENVIRONMENTAL AWARENESS

**Definition - 'Environmentally preferable products'** means products that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.

**Environmental Purchasing Policy** - Bidders able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals.

- A. **Recycled Packaging.** Bidders may offer some or all of the following items listed below or provide alternative proposal as to how packaging materials can be reduced, eliminated or otherwise made more environmentally preferable. It is desirable that Bidders offer packaging which:
- is made from recycled content which meets or exceeds all federal and state recycled content guidelines (currently 35% post-consumer for all corrugated cardboard)
  - minimizes or eliminates the use of polystyrene or other difficult to recycle materials
  - minimizes or eliminates the use of disposable containers such as cardboard boxes
  - provides for a return program where packaging can be returned to a specific location for recycling
  - contains materials which are easily recyclable in Michigan..



- B. **Recycled Content of Products Offered** Bidders are expected to offer products using recovered materials suitable for the intended use whenever possible. The following definitions apply to 'Recovered Material':

'Post-Consumer Waste', is defined as 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 recycling into a usable commodity or product

'Secondary Waste', is defined as industrial by-products and wastes generated after completion of a manufacturing process that would normally be disposed.

All Bidders are requested to indicate below an estimate of the percentage of recycled materials, if any, contained in each item bid. Higher percentages of recycled materials are preferred. All recycled products and packaging are required to perform at the level outlined in bid requests.

\_\_\_ 50 \_\_\_ % (Total estimated percentage of recovered material)

\_\_\_ 30 \_\_\_ % (Estimated percentage of post-consumer material)

\_\_\_ -- \_\_\_ % (Estimated percentage of secondary waste)

**Certification**

I, Steven J. Johnson (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the percentage of recovered material content for EPA-designated products met the applicable contract specifications.

SJJ (Initial)

- C. **Clean Air and Water**

Vendor certifies that any facility to be used in the performance of this contract IS \_\_\_\_, IS NOT x listed on the Environmental Protection Agency (EPA) List of Violating facilities.

The vendor will immediately notify the state, before award, of the receipt of any communication from the EPA or the state, indicating that any facility that the vendor proposes to use in the performance of this contract is under consideration to be listed on the EPA List of Violating Facilities or any enforcement action.

- D. **Mercury Content** It is the clear intent of state agencies to avoid purchasing products that contain mercury whenever possible. Bidders shall offer mercury-free products when available. Should mercury-free alternatives not exist, as presently is the case with fluorescent lamps, bidders shall offer the lowest mercury content available. Bidders shall disclose whenever products contain added mercury by using the following format.

(N/A) Product does not contain Mercury



- ( ) Product does contain Mercury (attach an explanation that includes: the amount or concentration of mercury, and justification as to why that particular product is being proposed)

Bidders shall ensure that mercury added products containing mercury in excess of 1 gram or 250 ppm, shall be labeled: "contains mercury".

- E. Polybrominated Flame Retardents (BFR).** Bidders shall disclose whether the products being offered contain toxic flame retardants. Bidders are encouraged to provide BFR-free alternatives when available.

(N/A) Product does not contain BFR's

- ( ) Product does contain BFR's (attach an explanation)

- F. Hazardous Material Identification.** 'Hazardous material', as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

- (1) The bidder must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (if none, insert 'None')	Identification Number
N/A	

- (2) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (3) The apparently successful bidder agrees to submit, for each item as required prior to award, a **Material Safety Data Sheet** for all hazardous material identified in paragraph (1) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful bidder is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful bidder being considered non-responsive and ineligible for award.
- (4) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted



under paragraph (3) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

- (5) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.
- (6) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (7) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:
  - (a) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to:
    - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
    - (ii) Obtain medical treatment for those affected by the material; and
    - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
  - (b) To use, duplicate, and disclose data furnished under this clause, in precedence over any other clause of this contract providing for rights in data.
  - (c) The Government is not precluded from using similar or identical data acquired from other sources.

- G. **Waste Reduction Program** Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, *et seq.*). The following definitions apply to 'Waste Reduction':

'Recycling', means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products." This definition excludes the use of these materials as a fuel substitute or for energy production.

'Waste prevention', means any action undertaken to eliminate or reduce the amount, or the toxicity, of materials before they enter the waste stream. This action is intended to conserve resources, promote efficiency, and reduce pollution." Waste prevention includes reduction and reuse, but not recycling.

'Waste reduction', means any practice, such as an equipment or technology modification, a process or procedure modification, a reformulation or redesign of a produce, a substitution of raw materials, or improved management, training, or inventory control, which practice is undertaken by a person to directly or indirectly



reduce the volume or quantity or toxicity of waste that may be released into the environment or that is treated at a location other than the location where it is produced.

'Pollution Prevention', is defined as the practice of minimizing the generation of waste at the source and, when wastes can not be prevented, utilizing environmentally sound on-site or off-site recycling or reuse. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

**H. Ozone Depleting Substances**

'Ozone-depleting substance', as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR part 82 as:

- (1) Class I, including, but not limited to, chlorofluorocarbons, halos, carbon tetrachloride, and methyl chloroform; or
- (2) Class II, including, but not limited to, hydro chlorofluorocarbons.

The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR part 82, Subpart E, as follows:

'**Warning:** Contains (or manufactured with, if applicable)

N/A (insert the name of the substance(s).), a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.'

**I. Refrigeration and Air Conditioning**

The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

**J. Emergency Planning and Community Right-to-Know Reporting - By signing this offer, the bidder certifies that:**

- (1) The owner or operator of facilities that will be used in the performance of this contract is in compliance with the filing and reporting requirements described in sections 302, 304, 311, 312 and 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001, et. seq.) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101, et. seq.). EPCRA filing and reporting requirements include emergency planning notification, release reporting, hazardous chemical inventory reporting, and toxic chemical release inventory (TRI) reporting.
- (2) The owner or operator of facilities that will be used in the performance of this contract will maintain compliance with the filing and reporting requirements described in sections 302, 304, 311, 312 and 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001, et. seq.) and section 6607 of the



Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101, et. seq.) for the life of the contract.

GH (Initial)

### 3.309 KNOWLEDGE OF CHILD LABOR FOR LISTED END PRODUCTS

- (a) 'Forced or indentured child labor', means all work or service:
- (1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or
  - (2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.
- (b) *Listed end products.* The following end product(s) being acquired under this solicitation is (are) included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, identified by their country of origin. There is a reasonable basis to believe that listed end products from the listed countries of origin may have been mined, produced, or manufactured by forced or indentured child labor.

Listed End Product	Listed Country of Origin
N/A	

- (c) *Certification.* The State will not make award to a bidder unless the bidder, by checking the appropriate block, certifies to one of the following:
- (A) The bidder will not supply any end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in a corresponding country as listed for that end product.
- ( ) The bidder may supply an end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The bidder certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture such end product. On the basis of those efforts, the bidder certifies that it is not aware of any such use of child labor.

### 3.310 FORCED LABOR, CONVICT LABOR, OR INDENTURED SERVITUDE MADE MATERIALS

Contractor hereby represents and certifies that, to the best of his /her knowledge and belief no foreign (outside of the U.S.) made equipment, materials, or supplies, furnished to the state under



this agreement, have been produced in whole or in part by forced labor, convict labor, or indentured servitude.

     (Initial)

### 3.4 Vendor/Contractor Demographics

#### 3.401 SMALL BUSINESS REPRESENTATION

The vendor represents and certifies that it IS \_\_\_\_\_, IS NOT \_\_\_\_\_ a small business concern and that all \_\_\_\_\_, NOT ALL \_\_\_\_\_ end items to be furnished will be manufactured or produced by a small business concern in the US, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands

Provide the following information:

\_\_\_\_\_ (Estimate # of employees)

\$\_\_\_\_\_ (Estimate of annual revenue)

#### 3.402 WOMEN, MINORITY, OR VETERAN-OWNED SMALL BUSINESS REPRESENTATION

##### DEFINITIONS:

'Women-owned business', means a small business that is at least 51% owned by a woman or women who are US citizens and who control and operate the business

The vendor represents that it IS \_\_\_\_\_, IS NOT \_\_\_\_\_ a women-owned small business.

'Minority-owned business', means a small business that is at least 51% owned by a minority or minorities who are US citizens and who control and operate the business

The vendor represents that it IS \_\_\_\_\_, IS NOT \_\_\_\_\_ a minority owned small business.

'Veteran-owned business', means a small business that is at least 51% owned by a veteran or veterans who are U.S. citizens and who control and operate the business

The vendor represents that it IS \_\_\_\_\_, IS NOT \_\_\_\_\_ a veteran owned small business.

The Contractor represents and warrants that the company meets the above (when checked) and can provide supportive documentation upon request.

#### 3.403 OWNERS AND OFFICERS

Vendor must list all owners or officers that hold a 25% interest or more in the company (use attachment if necessary):

Name and Title	% of Interest or Ownership



Steven G. Lehmann	33%
Joseph A. Herbers	33%

**3.404 RESERVED****3.5 State Concerns****3.501 GENERAL COMPANY DEMOGRAPHICS**

1. Company Name: Pinnacle Actuarial Resources, Inc.
2. Company Address: 2817 Reed Road, Suite #2  
Bloomington, IL 61704
3. Principle Place of Business (zip code): 61704
4. Organization type
  - Limited Liability Company
  - Limited Liability partnership
  - Corporation
  - Partnership
  - Health Care Provider
  - Hospital or extended care facility
  - Sole Proprietorship
  - Other: \_\_\_\_\_
5. Year of establishment 2003

**3.502 BUSINESS OWNED BY PERSONS WITH DISABILITIES**

DEFINITION: 'Business owned by persons with disabilities', means a business in which all of the following apply:

1. More than 50% of the voting shares or interest in the business is owned, controlled, and operated by 1 or more persons with disabilities
2. More than 50% of the net profit or loss is attributable to the business accrues to shareholders who are persons with disabilities
3. More than 50% of the employees of the business are residents of this State of Michigan DMB

The vendor represents that it IS \_\_\_\_\_, IS NOT X a small business owned by persons with disabilities.



Fraudulently representing information about the use of businesses owned by persons with disabilities to procure this contract is a violation of the Business Opportunity Act For Persons with Disabilities of 1988, PA 112, MCL 450.791 – 450.795. A person who knowingly violated this act is guilty of a felony, punishable by imprisonment up to 2 years in prison, or a fine not less than \$5,000. A person found guilty of violating this act shall be barred from obtaining future contracts with the state.

### 3.503 COMMUNITY REHABILITATION ORGANIZATION (Formerly Sheltered workshops)

DEFINITION: 'Community rehabilitation organization', means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers, which provides those individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

The vendor represents that it IS \_\_\_\_\_, IS NOT X a community rehabilitation organization

### 3.504 CERTIFICATION OF A MICHIGAN BASED BUSINESS

DEFINITION: To qualify as a Michigan business, vendor must have during the 12 months immediately preceding this bid deadline, or if the business is newly established, for the period the business has been in existence, it has (check all that apply):

- ( ) Filed a Michigan single business tax return showing a portion or all of the income tax base allocated or apportioned to the State of Michigan pursuant to the Michigan Single Business Tax Act, 1975 PA 228, MCL §§ 208.1 – 208.145; or
- ( ) Filed a Michigan income tax return showing income generated in or attributed to the State of Michigan; or
- ( ) Withheld Michigan income tax from compensation paid to the bidder's owners and remitted the tax to the Department of Treasury; or

I certify that **I have personal knowledge** of such filing or withholding, that it was more than a nominal filing for the purpose of gaining the status of a Michigan business, and that it indicates a significant business presence in the state, considering the size of the business and the nature of its activities.

I authorize the Michigan Department of Treasury to verify that the business has or has not met the criteria for a Michigan business indicated above and to disclose the verifying information to the procuring agency.

Steven G. Lehmann

Authorized Agent Name (print or type)

Steven G. Lehmann

Authorized Agent Signature

Fraudulent Certification as a Michigan business is prohibited by MCL 18.1268 § 268. A BUSINESS THAT PURPOSELY OR WILLFULLY SUBMITS A FALSE CERTIFICATION THAT IT IS A MICHIGAN BUSINESS OR FALSELY INDICATES THE STATE IN WHICH



IT HAS ITS PRINCIPAL PLACE OF BUSINESS IS GUILTY OF A FELONY, PUNISHABLE BY A FINE OF NOT LESS THAN \$25,000.

Bidder shall also indicate one of the following:

- Bidder qualifies as a Michigan business (provide zip code: \_\_\_\_\_)
- Bidder does not qualify as a Michigan business (provide name of State: Illinois)
- Principle place of business is outside the State of Michigan, however service/commodity provided by a location within the State of Michigan (provide zip code: \_\_\_\_\_)

**3.505 PLACE OF PERFORMANCE**

Bidder must obtain the approval of the Director of Acquisition Services before using a place of performance that is different from the address that bidder provided in their bid.

- (a) The bidder, in the performance of the contract, INTENDS \_\_\_\_\_, DOES NOT INTEND  X  to use one or more plants or facilities located at a different address from the address of the bidder as indicated in this bid.
- (b) If the bidder checks "intends" in paragraph (a) of this provision, it shall insert in the spaces provided below the required information:

Place of Performance Full address	Owner/Operator of facility to be used	Percent (%) of Contract value to be Performed at listed Location

**3.506 FORMER STATE EMPLOYEES**

Vendor certifies that there ARE \_\_\_\_\_, ARE NOT  X  former state employees involved in the performance of this contract.

If former state employees are involved in the performance of this contract, vendor must provide the following information

Vendor hereby represents that the following employees involved in the performance of this contract are former state employees (use attachment if necessary).

Name	Department, Division	Date of Employment




**3.507 DOMESTIC END PRODUCT**

DEFINITION: 'Domestic end product', means one that is manufactured within the United States and the cost of the domestic components exceeds 50% of the cost of all the components.

The vendor hereby certifies that the product to be provided, **except those listed below**, are a domestic end product, and that components of unknown origin have not been mined, produced, or manufactured outside the United States (use attachment if needed):

Excluded End Products	Country of Origin
N/A	

SGL (Initial)

**3.508 USE TAX**

Companies (and their affiliated organizations) that are awarded contracts are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services **delivered into the state of Michigan**. This is required of all companies that are awarded contracts. Those companies that lack sufficient "presence" in Michigan to be required to register and pay tax must do so as a **"volunteer"**. This requirement extends to: (1) ALL MEMBERS OF ANY CONTROLLED GROUP AS DEFINED IN § 1563(A) OF THE Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make **sales at retail for delivery into the state of Michigan** are registered with the State of Michigan for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two or more trades or businesses under common control" the term "organization" means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

The requirement of remittance could be limited to the bidder only without including affiliate companies.

Contractors and their affiliates as defined in the paragraph above must register for and remit sales and use tax on all taxable sales of tangible personal property or services **delivered to the state of Michigan**.

SGL (Initial)



### 3.509 TAX EXCLUDED FROM PRICE

Contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The Contractor shall state separately on its invoices taxes excluded from the contract price, and the Government agrees either to pay the amount of the taxes to the Contractor or provide evidence necessary to sustain an exemption.

SL (Initial)

### 3.510 TAX PAYMENT

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes for all persons involved in the resulting Contract.

The State may refuse to award a contract to any vendor who has failed to pay any applicable state taxes. The State may refuse to accept vendor's bid, if vendor has any outstanding debt with the State of Michigan. Prior to any award, the State will verify whether vendor has any outstanding debt with the State.

Vendor hereby certifies that all applicable state taxes are paid as of the date of bid submission, and that vendor owes no outstanding debt to the State of Michigan.

SL (Initial)

### 3.511 USE OF OTHER SOURCES AS SUBCONTRACTORS

The State has sources of supply and services that are mandatory. The state may use the information provided under this section and 3.502 and 3.503 in determining future awards and vendor standing with the state.

#### (1) Persons with disabilities

See Paragraph 3.502 for definition and penalty for fraudulent represents this information.

Vendor IS , IS NOT  purchasing supplies and/or service from a business owned by persons with disabilities in the performance of this contract.

Vendor has contracted for \_\_\_\_\_% of supplies and services needed for the performance of this contract, which equals \$\_\_\_\_\_, from a business owned by persons with disabilities (estimates or approximates are acceptable).

Vendor(s) Name: \_\_\_\_\_

#### (2) Community Rehabilitation Organizations (CRO) (formerly sheltered workshops)

See Paragraph 3.503 for definition.



Vendor IS \_\_\_\_\_, IS NOT  purchasing supplies and/or service from a community rehabilitation organization in the performance of this contract.

Vendor has contracted for \_\_\_\_\_% of supplies and services needed for the performance of this contract, which equals \$\_\_\_\_\_, from a community rehabilitation organization (estimates or approximates are acceptable).

Vendor(s) Name: \_\_\_\_\_

**3.512 UTILIZATION OF BUSINESS CONCERNS**

It is the policy of the State of Michigan that small business concerns, veteran-owned small business concerns, persons with disabilities-owned small business concerns, small disadvantaged business concerns, minority-owned small business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any state agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems.

The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the State of Michigan or the awarding agency of the State of Michigan as may be necessary to determine the extent of the Contractor's compliance with this clause.

**3.513 RESERVED**

**3.514 RESERVED**

**3.515 PLACE OF SUBCONTRACTING**

Indicate below ALL work to be subcontracted under this agreement (use additional attachment if necessary; estimates are acceptable):

Description of Work to be sub-contracted	Percent (%) of total contract value to be sub-contracted	Sub-contractor's name and principal place of business (City and State)



**3.516 RESERVED**

**3.517 SERVICES NEEDED IN PERFORMANCE**

Vendor hereby certifies that services to be purchased to enable vendor to perform this agreement will be purchased from a business having its principle place of business in the State of Michigan, **except those listed below** (use additional attachment if necessary; estimates are acceptable):

Description of Service to be purchased	Percent (%) of total contract value to be purchased	Service providers principal place of business (City and State)

**3.518 EMPLOYEE AND SUBCONTRACTOR CITIZENSHIP**

Vendor hereby certifies that all employees, contractors, subcontractors, and any other individual involved in the performance of this contract, **except those listed below**, are citizens of the United States, legal resident aliens, or individuals with valid visa (use additional attachment if necessary; estimates are acceptable):

Employee Name	Title

**3.6 Changes to Disclosures**

If any of the certifications, representations, or disclosures indicated in this document change after awarding of a contract, the Contract is required to report those changes immediately to the Department of Management and Budget, Acquisition Services.

**3.7 State Assertions**

If the state finds that grounds to debar exist, it shall send notice to the vendor of proposed debarment indicating the grounds for proposed debarment and the procedures for requesting a hearing. If the vendor



does not respond with a written request for a hearing within twenty (20) calendar days, the state shall issue the decision to debar without a hearing. The debarment period may be of any length up to eight (8) years. After the debarment period expires, the vendor may reapply for inclusion on bidder lists through the regular application process. Authority given by Executive order 2003-1.

ANY FALSE CERTIFICATION OF ANY OF THE PRECEEDING PROVISIONS IS GROUNDS FOR DEBARMENT AND WILL GIVE THE STATE THE RIGHT TO INVOKE ALL REMEDIES AVAILABLE TO IT UNDER THIS CONTRACT.

I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THE REPRESENTATIONS AND CERTIFICATIONS MADE HEREIN BY THE VENDOR/CONTRACTOR/SUPPLIER ARE ACCURATE AND CURRENT AS OF THE DATE INDICATED BELOW

Pinnacle Actuarial Resources, Inc.

Name of Vendor/contractor/supplier

2817 Reed Road, Suite #2

Bloomington, IL 61704

Address of supplier

(309) 665-5010 Fax: (309) 662-8116

Telephone and fax No. of supplier

*Steven G. Schuman*

Signature of supplier's authorized representative

President

Title of Supplier representative

August 30, 2004

Date

## ***BIOGRAPHY***

### ***ROBERT J. WALLING III***

Mr. Walling is a Principal and Consultant with Pinnacle Actuarial Resources, Inc., in the Bloomington, Illinois, office. He holds a Bachelor of Science degree in secondary mathematics education from Miami University. He has worked in the insurance industry since 1989.

Mr. Walling is a Fellow of the Casualty Actuarial Society and a member of the American Academy of Actuaries. He has served the CAS as Chairman of the Ratemaking Seminar Committee and Chairman of the Risk and Capital Management Seminar Committee.

Prior to joining PINNACLE, Mr. Walling was employed for five years by Anthem Casualty Insurance Group where he was responsible for the pricing and product monitoring functions of the Commercial Lines and Managed Care Workers Compensation Divisions. He also has work experience at Providence Washington Insurance Company and Great American Insurance Group. His experience includes dynamic financial analysis of insurance companies, commercial lines ratemaking and product development, product management responsibilities, personal and commercial lines reserving, rate filings and regulatory compliance, and planning for ongoing and start up operations.

His published articles include "A Dynamic Approach to Modeling Free Tail Coverage," *CAS Forum*, Fall, 1999, and "Customizing the Public Access Model Using Publicly Available Data," *CAS Forum*, Summer, 1999.

August 31, 2004

## ***BIOGRAPHY***

### ***JOHN E. WADE***

Mr. Wade is a Consultant with Pinnacle Actuarial Resources, Inc., in the Bloomington, Illinois, office. He holds a Bachelor of Science degree and a Master of Arts degree in actuarial science from Ball State University. He has over twenty five years of actuarial experience. He earned his designation as an Associate of the Casualty Actuarial Society in 2002 and became a member of the American Academy of Actuaries that same year.

Prior to joining Pinnacle Actuarial Resources, Inc. Mr. Wade spent four years as an independent casualty actuarial consultant working in the areas of pricing, product development, and claims procedure analysis. He has also been employed by State Farm Insurance and Indiana Farm Bureau Insurance. His responsibilities have included developing and using ratemaking formulas and procedures for several property/casualty lines of insurance; developing forms, rating rules, and underwriting guidelines for personal lines of insurance; filing rates, rules and forms with state regulators; analyzing loss and loss adjustment expense reserves; managing and developing actuarial and loss control staff; developing actuarial data bases and attendant reports; and designing and costing agent compensation plans.

At Pinnacle Actuarial Resources, Inc., Mr. Wade's client engagements include rate reviews. He also supports rate reviews and loss and expense reserve reviews of other consultants. Mr. Wade also serves as a project manager within our office and is responsible for the work of several actuarial analysts and support staff.

August 31, 2004

## ***BIOGRAPHY***

### ***CHARLES C. EMMA***

Mr. Emma is a Principal and Consultant with Pinnacle Actuarial Resources, Inc. in its Chicago office. He holds a Bachelor of Science degree in Mathematics from the University of Notre Dame, and has nineteen years of actuarial experience.

Mr. Emma is a Fellow of the Casualty Actuarial Society and a member of the American Academy of Actuaries. He is the Chairman of the Dynamic Financial Analysis Research Committee of the Casualty Actuarial Society.

Before joining Pinnacle, Mr. Emma was employed by Zurich American Insurance Companies and was a consultant with Deloitte & Touche. His expertise is largely focused on involved loss reserving for property/casualty companies and self-insured organizations. He is also heavily involved with Dynamic Financial Analysis solutions for property/casualty insurance companies. His experience includes: loss reserve studies for insurance companies; financial modeling and valuation of insurance companies and of non-traditional risks; participation on due diligence teams in mergers and acquisitions of property/casualty insurance companies; development of independent loss reserves for large workers compensation carriers; developing of funding and reserving recommendations for self-insured entities; analysis and strategy regarding risk based capital; designing rating models for premium allocations of large insurance companies.

Mr. Emma is a frequent speaker on Dynamic Financial Analysis, loss reserving, and risk based capital. He has participated on various professional society research and communication committees. His most recent published article is the prize-winning "Linking DFA to Corporate Strategy," in CAS Forum, 2000.

August 31, 2004

APPENDIX A

PROPERTY/CASUALTY ACTUARIAL CONSULTING ENGAGEMENTS

Our firm has over 250 active clients including insurers of all sizes, state insurance regulators, government insurance programs, captive insurance companies, self-insured entities, municipal pools, and risk retention groups. Following is a list of selected current clients:

AAA of Michigan	Louisiana Insurance Rating Commission
Allied Property/Casualty Ins. Company	Michigan Association of Rehab. Orgs.
Allstate	Michigan Bankers Association
American Insurance Association	Michigan Division of Insurance
Budget-Rent-a-Car	Michigan Farm Bureau
EMC Insurance Companies	Michigan University Self-Insured Corp.
Foremost	Nationwide
Great American Insurance Companies	New Mexico Patient Compensation Fund
HARCO National	Ohio Casualty Group
Illinois State Toll Highway Authority	State Farm Insurance Company
Iowa Department of Insurance	21 <sup>st</sup> Century Insurance Co

Through the years we have provided consulting services for numerous state insurance departments. This work has ranged from loss reserve analyses to rate reviews to staff training seminars. Following is a summary of these engagements. Please note that these examples include engagements of Pinnacle as well as engagements conducted by Pinnacle's actuaries while affiliated with Miller, Herbers, Lehmann, & Associates, Inc. and Tillinghast prior to 2003.

<u>State</u>	<u>Engagements</u>
California	Provided assistance to the insurance commissioner in a wide variety of actuarial issues.
Indiana	Provided a loss reserve analysis and operational review to assist in the financial examination of a troubled company.
Iowa	We provide financial examination services to the Iowa Department of Insurance.
Kentucky	We provided rate filing review services to the Kentucky Department of Insurance.

Louisiana	Provided actuarial consulting services supporting the review of the rate filing of the Louisiana Patients Compensation Fund. Conducted an actuarial training seminar for the Commissioner's Staff. We also developed a prototype of an automated rate review system for the Department of Insurance.
Maine	We have provided financial examination services to the Maine Bureau of Insurance.
Michigan	We provide financial examination services to the Michigan Division of Insurance.
New Mexico	We have provided actuarial consulting services regarding the rates and reserves for the New Mexico Patient's Compensation Fund.
Ohio	Provided various actuarial consulting services, most recently providing a comprehensive feasibility study for a medical malpractice patients compensation fund.
Oregon	We have provided financial examination services to the Oregon Insurance Division.
Texas	We were one of nine firms approved to assist the Texas Department of Insurance with property/casualty financial examinations during 2000.

**BIOGRAPHY**

**STEVEN G. LEHMANN**

Mr. Lehmann is a Principal and Consultant with Pinnacle Actuarial Resources, Inc., in the Bloomington, Illinois, office. He holds a Bachelor of Science Degree (Cum Laude) in actuarial science from the University of Illinois. He has over thirty years experience in the insurance industry.

Mr. Lehmann is a Fellow of the Casualty Actuarial Society (CAS), a Fellow of the Society of Actuaries, a member of the American Academy of Actuaries and a Fellow of the Canadian Institute of Actuaries. Mr. Lehmann is a former President of the CAS and Chairman of the CAS Board of Directors. He has also served as Vice President of the American Academy of Actuaries and Chairman of its Casualty Practice Council.

Mr. Lehmann's experience includes development of pricing strategies including coordination of underwriting and rating programs, credit score analysis, financial examinations, loss reserve opinions, rate filings, residual market studies, and rate of return analysis. He has testified before regulatory and legislative bodies on a variety of insurance matters including ratemaking, risk classification, and rate of return.

Mr. Lehmann has authored a *CAS Forum* paper entitled "Contingency Margins in Rate Calculations," an article entitled "Auto Insurance Residual Market Mechanisms" and co-authored a *CAS Forum* paper entitled "Building a Public Access PC-Based DFA Model." He has given numerous speeches and panel presentations in professional and public forums.

August 31, 2004

## **Pinnacle Actuarial Resources, Inc.**

### **Peer Review Procedures and Requirements**

#### ***I. Purpose of Peer Review***

The primary purposes of peer review are to maximize the quality and comprehension of our work product, and to minimize our own professional liability exposure within practical time and fee constraints.

The interest of the firm's clients, and those of the firm itself, mandate that work performed by the firm, and the communication of that work by the firm, conform to high professional standards. Appropriate recognition of such interests deserves and requires adoption of and compliance with certain internal standards and procedures regarding work performance and communication of the work product, the objectives of such standards and procedures being to attempt to determine, to the extent practicable, that:

- methods and assumptions employed are appropriate and acceptable in the circumstances;
- judgments made and applied are reasonable and supportable;
- communications to clients are accurate, complete and understandable; and
- work is performed adequately supports all statements and conclusions.

A system of peer review is the tool we use to exercise due care and diligence such that these objectives are achieved.

File documentation is an important element of peer review. The file must maintain an adequate trail which minimizes the risk of an undocumented or unsupported work product when viewed from the perspective of an independent third party.

The peer review system is intended to foster the maintenance of high professional standards and practices, consistently applied to Pinnacle Actuarial Resources, Inc (the Firm's) assignments. Thus, the review should not be considered perfunctory, even in cases of the most routine or straightforward assignments.

It will be the expressed duty of the Professional Standards Officer (PSO) to ensure the work product of the firm abides by these guidelines.

## **II. *Items Requiring Peer Review***

### **A. *Written Correspondence***

All substantive correspondence written in a professional capacity from the Firm to a client must be peer reviewed prior to release to the client.

- Written correspondence includes (but is not limited to) reports, letters, data requests, proposals, discussion outlines, presentations, and engagement confirmations.
- Documents submitted in draft form are to be peer reviewed prior to release to a client. A draft stamp, draft paper, or note that document has not been reviewed does not waive or delay the peer review requirement.
- Correspondence relating to billing, since it is written in an "administrative" capacity rather than a professional capacity, does not require a peer review. However, there may be significant benefits from reviewing billing with a peer.

When in doubt, err on the conservative side and have the document reviewed.

### **B. *Oral discussions and presentations***

Elements of an assignment subject to peer review include discussions with the client pertaining to The Firm's assumptions, methods, opinions, findings, conclusions, or recommendations related to the assignment. In many cases, it is not practical to obtain prior peer review of phone conversations and meetings. The consultant must decide whether peer review (either prior or post) of oral advice and opinions is necessary. Peer review of substantive oral advice may, in certain circumstances, require the presence of a second consultant. Presence of a second consultant will most likely be necessary for third party negotiations. Depending upon the nature of the issues, the presence of a second consultant may be necessary for testimony as an expert witness, either at hearings or depositions. When peer review of oral advice is not provided by the presence of a second consultant, there must be a review of subsequent written confirmation of the advice.

**C. Proposals and Engagement Letters**

Proposals and confirmation letters should always be specific about the scope of work, background as to client's operations, expected reliance on client and/or industry data, and expected number of days on site and attendance at meetings.

**D. Joint Projects**

Peer review requirements are not waived on joint projects with other firms. Components of the project and any references to or uses of the Firm's work elsewhere in the overall work product are subject to peer review standards of the firm. It would be beneficial for consultants to review the entire work product, even those sections outside of our area of expertise, for reasonableness and consistency.

**E. Articles and Publications**

All articles, publications, and similar materials intended for broad or general consumption, must be peer reviewed.

**III. Definition of a "Peer"**

A peer is someone who is qualified to perform the assignment. When deciding between/among potential peer reviewers the first choice should always be the person with the greater expertise in the type of work being reviewed.

**1. Specialty Knowledge**

Certain projects require a peer reviewer with expertise in the specific area being addressed, as opposed to general expertise. This is either because of the sensitivity and/or professional liability exposure of the type of assignment, the complex or technical nature of the work, or the desire to have consistent answers (and work quality) in certain industry segments. On the actuarial side, in particular, it is necessary to ensure that assumptions conform to specialty standards or that deviating assumptions are well supported.

Whenever there is a question regarding the appropriateness of a peer reviewer for a particular assignment, contact the PSO.

In the cases where all knowledgeable consultants in a specialty area are already involved in the project, or the specialty consists of a "sole practitioner," a consultant not involved in the project but familiar with the scope of work being performed should review the work for reasonableness. The PSO can assist in peer review selection in such cases.

## 2. Limitations

To minimize bias in the peer review process, the peer reviewer should not have directed the project. This does not preclude keeping the peer reviewer notified as to the project status and the general methodology and assumptions to be used. In fact, the peer reviewer is ideally assigned in the proposal process or when the project is received.

The independence of the consultant and the peer reviewer is a key criterion in peer reviewer selection. An account executive should not peer review the work done by a junior consultant on an account where the specific methodology and assumptions were established by the account executive and merely updated by the junior consultants. If the junior consultant has independently performed the analysis and established assumptions, then account executive peer review is acceptable, although not preferred.

It is desirable to select a new consultant and/or peer reviewer of a particular project after a certain number of years, e.g., two. Similar to the project involvement limitation, this principle is intended to maximize independence between the consultant and the peer reviewer, but balance the efficiency gained through repeat project management and/or peer reviews.

### **Special Situations**

In these situations, the PSO is to be involved in the selection of the peer reviewer.

- **Reserve Opinions**

All Reserve Opinion letters must have a checklist attached and be reviewed by the PSO prior to release to the client.

- **M&A/Conversions**

All merger & acquisition work must be approved in advance by the Board of Directors. Peer reviewer must be approved in advance by the PSO. Every M&A assignment requires an engagement letter. All M&A engagement letters should be reviewed by the PSO before transmittal.

### **C. Two Answer Situations**

The Firm will avoid any and all two answer situations as a de facto conflict of interest. Such two answer situations include, but are not limited to:

M&A - buyer vs. seller

M&A - two buyers

Rate filings

Insurance department vs. insurance company

Two different states  
Two filers in same state  
Any other potential "two answer" situation

4. Articles and Publications

Articles and publications are intended for a wide audience and enhance the image and reputation of the firm. As such, articles, publications, and similar materials intended for broad and general consumption are subject to peer review.

**IV. Responsibilities of Account Executive/Project Manager, Peer Reviewer, and Tech Reviewer**

A. Account Executive/Project Manager

1. Select peer reviewer on a timely basis.
2. Give as much notice as possible to peer reviewer as to timing.
3. Make sure the technical work and report meet your standards of quality before involving peer reviewer.
4. Make sure that technical review is performed prior to peer review, or that the peer reviewer is aware of any changes resulting from technical review.
5. Provide background and discuss any special client or analysis circumstances with the peer reviewer.
6. Make sure that all peer review comments have been incorporated or refuted.
7. Make sure that peer review is completed before sending out the report, including follow-up peer review if requested by reviewer or if indicated by circumstances (e.g., results have changed).
8. Make sure that peer review is properly documented in the client files.
9. Make sure that peer reviewer's time is recorded in the billing file.

B. Technical Reviewer

1. Check input and calculations, as well as footnotes, headings, and labels.
2. Check that results are correctly transcribed and cross referenced in text.
3. Check the appropriateness of the calculations as well as the arithmetic.
4. Make note of any calculations that are too complex to check within a reasonable time frame. These should be communicated to the peer reviewer (designated on form), who may direct a spot-check or check themselves.
5. Any questions about the level of detail of the technical review should be directed to the peer reviewer.
6. Any unresolved disagreement with the analyst should be referred to the consultant and/or peer reviewer.
7. Any other unusual concerns should be relayed to the peer reviewer.
8. Make sure that all backup to input and calculations is contained in the file.
9. Check and sign the peer/technical review form.

C. Peer Reviewer

1. For proposals, areas to be reviewed include:
  - a. firm qualifications and description
  - b. description of project personnel
  - c. description of our understanding of the project
  - d. definition of project scope
  - e. description of data requirements
  - f. fee estimate commensurate with level of effort, qualified if necessary
  - g. disclosure of significant qualifications or limitations to project scope
  - h. disclosure of limitations on distribution and use
  - i. disclosure of apparent or potential conflicts of interest
  - j. discussion of indemnification agreement, if required
  - k. references, if necessary
  - l. ownership of work product (copyright)
  - m. documentation of work product (record retention vs. return or destruction of documents)
  - n. reasonable deadlines for completion of work
  - o. payment of fees if project terminated
  
2. For report, areas to be reviewed include:
  - a. Purpose/Scope appropriate to proposal
  - b. Distribution & Use and Reliances/Limitations complete
  - c. Conclusions
    - i. address the important issues
    - ii. conform to scope
    - iii.adequately supported
  - d. Methods employed (assumptions/judgments)
    - i. reasonable and appropriate
    - ii. documented and described
  - e. Text and overall organization and appearance
    - i. clear and well-formatted
    - ii. includes background where necessary
    - iii. use draft paper/report over if not final
  - f. Exhibits/graphs clear and understandable
  - g. Background checks
    - i. conflicts of interest/independence resolved/disclosed
    - ii. letter of representation, if required
    - iii.indemnification agreement, if required
  
3. Answer technical reviewer's questions concerning level of detail of technical review or disagreements with the analyst.

4. Periodically discuss extent of review with technical reviewer to avoid gaps in overall review.
5. Advise the consultant as soon as possible if peer review cannot reasonably be accomplished by the project deadline.

The following related points pertaining to peer review should be noted:

- If the work product is not ready for a thorough peer review, the peer reviewer may advise the consultant as to the areas needing work and direct that the work be done before further peer review.
- The peer reviewer may determine that an alternative or additional peer reviewer needs to get involved. The peer reviewer should assist in identifying such a peer reviewer with the help of the PSO, if necessary. A peer reviewer should not ask to be replaced simply because of a disagreement with the consultant.
- Consider whether the work product or results have a more sensitive nature (e.g., assignment evolves into expert witness work; reserve indications have deteriorated markedly from our prior work; any result that may surprise a client). If so, give extra consideration to all aspects of the project, including the scope of project, billing status, support for methods and assumptions, method of communication of results, and ways to turn "bad news" into an opportunity to assist the client.
- Specifically identify items requiring action, follow-up or response by consultant.

#### D. Follow-up

At the completion of a peer review, the account executive/project manager should ask whether the peer reviewer needs to see the client product again before it is sent to the client. If peer review comments are relatively minor, the answer will most likely be no. On the other hand, if major changes are likely to result from peer review, then the answer may very well be yes. If the peer reviewer expects to see the product again before it is sent to the client, this should be made clear to the account executive/project manager. Follow-up by the technical reviewer is based on similar guidelines.

#### E. Resolution of Disagreements

1. If the analyst and technical reviewer disagree on an issue, the issue should be referred to the consultant and/or peer reviewer.

2. If the analyst disagrees with the consultant on an issue, the analyst's recourse is to bring the issue to the peer reviewer or the PSO.
3. Any unresolved disagreement between the technical reviewer and the analyst should be referred to the consultant and/or peer reviewer.

If the account executive/project manager and the peer reviewer cannot resolve a point of dispute between them, they should agree on an impartial arbitrator, who may be:

- another consultant who would be qualified to peer review the project, agreed upon by both parties
- the PSO
- another consultant designated by the PSO

Both parties should agree to abide by the conclusion reached by the impartial arbitrator. The PSO is available as a resource to resolve peer review conflicts.

#### ***V. Documentation***

The peer review should be documented on the standard peer review form. This form should be filled out to the extent possibly by the report author, and provided to the peer reviewer along with the report or letter and any supporting files that are necessary. After the peer review has been completed, the signed form should be returned to the author or account executive. The signed copy of this form should be kept in the client file. Pending the return of the signed copy, a copy of the form that was sent to the peer reviewer should be kept in the file.

The current versions of the peer review/technical review form and reserve opinion checklist are attached. There are two acceptable approaches to file documentation:

- a) Keep all peer review/technical review drafts and comments with follow up notes as to how and why each comment was incorporated or refuted, or,
- b) Retain the signed peer review/technical review form in the client file after the project is completed.

In the latter case it is desirable for the peer reviewer to have an opportunity to perform a follow-up review on the final document before the earlier versions are destroyed.

#### ***VI. Audit***

On an annual basis, the PSO shall conduct an audit of the files sufficient to determine the degree of compliance with these peer review requirements and shall submit a written report of the audit findings to the Board of Directors.

**APPENDIX D  
CONTRACTORS PRICING**

#### **4.307 COMPENSATION AND PAYMENT**

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The billing rates for these assignments are set forth below:

<u>Staff Category</u>	<u>Normal Hourly Billing Rate</u>	<u>Project Hourly Billing Rate</u>
Steven G. Lehmann	\$400	\$195
Consulting Actuaries	\$225-\$400	\$165
Actuarial Analysts	\$175	\$100
Actuarial Technicians	\$100	\$ 85

The fees listed above include all professional fees, computer charges, clerical charges, and other miscellaneous charges such as telephone and photocopy charges. Our out-of-pocket expenses, including overnight shipping charges and travel expenses, will be billed in addition to the above fees in accordance with applicable reimbursement requirements.